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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS*, PAGE 3227.

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** The New Jersey Register supplements the New Jersey Administrative Code. To complete your research of the latest State Agency rule changes, see the Register Index of Rule Proposals and Adoptions in this issue.*

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RULE PROPOSALS

Interested persons may submit, in writing, information or arguments concerning any of the following proposals until **December 19, 1984**. 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. 1:30-3.5. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice.

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Rules of Special Applicability Public Welfare Hearings

Proposed New Rules: N.J.A.C. 1:10

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

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

Proposal Number: PRN 1984-667.

Address comments and inquiries to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
185 Washington Street
Newark, NJ 07102

The agency proposal follows:

Summary

The proposed new rule codifies existing OAL procedures for handling contested cases transmitted to the OAL by the Division of Public Welfare (DPW) with the exception of two special provisions governing emergency fair hearings and settlements and withdrawals of fair hearing requests. The proposed rule is intended to supplement and implement DPW's rules governing complaints, hearings and administrative reviews, N.J.A.C. 10:81-6 et seq., which were promulgated on October 15, 1984 at 16 N.J.R. 2816(a), and should be read in conjunction with these rules. This proposal also supercedes proposed rules concerning settlements at 16 N.J.R. 945(a). The Department of Human Services and the Division of Public Welfare concur in this proposal.

Many of the provisions contained within the proposed rule, for example, notification requirements, representation rights, adjournments, right to continuation of benefits, scheduling requirements, and right to discovery, merely implement mandated Federal requirements for DPW contested case hearings. 7 C.F.R. 273.15 et seq.; 7 C.F.R. 273.16 et seq.; 45 C.F.R. 205.10 et seq.

The proposed rule also includes an emergency fair hearing process which reflects the revisions contained within N.J.A.C. 10:81-6.16. The new process eliminates the interim decision and establishes specific time frames for the scheduling and processing of emergency fair hearing requests, while still affording parties the opportunity to respond to the ALJ's initial decision prior to the final decision of the Director of the DPW. Although enlarging the time frame for the issuance of emergency decisions, the proposed new rule is designed, in

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PROPOSALS

ADMINISTRATIVE LAW

practical effect, to be more efficient and expeditious than the former process, which was found to be burdensome, unnecessary and duplicative.

The proposed new rule also establishes special procedures for the disposition of DPW contested cases by settlement and withdrawal. These procedures were developed after evaluating the results of the Hudson County Administrative Hearings Pilot Program, during which an effort was made to expedite fair hearings and to speed the delivery of benefits to which welfare program applicants or recipients were found to be entitled. Specifically, the proposed rule establishes shortened time frames for the transmission of settled cases to the Bureau of Administrative Review and Appeals (BARA), for the review of settlements by the BARA and for the implementation of the settlement terms by the County Welfare Agency (CWA) or Municipal Welfare Department (MWD). The Department of the Public Advocate and the Office of the Attorney General concur in the proposed settlement procedures.

Social Impact

The proposed new rule will expedite the resolution of DPW contested cases transmitted to the OAL and the delivery of benefits to eligible applicants or recipients, while still ensuring that applicants or recipients who dispute proposed CWA or MWD actions are afforded the full protections of the fair hearing process mandated by Federal law.

Economic Impact

The proposed new rule should result in some reduction in litigation costs by eliminating duplicative efforts in the emergency fair hearing process. By ensuring a quick and efficient system for the implementation of DPW settlements, the proposed new rule should encourage parties to utilize the settlement process, thus saving the OAL and the parties litigation costs.

Full text of the proposal follows.

CHAPTER 10 PUBLIC WELFARE HEARINGS

SUBCHAPTER 1. APPLICABILITY

1:10-1.1 Applicability

(a) The rules in this chapter shall apply to matters transmitted to the Office of Administrative Law by the Division of Public Welfare (DPW) wherein an applicant or recipient disputes the proposed action on eligibility or benefits entitlement by a county welfare agency (CWA) or a local decision or inaction by a municipal welfare department (MWD). These rules also apply to food stamp intentional program violations. To the extent that these rules of special applicability are inconsistent with the Uniform Administrative Procedure Rules (UAPR) contained in N.J.A.C. 1:1-1 et seq., these rules shall apply.

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. CONDUCT OF CONTESTED CASES

1:10-3.1 Representation at hearing

(a) An applicant or recipient may appear at a proceeding without legal representation, be represented by an attorney or be assisted in presentation by a relative, friend or other spokesperson pursuant to the procedures set forth in

N.J.A.C. 1:1-3.12. 7 C.F.R. 273.15(c)(4); 45 C.F.R. 205.10(a)(3)(iii); 7 C.F.R. 273.15(d)(3)(ii)(D); 7 C.F.R. 273.15(p)(2).

1:10-3.2 Attendance at hearing

(a) The applicant/recipient or a representative and the CWA or MWD and their representatives, if any, shall attend the hearing.

(b) The hearing may also be attended by other persons having an interest in the matter if permitted by the applicant or recipient.

(c) The judge may limit the number of persons in attendance at the hearing to comport with any hearing room space limitations.

(d) If neither the applicant/recipient nor a representative appears at a hearing concerning an alleged intentional program violation and timely adequate notice of the hearing was given to the applicant/recipient, the hearing shall be conducted ex parte. 7 C.F.R. 273.16(e); N.J.A.C. 10:87-11.4(1).

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. (RESERVED)

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. (RESERVED)

SUBCHAPTER 8. HEARINGS

1:10-8.1 Adjournments

(a) For good cause shown and upon timely application, an applicant/recipient may request one adjournment of the scheduled hearing date for a period of no more than 30 days.

(b) The total of all adjournments in a case shall not exceed 30 days, unless good cause is shown for a greater extension of time.

(c) In cases involving an alleged intentional program violation, the applicant/recipient must request the adjournment at least 10 days before the scheduled hearing date. 7 C.F.R. 273.16(e)(1)(iii).

1:10-8.2 Notice of hearing

(a) In cases involving AFDC or food stamp benefits, except for emergency hearings, the Clerk shall send written notice of the filing and hearing to each party at least 10 days before the scheduled hearing date.

1. The notice may be sent less than 10 days before the hearing date if the applicant or recipient so requests in order to expedite the hearing.

(b) In cases involving an alleged intentional program violation, written notice of the scheduled hearing shall be sent to the applicant/recipient at least 30 days prior to the hearing. 7 C.F.R. 273.16(e)(3).

1:10-8.3 Scheduling of hearing

(a) The hearing shall be held at a time, date and location convenient to the applicant or recipient.

(b) Upon presentation of acceptable information regarding an applicant's or recipient's illness or infirmity which would prevent his or her appearance at a hearing location, the hearing shall be scheduled at the applicant/recipient's residence.

SUBCHAPTER 9. CONTINUED ELIGIBILITY; EMERGENCY FAIR HEARINGS

1:10-9.1 Eligibility for continued benefits in AFDC and food stamp cases

(a) If the recipient is entitled to and has elected to receive continued unreduced benefits, the ALJ shall determine at the conclusion of the hearing whether assistance should be continued unreduced pending a final decision. Benefits may be continued unreduced if the ALJ determines that the issue is one of fact rather than law or policy. (N.J.A.C. 10:81-6.9(a)).

(b) An adjournment of a hearing at the request of a recipient shall not prolong continuation of benefits at an unreduced level, unless the adjournment is due to: delay caused by the DPW, the OAL or the CWA; unavoidable causes such as illness on the part of the recipient or the failure of the CWA to provide assistance for transportation when such assistance is required by regulations. Adjournment at the request of the CWA or by the ALJ shall not affect continued benefits. (N.J.A.C. 10:81-6.9(b)).

(c) The judge shall inform the recipient and the CWA in writing either at the time of the hearing or on the first workday following the hearing whether or not benefits will be continued unreduced pending a final decision. (N.J.A.C. 10:81-6.9(c)).

1:10-9.2 Emergency fair hearings in AFDC or General Assistance cases

(a) When DPW determines that a request for hearing should be scheduled as an emergency fair hearing:

1. DPW shall notify the OAL by telephone of the hearing request on the same business day as the request is received. The Clerk of the OAL shall prepare the OAL transmittal form based upon the telephone call.

2. The case shall be scheduled by the OAL for a hearing within three business days after the phone call is received.

3. Notice of the time, date and place of the hearing shall be transmitted by telephone to DPW within one business day after the OAL is notified of the hearing request. DPW shall notify the CWA or MWD, the petitioning applicant/recipient or the petitioner's representative of the scheduled hearing by telephone.

4. The ALJ shall file an initial decision by mailgram with the Director of the DPW and the parties no later than the business day following the date of the hearing.

5. The petitioning applicant/recipient, his or her representative or the CWA or MWD may, by telephone, make exception or objection to the initial decision, to the DPW no later than the first business day following the issuance of the initial decision.

6. The Director of the DPW shall issue a final decision no later than three business days following the date the initial decision is received which shall accept, reject or modify the initial decision. On the date the final decision is issued, the DPW shall notify the CWA or MWD, the OAL and the petitioner or the petitioner's representative by telephone of the final decision and any relief ordered shall be provided on the date notice of the decision is received.

SUBCHAPTER 10. (RESERVED)

SUBCHAPTER 11. DISCOVERY

1:10-11.1 Discovery

(a) The CWA or MWD shall provide the applicant or recipient or his or her authorized representative opportunity to

review the entire case file and all documents and records to be used in the hearing. (7 C.F.R. 273.15(i)(1); 45 C.F.R. 205.10(a)(13)(i); 7 C.F.R. 273.16(e)(3)(c)).

(b) Any other discovery shall be by motion to the judge and for good cause shown. In no case shall the hearing date be adjourned to permit discovery.

SUBCHAPTER 12. (RESERVED)

SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. (RESERVED)

SUBCHAPTER 15. (RESERVED)

SUBCHAPTER 16. DECISIONS

1:10-16.1 Initial decision (other than emergency hearing matters)

(a) In cases involving AFDC benefits, an initial decision shall be issued within 21 days from the date of the hearing.

(b) In cases involving food stamp benefits, an initial decision shall be issued within 14 days from the date of the hearing.

(c) In cases involving food stamp intentional program violations, an initial decision shall be issued within 21 days from the date of the hearing.

(d) In cases involving General Assistance, an initial decision shall be issued within 21 days from the date of the hearing.

1:10-16.2 Exceptions

If the parties wish to take exception to the initial decision, such exception must be submitted in written form to the Clerk of the OAL, the Director of the DPW and to all parties. The exceptions must be received by the DPW no later than five business days after receipt of the initial decision. No replies and cross exceptions shall be permitted.

SUBCHAPTER 17. SETTLEMENTS

1:10-17.1 Division of Public Welfare settlements

(a) The parties to a hearing may resolve a dispute, subsequent to transmittal of a matter to OAL, by agreeing to settlement and withdrawal of the hearing request.

(b) Settlement prior to the scheduled hearing date shall not involve the administrative law judge. The DPW shall notify the OAL of any settlement and withdrawal so derived and the contested case shall be closed.

(c) If on the date of the scheduled hearing or at any time during the hearing the parties agree to settle the matter at issue, a "Stipulation of Settlement and Withdrawal" shall be executed by the parties. This document shall contain:

1. The reason for the hearing request;
2. The reason for settlement and terms of settlement; and
3. The effective date of eligibility and/or benefit entitlement resulting from settlement when appropriate.

(d) The execution of a Stipulation of Settlement and Withdrawal terminates the contested case. The OAL shall transmit the closed file to the Bureau of Administrative Review and Appeals (BARA), Division of Public Welfare within three workdays of the date of the scheduled hearing.

(e) A review of the settlement shall be completed and written notice shall be provided by BARA not later than three workdays after its receipt from OAL. When approved, any terms or conditions of settlement shall be implemented within

three workdays of the date notification of approval is received in the CWA or MWD. In the event settlement action is disapproved, the matter will be returned to OAL within three workdays as a new case. The specific reason for returning the matter and applicable citation of law and regulations shall be clearly stated on the transmittal form.

(f) When implementation by the CWA or MWD is required in a settlement, a written report shall be sent by the CWA or MWD to the BARA within 30 days of the date the action was approved. Such report shall include the calculation of benefits in all cases involving a retroactive payment or a recalculation of benefit entitlement.

AGRICULTURE

(a)

DIVISION OF DAIRY INDUSTRY

Processors, Dealers and Subdealers Notices of Intent

Proposed Amendments: N.J.A.C. 2:52-2.1 and 3.1; 2:53-4.1

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

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-20.

Proposal Number: PRN 1984-643.

Address comments and inquiries to:

Woodson W. Moffett, Jr., Director
Division of Dairy Industry
New Jersey Department of Agriculture
CN 332
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendments add two exceptions to the notice of intent to change milk supplier requirements of the Division of Dairy Industry.

One exception provides that notice of intent is not required if the store ownership or account changes provided the new owner does not accept two or less deliveries, otherwise notice will be required. The transfer of title of ownership, however, must be bona fide and can not be made to a member of the current owner's immediate family.

The second exception provides that notice is not required if the supplier transfers the account to another supplier, unless the store or dealer is notified in writing of the transfer and accepts three deliveries after the notice is received.

Social Impact

The proposed amendments will benefit all licensees of the Division of Dairy Industry by providing additional exceptions in the filing of notices to change milk suppliers.

Economic Impact

The proposed amendments simplify the administration of the Milk Control Act by providing exceptions for licensees filing notice concerning changes of milk suppliers. The licensees should experience some positive economic impact by not having to file as many notices of intent.

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

2:52-2.1 Notice of intent

(a) A dealer licensee may begin selling milk and milk products to an unlicensed store (other than a government agency) upon approval by the Director as follows:

1.-3. (No change.)

4. Without notice, if the unlicensed store account is changing ownership, and the new owner accepts two or less deliveries of milk and milk products from the supplier. (If the new owner accepts three or more deliveries of milk and milk products from the supplier, notice shall be required). As used herein "changing ownership" must be a bona fide transfer of title to the new owner(s). Transfers of title to another member of the owner's immediate family or partial change of ownership shall not be considered a change of ownership for purposes of this regulation.

5. Without notice, if the authorized supplier transfers the account to another supplier; however, if the unlicensed store is notified in writing of the transfer and accepts three deliveries from the new supplier after the date the written notice is received by the unlicensed store, notice shall be required.

(b) (No change.)

2:52-3.1 Change in source of supply

(a) A dealer may change his source of supply or engage an additional source of supply of milk and milk products upon approval by the Director as follows:

1.-3. (No change.)

4. Without notice, if the business is changing ownership, and the new owner accepts two or less deliveries of milk or milk products from the supplier. (If the new owner accepts three or more deliveries of milk and milk products from the supplier, notice shall be required.) As used herein "changing ownership" must be a bona fide transfer of title to the new owner(s). Transfers of title to another member of the owner's immediate family or partial change of ownership shall not be considered a change in ownership for purposes of this regulation.

5. Without notice, if the authorized supplier transfers the account to another supplier; however, if the licensed dealer is notified in writing of the transfer and accepts three deliveries from the new supplier after the date the written notice is received by the dealer, notice shall be required.

(b) (No change.)

2:53-4.1 Notice of intent

(a) A licensed store may change source of supply or engage an additional supply of milk and milk products upon approval by the Director as follows:

1.-3. (No change.)

4. Without notice, if the store is changing ownership, and the new owner accepts two or less deliveries of milk or milk products from the supplier. (If the new owner accepts three or more deliveries of milk and milk products from the supplier, notice shall be required.) As used herein "changing ownership" must be a bona fide transfer of title to the new owner(s). Transfers of title to another member of the owner's immediate family or partial change of ownership shall not be considered a change in ownership for the purpose of this regulation.

5. Without notice, if the authorized supplier transfers the account to another supplier; however, if the licensed store is notified in writing of the transfer and accepts three deliveries from the new supplier after the date the written notice is received by the store, notice shall be required.

(b) (No change.)

CIVIL SERVICE

The following proposals are authorized by Peter J. Calderone, Assistant Commissioner, Department of Civil Service.

Address comments and inquiries to:
Peter J. Calderone
Assistant Commissioner
Department of Civil Service
CN 312
Trenton, New Jersey 08625

(a)

Performance Evaluation and Employee Training Certified Public Manager Program

Proposed New Rules: N.J.A.C. 4:1-20.2 and 4:2-20.7

Authority: N.J.S.A. 11:1-7a, 11:5-1a, 11:6-2e.
Proposal Number: PRN 1984-654.

The agency proposal follows:

Summary

Proposed new rules N.J.A.C. 4:1-20.2 and 4:2-20.7 reflect Executive Order No. 28 establishing the Certified Public Manager Program (CPM), a training and development program for all managers and supervisors in State service. The program, which consists of progressive levels of instruction, is administered by the Department of Civil Service. The instructional portions are conducted jointly by the Division of Personnel Services and Employee Development in the Department of Civil Service and Rutgers, The State University.

Social Impact

The Certified Manager Program (CPM) will provide training that was not previously available through the State, that

is, uniform and comprehensive professional management training for supervisors and managers. Prior to Executive Order No. 28, the State expended the bulk of its training monies for general employee development, but less than seven percent was being expended for the improvement of supervisors and managers. With the implementation of CPM, State management training programs will be strengthened. CPM will raise the level of professionalism of managers in State government thereby affecting all employees and departments, as well as the public, in a positive manner.

Economic Impact

The Certified Public Manager Program is funded by the departments and participants of the program. There is no direct cost to the Department of Civil Service. The full tuition fee, \$365.00 at present, is paid by the department for each supervisor or manager the department enrolls in the first three levels (90 hours). The fourth, fifth and sixth levels (150 hours) which is for managers only, is funded 75 percent, \$675.00 at present, by the State and 25 percent, or \$225.00 by the employee.

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

4:1-20.2 Certified Public Manager Program (CPM)

(a) In State service, the Department of Civil Service shall develop, implement and administer a comprehensive training and development program for supervisors and managers to be known as the Certified Public Manager Program (CPM).

(b) Local governments and private industry may participate in the State Certified Public Manager Program (CPM) on a limited basis as determined by the President of the Civil Service Commission.

4:2-20.7 Certified Public Manager Program (CPM)

(a) The Department of Civil Service shall implement a Certified Public Manager Program (CPM) for supervisors and managers consisting of progressive levels of instruction to be administered by the Division of Personnel Services and Employee Development, Department of Civil Service. See N.J.A.C. 4:1-20.2.

(b) The instructional portion of CPM shall be jointly conducted by the Division of Personnel Services and Employee Development and Rutgers, The State University.

1. The program content for supervisors will include, but not be limited to, management duties and responsibilities, controls, policies and procedures, human and interpersonal relations, communications, equal employment opportunity and affirmative action responsibilities, work simplification and evaluation, and employee relations.

2. The program content for managers will include, but not be limited to, the effects of social changes on public organizations, forecasting and strategic planning, managing organizational liability, production enhancement, management by objectives, and ethics for the public manager.

(c) The Certified Public Manager Program (CPM) will be provided overall policy direction by a Board. The President of the Civil Service Commission shall select members of the Board from State government, the academic community, and private industry.

(d) The President of the Civil Service Commission shall determine the criteria for program participation for each department of the State.

(e) Each department's share of the program cost will be provided by an annual transfer of existing departmental ap-

propriations to a special account in the Department of Civil Service. For that part of the program which is limited to managers only, the departmental share will be 75 percent and the individual manager's share will be 25 percent.

(a)

**Assignment and Transfers
Transfer of County Caseworkers**

Proposed Repeal: N.J.A.C. 4:3-15.1

Authority: N.J.S.A. 11:1-7a, 11:5-1a.
Proposal Number: PRN 1984-655.

The agency proposal follows:

Summary

Current N.J.A.C. 4:3-15.1 describes a procedure that had been used for transferring professional welfare board caseworkers between counties. This rule is obsolete and has not been used for a considerable length of time. In fact, the title Caseworker is no longer in use. As part of the ongoing review of Title 4, the commission is deleting unnecessary provisions.

Social Impact

This repeal will have no social impact since the rule is not currently being utilized.

Economic Impact

This repeal will have no economic impact since the rule is not currently being utilized.

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

**SUBCHAPTER 15. [ASSIGNMENTS AND TRANSFERS]
RESERVED**

[4:3-15.1 Transfer of professional caseworkers of county welfare boards

(a) This section describes the procedure approved by the Civil Service Commission for transfer of professional caseworkers of county welfare boards in Civil Service jurisdictions who have permanent status entry level positions.

(b) Procedure:

1. Professional caseworkers of county welfare boards in Civil Service jurisdictions who have at least one year permanent status in entry level positions shall be permitted to transfer to positions having the same class title in other counties under Civil Service jurisdiction provided:

- i. The transfer has the approval and consent of the appointing authorities from and to whose county the transfer is to be made, in addition to the consent of the employee; and
- ii. The county to which the transfer is made notifies the appropriate branch office of the Department of Civil Service of the transfer on Form CS-6; and
- iii. The prospective transferee assumes residence within the county of his new employment, if so required by the appoint-

ing authority, before the transfer required by the appointing authority, before the transfer becomes final; and

iv. The transferee may be returned to his former position at any time within 60 days after the transfer if his services are not satisfactory.

2. The following policies will be followed in regard to seniority, sick leave, and vacation leave for transferred employees:

i. Seniority will be transferred for purposes of determining entitlement to annual vacation leave. Annual vacation leave granted by the new county employer would depend on the number of years served in both counties continuously.

ii. Seniority for purposes of determining layoffs, demotional or promotional entitlement must be earned anew under the new county employer. Seniority for these purposes will not be transferred or considered except in case of layoff where two employees have the same seniority in the county; then seniority in another county will be used to determine order of layoff.

iii. Sick leave accrued under the prior county employer shall be indicated to the new county employer prior to transfer and credited to the employee at the time of transfer.

iv. Annual vacation leave accrued under the prior county employer shall be indicated to the new county employer prior to transfer and credited to the employee at the time of transfer.]

COMMUNITY AFFAIRS

**DIVISION OF HOUSING AND
DEVELOPMENT**

The following proposals are authorized by John P. Renna, Commissioner, Department of Community Affairs.

Address comments and inquiries to:

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

(b)

**Uniform Construction Code; Rooming and Boarding Houses
Alterations Required by Other Codes; Minor Work**

**Proposed Amendments: N.J.A.C. 5:23-2.4,
2.6 and 2.17A; 5:27-1.5**

Authority: N.J.S.A. 52:27D-124 and 55:13B-4.
Proposal Number: PRN 1984-635.

The agency proposal follows:

Summary

Alterations required under codes other than the State Uniform Construction Code (U.C.C.) in existing buildings are to be required to conform only to the requirements of those codes and not to the higher standards otherwise applicable under the U.C.C. Alterations required in rooming and boarding houses pursuant to the Rooming and Boarding House Act of 1979 are to be done in accordance with N.J.A.C. 5:27 and higher requirements imposed by any subcode adopted under N.J.A.C. 5:23 are inapplicable unless otherwise directed by the Bureau of Rooming and Boarding House Standards.

These amendments are being proposed because of problems that have arisen when owners of buildings, particularly rooming and boarding houses, have been ordered to make alterations in order to conform with applicable maintenance regulations, such as N.J.A.C. 5:27, only to be told by the local construction official that the alterations must conform to the adopted subcodes of the State Uniform Construction Code, even though this may entail imposing additional requirements to those imposed by the maintenance regulations.

Much of the difficulty has involved fire safety regulations. By making clear the relationship between the State Uniform Construction Code and the various maintenance codes, these amendments will deal with a problem that would otherwise be likely to arise when the Uniform Fire Safety Code, to be promulgated pursuant to the Uniform Fire Safety Act (P.L. 1983, c.383), goes into effect.

The proposal also includes an amendment to the rules on "minor work", which requires a construction permit, to include telephone systems. The State Uniform Construction Code Act excludes work done by public utilities.

Social Impact

Property owners cited under other codes, such as the Regulations for the Maintenance of Hotels and Multiple Dwellings, the Regulations Governing Rooming and Boarding Houses and other State and local maintenance codes will have to comply with the orders issued under those codes but will not, as a consequence of their attempt to comply, become subject to the higher requirements established under the State Uniform Construction Code. The various maintenance codes are minimum standard codes and are not intended to be as stringent as the State Uniform Construction Code. Nonetheless, owners have been placed in the position of having to comply with the Construction Code when they make alterations required under the maintenance codes. This is unreasonable and unfair and will be corrected by the proposed amendment.

The minor work amendment will clarify the status of work by telephone installers in the aftermath of the breakup of A.T.& T.

Economic Impact

By removing the necessity to have alterations mandated under one or another of the maintenance codes conform to the State Uniform Construction Code, the proposed amendment has a favorable economic impact on affected owners.

Also, it will now be clear that permit fees may be required for telephone system installations.

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

5:23-2.4 Alterations, replacements and damages

(a) Except as provided in N.J.A.C. 5:23-2.5, existing structures, when altered or repaired, shall conform to the following requirements:

1.-6. (No change.)

7. Alterations mandated by any property or fire safety maintenance code, or minimum housing standard or regulation, adopted pursuant to law, shall be made to conform only to the requirements of that code, standard or regulation and shall not be required to conform to the subcodes adopted pursuant to this chapter unless the code requiring the alterations so provides.

(b) (No change.)

5:23-2.6 Change in use group

(a) Continuation of existing use: The legal use of any structure existing on the effective date of the regulations may be continued without change, except as may be specifically provided in these regulations or in any property or fire safety maintenance code, or **minimum housing standard or regulation**, adopted pursuant to law.

1. (No change.)

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

5:23-2.17A Minor work

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

(c) (No change.)

1.-3. (No change.)

4. Minor work shall also mean and include the installation of any fire detection or suppression system or device in any one or two-family home; and the installation of a burglar alarm, security, **telephone**, or low voltage communication system in any structure.

(d) (No change.)

5:27-1.5 Construction and alteration; change of use

(a) No rooming or boarding house may be constructed or altered except in accordance with the Uniform Construction Code, **except that alterations required by this chapter shall be made in accordance with this chapter and higher requirements of any adopted subcode of the Uniform Construction Code shall be inapplicable unless the Bureau shall otherwise direct.**

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

(a)

**Uniform Construction Code
Products Violating the Code**

Proposed Amendments: N.J.A.C. 5:23-3.8A

Authority: N.J.S.A. 52:27D-124, P.L. 1983, c.83.
Proposal Number: PRN 1984-653.

A public hearing concerning this proposal will be held on December 13, 1984 at 10:00 A.M. at:

Offices of Bureau of Construction
Code Enforcement
3131 Princeton Pike
Lawrenceville, New Jersey

PROPOSALS

EDUCATION

The agency proposal follows:

Summary

P.L. 1983, c.83 provides for the establishment by the Department of a list of products the regular and intended use of which would violate the State Uniform Construction Code and which are therefore to be illegal to sell. This proposal contains such a list.

Social Impact

The establishment of this listing, and its enforcement by construction officials, will benefit consumers by protecting them against unsafe items, devices and materials used in construction and alteration of buildings. The proposed rule will also benefit suppliers who currently follow accepted industry standards.

Economic Impact

The sale of recognized approved products will protect sellers from product liability litigation while affording protection to the public, including public agencies and publicly funded construction projects, against premature product failure and property damage. Producers of disapproved products will be unable to sell them legally in this State. Affected retailers will have to find alternate means of disposing of any current inventory.

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

5:23-3.8A Products violating the Code

(a) The Department shall, after public hearing and in accordance with the Administrative Procedure Act (P.L. 1968, c.410, as amended), establish and distribute to all enforcing agencies a list of items, devices and materials the regular and intended use of which would violate any provision of the State Uniform Construction Code. **A list of such items is set forth in (d) below.**

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

(d) **The Commissioner has determined that the following materials and supplies are not in conformance with the State Uniform Construction Code:**

1. Building materials and supplies:

i. **Wood paneling being used as an interior finish not in conformance with section 1404.2 of the building subcode. This section specifies that finish shall be classified in accordance with ASTM E84;**

ii. **Carpeting used as an interior floor finish material not in conformance with section 1404.3 of the building subcode. This section specifies that interior floor finish shall be classified in accordance with ASTM E648;**

2. Electrical materials/supplies:

i. **As stated in the National Electrical Code (sections 90-6, 110-2, 110-3, and 100), only products listed, labeled, approved, and identified are acceptable. Approval is to be based on tests and listings of testing laboratories such as Underwriters Laboratories Inc. (UL), or Factory Material (FM), etc.**

3. Plumbing materials/supplies:

i. **All purpose solvent cement;**
ii. **Clear PB piping;**
iii. **Flexible traps and tailpieces;**
iv. **Sheet and tubular cooper and brass trap and tailpiece fittings less than B & S 17 gauge (.045 in.);**

4. Miscellaneous materials and supplies:

- i. **Propane unvented heaters, unless offered for sale for use in buildings not for human occupancy;**
- ii. **Urea formaldehyde foam insulation, unless offered for sale for use elsewhere than in buildings.**

EDUCATION

STATE BOARD OF EDUCATION

The following proposals are authorized by the State Board of Education, Saul Cooperman, Secretary.

Address comments and inquiries to:

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

(a)

Teacher Preparation and Certification Types of Certificates; Emergency

Proposed Amendment: N.J.A.C. 6:11-4.3

Authority: N.J.S.A. 18A:4-15 and 18A:6-38
Proposal Number: PRN 1984-647.

The agency proposal follows:

Summary

On September 5, 1984, the State Board of Education adopted changes in N.J.A.C. 6:11-4.3 eliminating the practice of emergency certification in most teaching fields. After adoption, the Board voted to republish the amended rule deleting also the provision allowing the emergency certification of administrators. This decision was based upon information that emergency certification of administrators rarely occurs.

Social Impact

The elimination of the possibility of substandard certification for administrators will insure that all educational administrators are certified and trained for the positions they hold.

Economic Impact

There is no economic impact as a result of the elimination of emergency certificates for administrators since emergency certification of administrators virtually never occurs.

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

6:11-4.3 Emergency certificate

(a) An emergency certificate is a substandard one-year certificate issued only in the fields of [administration,] educational services, teacher of the handicapped, teacher of the blind and partially sighted, teacher of the deaf and hard of hearing, bilingual education, English as a Second Language and certain technical fields (see N.J.A.C. 6:11-8.3).

(b) An emergency certificate is issued only on application of a public school district, submitted after August 1, in which the district board of education declares its inability due to unforeseen shortages or other extenuating circumstances to locate a suitable certificated teacher.

(a)

**State Library
Library Network Services**

Proposed New Rules: N.J.A.C. 6:70

Authority: N.J.S.A. 18A:4-15 and 18A:73-35a et seq., specifically 18A:73-35.

Proposal Number: PRN 1984-648.

The agency proposal follows:

Summary

The proposed new rules provide the mechanism for the establishment of a regional multitype library network and for the sharing of resources and services of New Jersey libraries of all types—academic, institution, public, school and special. The goal of the new network is to provide every resident of New Jersey full and equal access to the collective library resources of the State.

Up to seven regions will be established throughout the State. Libraries within these regions will form regional library cooperatives which operate under a service plan developed by their membership and approved by the State Librarian. The proposed rules mandate that each regional library cooperative provide four required services: reference, interlibrary loan, delivery and citation/location. Each cooperative may also provide a variety of additional services to meet regional needs which they have identified.

Social Impact

No one library can meet all the educational, informational, and recreational needs of its users, regardless of its funding or size. The regional library network will provide New Jersey residents with greater access to materials and resources of all types of libraries. It will also assist libraries in their response to the increasingly diverse informational needs of library users for resources and services of varying levels of complexity. It will provide faster response to requests for information and materials through shared use of new technology and improved regional and Statewide delivery systems.

Through the new network, New Jersey libraries and library-related agencies of all types may join together with a common program which will efficiently and effectively serve all New Jersey residents.

Economic Impact

The new regional library network will provide residents with more cost-effective access to the collective resources of New Jersey libraries through increased sharing of resources and better coordination of materials and services. Needless duplication will be eliminated, permitting better use of library funds. Increased flexibility and responsiveness to user needs, shared use of new technology, and faster delivery of materials and information will enable library users to be served better. The sum of \$125,000 was appropriated in Fiscal Year 1984 for planning and startup costs; \$685,000 has been appropriated for operational costs in Fiscal Year 1985.

Full text of the proposed new rules follows.

6:70-1.1 Scope and purpose

The rules set forth in this chapter provide for the establishment of regions designed to promote the cooperative use of services and materials of all types of libraries in the region, pursuant to the provisions of Chapter 486, Laws of 1983 (N.J.S.A. 18A:73-35a et seq.), known as the Library Network Law.

6:70-1.2 Definitions

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

“Academic library” means a library within a publicly or privately supported institution of higher education.

“Area library” means a library with which the State contracts for specialized services pursuant to N.J.S.A. 18A:74-2 and 18A:74-4.

“Institutional library” means a library within an adult or juvenile residential facility or day training center, other than a public school, administered and substantially funded by State, county or municipal funds to carry out health, welfare, educational and correctional programs.

“Lay representative” means a New Jersey resident who is not a librarian or school media specialist and is not in the employ of any New Jersey library or library-related agency defined in this chapter. Members of library boards of trustees shall be considered lay representatives.

“Library materials” means print and nonprint items.

“Library region” means a multi-county area designated by the State Librarian as the geographic area to be served by a regional library cooperative.

“Library-related agency” means a county audio-visual aids commission established under N.J.S.A. 18A:51; educational information and resource center established under N.J.S.A. 18A:6-95; regional curriculum services unit; or any other non-profit organization meeting the criteria for membership in the regional library cooperative in accordance with N.J.A.C. 6:701.5(b).

“Local library cooperative” means a group of academic libraries, institutional libraries, public libraries, school libraries, special libraries and library-related agencies, or any combination thereof, which is organized as a nonprofit corporation pursuant to N.J.S.A. 15A:1-1 et seq. to provide cooperative or reciprocal library services.

“Multitype library network” means a group of libraries of more than one type (for example, academic, institutional, public, school and special) and library-related agencies whose cooperative activities are specified in a plan approved by the State Librarian.

“Public library” means a municipal, county, association, or joint library, which receives public funding.

"Regional contract library" means a library, library-related agency, local library cooperative, or commercial vendor with which the regional library cooperative contracts for the purpose of providing regional library services.

"Regional library cooperative" means a nonprofit corporation pursuant to N.J.S.A. 15A:1-1 et seq. composed of libraries and library-related agencies which agrees to receive funds for the provision of library services on behalf of the residents of a library region as specified in the five-year plan for library network development approved by the State Librarian.

"School district" means an operating school district as listed in the current New Jersey State Department of Education directory. For the purposes of this program, every school (public and nonpublic) located within a district so listed shall be considered a member of the district.

"School library" means a library/media center within any publicly or privately supported elementary or secondary school, or in any post-secondary vocational or technical school.

"Special library" means a library/information center of a business, a professional, scientific, or trade association, a government, hospital or other for-profit or nonprofit institution or organization which provides that organization with information, library materials, and technical bibliographic and research services.

"State contract library" means a library, library-related agency, or commercial vendor with which the State contracts for the purpose of providing library services.

6:70-1.3 Designation of library regions

(a) The State Librarian, with the approval of the State Board of Education, shall designate no more than seven library regions within the State. No county shall be divided among two or more regions. The regions shall be established on the basis of, but not limited to, the following considerations:

1. Population;
2. Population density;
3. Number and types of libraries and library-related agencies;
4. Information resources;
5. Marketing and transportation patterns;
6. Contiguity of municipalities.

(b) The State Librarian shall review the designated library regions at least every five years and make revisions if appropriate.

(c) After the first review by the State Librarian, which will occur at least every five years or sooner, members of a regional library cooperative located within the same county may request that the county be transferred to a different region when a majority of those members vote for such a transfer.

(d) If a request for a transfer from one region to another has been denied, the appeals and hearing process may be followed (see N.J.A.C. 6:70-1.19).

6:70-1.4 Regional library cooperative; formation

(a) Upon approval by the State Librarian of the plan for service and the plan and budget for the first year of operation of the regional library cooperative, the State Librarian shall establish the regional library cooperative.

(b) Each duly designated regional library cooperative shall be eligible for a grant not to exceed \$50,000 to fund the first year of operation of the regional library cooperative, in accordance with a plan and budget submitted to, and approved by, the State Librarian.

(c) Applicants whose request to be designated as a regional library cooperative has been denied may proceed with the appeals and hearing process described in N.J.A.C. 6:70-1.19.

6:70-1.5 Regional library cooperative; organization and membership

(a) the regional library cooperative shall constitute a council of members and shall be incorporated as a nonprofit corporation pursuant to N.J.S.A. 15A:1-1 et seq. It shall organize, adopt bylaws within six months, and elect an executive board from its membership.

(b) To be eligible as a member of a regional library cooperative, a library or library-related agency shall have explicit service objectives, a fixed location and regular hours of service, an organized collection of information and materials accessible for use by its designated clientele, and qualified and responsible staff. Its organizational structure shall be identifiable with a legal basis for operation and an established funding pattern. It shall be willing and able to contribute to the appropriate services and programs as determined by the regional library cooperative, and mutually agreed upon.

(c) Each campus library of an academic institution is eligible to be a member of the regional library cooperative.

(d) Each library of a multi-location business is eligible to be a member of the regional library cooperative.

(e) The board of governance or the appropriate administrative authority for each eligible academic library, institutional library, public library, school library, special library and library-related agency that wishes to become a member of the regional library cooperative shall take official action as specified by the State Librarian to join the regional library cooperative.

6:70-1.6 Voting

(a) Each academic library, institutional library, public library, special library, and each library-related agency which is a member of a regional library cooperative shall have one vote.

(b) The public school libraries located within each operating public school district which are members of a regional library cooperative shall be considered a single entity and shall elect one voting representative from among themselves, whose appointment shall be subject to the approval of the district board of education.

(c) The private and parochial school libraries located within each operating public school district which are members of a regional library cooperative shall be considered a single entity and shall elect one voting representative from among themselves.

6:70-1.7 Duties

(a) The duties of the voting members of the regional library cooperative shall include, but not be limited to, the following:

1. Review and adopt bylaws;
2. Elect members of the executive board;
3. Approve the five-year plan and its annual updates;
4. Approve the annual budget.

6:70-1.8 Executive board; organization and duties

(a) The executive board shall be composed of a minimum of nine and a maximum of 15 members to include at least:

1. Five members elected by the regional library cooperative from its voting representatives: one each from an academic library, an institutional library, a public library, a school library and a special library;

2. Two members at large elected by the regional library cooperative from its voting representatives;

3. Two lay representatives appointed by the State Librarian, each of whom must reside within the designated area of the regional library cooperative;

4. Additional members, up to a maximum of six, who may be elected in accordance with bylaws adopted by the regional library cooperative.

(b) The executive board shall be governed by the bylaws adopted by the regional library cooperative.

(c) The duties of the executive board shall be to:

1. Hire a regional library coordinator and any necessary additional staff, fix their compensation and establish terms and conditions of employment;

2. Develop the five-year plan and submit it to the regional library cooperative for approval;

3. Develop the annual operating program and budget and submit them to the regional library cooperative for approval;

4. Contract with libraries, library-related agencies, commercial vendors, individuals, or any other designated regional library cooperative as may be necessary to implement the five-year plan for the regional library cooperative;

5. Receive and disburse all income;

6. Submit a written report to the regional library cooperative at least on a quarterly basis;

7. Submit the five-year plan, the annual update, and the annual budget to the State Librarian for review and approval;

8. Submit to the State Librarian an annual report, including a program evaluation and financial audit, and any additional reports as the State Librarian may require.

6:70-1.9 Executive board; term of office

(a) Members of the first executive board shall be elected for staggered terms of one, two and three years, with terms to be apportioned among the total members. Thereafter, each member of the executive board shall be elected for a term of three years.

(b) No member of the executive board shall serve for more than two consecutive terms. Upon serving two consecutive terms, a member of the executive board may serve again only after an interim of at least two years.

(c) Vacancies shall be filled for the unexpired term only. Vacancies occurring among the representatives of the regional library cooperative shall be filled by the regional library cooperative. Vacancies occurring among representatives appointed by the State Librarian shall be filled by the State Librarian.

6:70-1.10 Regional library coordinator; appointment and duties

(a) the regional library coordinator hired by the executive board of the regional library cooperative shall be eligible for certification as a professional librarian or educational media specialist by the State Department of Education.

(b) The duties of the regional library coordinator shall include, but not be limited to, the following:

1. Coordinate the activities, programs and services of the regional library cooperative;

2. Supervise the staff of the regional library cooperative;

3. Assist in developing the five-year plan for executive board review and regional library cooperative approval;

4. Assist in developing the annual program and budget for review by the executive board and approval of the regional library cooperative;

5. Negotiate all contracts for executive board approval;

6. Attend meetings of the executive board and of the regional library cooperative.

6:70-1.11 Regional library cooperative; responsibilities and services

(a) Within one year following incorporation as a regional library cooperative and receipt of an establishment grant, each regional library cooperative shall submit for approval by the State Librarian a five-year plan for regional library cooperative development and an annual program and operating budget in support of the plan.

(b) The goals, objectives, programs, and activities specified in the five-year plan for regional library cooperative development shall provide that:

1. All contract services meet applicable Federal and State rules;

2. The terms and conditions of all service contracts with library-related agencies, other libraries, other regional library cooperatives, library-related agencies, commercial vendors of library services, and individuals, be part of and made consistent with the goals, objectives, programs and activities of the plan;

3. All contract services be provided to member libraries, library-related agencies and residents of the library region in accordance with the plan;

4. For the first year of the operation of a regional library cooperative, area libraries located within the region shall be offered regional contracts for regional library services;

5. In general, each regional library cooperative shall contract with at least two different types of libraries to provide regional library service.

(c) In order to provide to every resident of New Jersey full and equal access to the collective library resources of the State, the State Library shall assure that the following services are provided in each region:

1. Reference services to supplement those provided by each local library, including interlibrary reference and referral services to residents of the library region;

2. Interlibrary loan services on behalf of residents of the library region;

3. Delivery services for library materials;

4. Citation and location services for library materials.

(d) Each regional library cooperative shall include the services listed in (c) above in its five-year plan and underwrite them in its annual operating budget. The State Library may contract with libraries, library-related agencies, or commercial vendors to provide any or all of these services on a Statewide basis. The regional library cooperatives may contract with libraries, library-related agencies or commercial vendors to provide any or all of these services on a regional basis.

(e) A regional library cooperative may also provide, but not be limited to, the following services:

1. Consultant services;

2. Cooperative and/or coordinated acquisition of library materials and/or subject specialization programs;

3. Reciprocal borrowing between and among member libraries;

4. Staff development and in-service training programs;

5. Centralized ordering, cataloging, and/or processing of library materials;

6. Cooperative storage of library materials and last copy protection programs;

7. Access to computerized literature citation and information data basis;

8. Preservation of library materials programs;

9. Public relations services.

(f) The five-year plan for regional library cooperative development shall be reviewed and evaluated on an annual basis

and amended as appropriate to reflect any change in policy approved by the regional library cooperative, and to provide for an annual program and operating budget. Any amended five-year plan for regional library cooperative development and the annual program and budget shall be submitted to the State Librarian for review and approval 90 days prior to the expiration date of the last approved plan.

6:70-1.12 Withdrawal from regional library cooperative

Any participating member may withdraw from a regional library cooperative when the appropriate administrative body determines by resolution or other recorded act to withdraw. Notification of intent to withdraw shall be submitted by the administrative body to the executive board of the regional library cooperative, with a copy to the State Librarian. The notice shall be filed on or before April 1 of any year, and withdrawal shall take place on or before June 30 of the ensuing year. Upon discontinuing membership, the member relinquishes its rights to any funds, supplies, materials, equipment or property held by or belonging to the regional library cooperative. Upon receipt of such notification and the satisfaction of all obligations by the withdrawing member, the executive board of the regional library cooperative shall officially note the withdrawal and shall file notice of this action with the State Library.

6:70-1.13 Dissolution of regional library cooperative

(a) The regional library cooperative may submit an application for dissolution to the State Librarian when:

1. The membership receives a resolution for dissolution from the executive board; or
2. A petition to dissolve is signed by 40 percent of the members of the regional library cooperative; and
3. The governing bodies of a majority of the members approve the dissolution.

(b) the application shall include a plan providing for the payment of all outstanding debts and describing how the obligations of the regional library cooperative will be liquidated.

(c) Upon receipt of the application, the State Librarian shall:

1. Determine if the area of service can be allocated to other adjoining regional library cooperatives;
2. Determine whether the assets and liabilities of the regional library cooperative can be assumed and absorbed by adjoining regional library cooperatives;
3. Take into consideration any other factors which relate to the operation and function of the regional library cooperative.

(d) If the State Librarian determines that the regional library cooperative must be liquidated and approves the plan for dissolution, the dissolution shall take effect when all the legal and fiscal obligations of the regional library cooperative have been satisfied.

6:70-1.14 Local library cooperatives

Any group of academic, institutional, public, school, or special libraries or library-related agencies, or any combination thereof, may organize as a nonprofit organization pursuant to the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1 et seq., and apply for designation to the appropriate regional library cooperative as a local library cooperative for the provision of cooperative or reciprocal library services among themselves on behalf of their collective library patrons. The local library cooperative may include members from more than one regional library cooperative.

6:70-1.15 Statewide library services

(a) In order to provide to every resident of New Jersey full and equal access to the collective library resources of the State, the State Library shall assure that the services listed in N.J.A.C. 6:70-1.11(c) are provided. The State Library may contract with libraries, library-related agencies, or commercial vendors to provide any or all of these services on a Statewide basis.

(b) Other services, as listed in N.J.A.C. 6:70-1.11(e) also may be provided Statewide.

6:70-1.16 Library network review board

(a) A library network review board shall be appointed to advise the State Librarian with respect to:

1. The structure for provision of the following services:
 - i. Reference services to supplement those provided by each local library;
 - ii. Interlibrary loan;
 - iii. Delivery;
 - iv. Citation and location services.
2. The designation of State contract libraries and the terms and conditions of any Statewide service contracts;
3. Necessary or desirable inter-regional programs or services;

4. Proposed standards for interlibrary services, including personnel qualifications;

5. Possible inter-regional reimbursement formulas for reciprocal borrowing and other cooperative programs;

6. Types of interaction and linkage of the New Jersey Library Network with interstate and national library networks.

(b) Members of library network review board shall be established as follows:

1. Each regional library cooperative shall elect two members from its voting representatives;
2. The State Librarian shall appoint five members including library users.

(c) Initially, one elected member from each regional library cooperative, and two members appointed by the State Librarian shall serve for a term of one year; one elected member from each regional library cooperative and three members appointed by the State Librarian shall serve for a term of two years. Thereafter, each member of the library network review board shall serve for a term of two years. No member of the library network review board shall serve for more than two consecutive terms. Upon serving two consecutive terms, a member may serve again only after an interim of at least two years. Vacancies shall be filled for the unexpired term only. Vacancies occurring among the members of the regional library cooperatives shall be filled by the regional library cooperative in which the vacancies occurred. Vacancies occurring among the members appointed by the State Librarian shall be filled by the State Librarian.

6:70-1.17 Allocation of Statewide library services funds

Each year the State Librarian shall identify the services to be provided on a Statewide basis and expend the amount allocated for this purpose.

6:70-1.18 Allocation of regional library services funds

(a) Each year the State Librarian shall determine the amount required to provide a base grant to each regional library cooperative according to the following formula:

1. Forty percent of the amount allocated shall be distributed equally among the regional library cooperatives;
2. Fifty percent of the amount allocated shall be distributed among the regional library cooperatives based on the

population of the region as shown by the latest Federal census effective in New Jersey; provided that upon application by a municipality or county to the Commissioner of Education, any special census of population taken by the United States Census Bureau subsequent to its latest effective census shall determine such number of inhabitants;

3. Ten percent of the amount allocated shall be distributed among the regional library cooperatives based on the number of square miles within the region.

(b) Each year the State Librarian shall determine the amount required to provide a program grant to each regional library cooperative in accordance with requirements established by the State Librarian. However, no program grants shall be awarded unless each regional library cooperative has received a base grant.

(c) For the calendar year subsequent to the effective date of the establishment of a regional library cooperative, area libraries within a designated region which have agreed to serve as regional contract libraries shall receive by contract an amount of money not less than the amount they received as an area library in the year prior to the establishment of the regional library cooperative. Thereafter, the regional library cooperative may contract with such former area libraries to provide regional services. An area library choosing not to contract for services as a regional contract library shall receive for the calendar year subsequent to the effective date of the establishment of the regional library cooperative up to 75 percent of the area money it received in the year prior to the establishment of the regional library cooperative to provide area library services.

(d) No less than 40 percent of the funds made available for the regional library cooperative shall be allocated in the annual operating budget of a regional library cooperative, and expended as necessary, to reimburse regional contract libraries for services to residents of the library region.

6:70-1.19 Appeals and hearing process

Appeals arising from any action of the State Librarian in administering the rules of this chapter may be requested, and an opportunity given for an informal fair hearing before the State Librarian. In the event of an adverse decision after such an informal hearing, appellants may request a formal hearing pursuant to N.J.S.A. 18A:6-9, 18A:6-24, and 18A:6-27. Such hearings shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1).

ENVIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES

The following proposals are authorized by Robert E. Hughey, Commissioner, Department of Environmental Protection.

(a)

Surface Water Quality Standards and Treatment of Wastewater Discharged into Surface Waters of the State

Proposed Repeal: N.J.A.C. 7:9-4 and N.J.A.C. 7:9-5

Proposed New Rules: N.J.A.C. 7:9-4 and N.J.A.C. 7:9-5

Authority: N.J.S.A. 13:1D-1 et seq., N.J.S.A. 58:10A-1 et seq., and N.J.S.A. 58:11A-1 et seq.

Proposal Number: PRN 1984-663.

DEP Docket No. 069-84-10.

Three public hearings concerning this proposal will be held at the following times and locations:

January 3, 1985, 3:30 P.M.-8:00 P.M.
Glassboro State College
Room 221, Student Center
Glassboro, N.J.

January 8, 1985, 10:00 A.M.-2:00 P.M.
Parsippany-Troy Hills Municipal Bldg.
Council Chambers
1001 Parsippany Boulevard
Parsippany, N.J.

January 8, 1985, 6:30 P.M.-10:30 P.M.
Rutgers, The State University
Cook Campus
Loree Addition, Room 124
Lipman Drive
New Brunswick, N.J.

Interested persons may submit in writing any data, views or arguments relevant to this proposal on or before January 18, 1985. These submissions, and any inquiries about submissions and responses, should be addressed to:

Patricia E. G. Skelly
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Federal Clean Water Act (P.L. 92-500) requires the States to hold public hearings from time to time, but at least once every three years, for the purpose of reviewing and, as appropriate, modifying and adopting water quality standards. New Jersey's last review of its standards was conducted in 1980 with revised Water Quality Standards adopted in March 1981. As part of the 1984 review of those standards, the entire set of regulations has been rewritten. The department therefore proposes to repeal N.J.A.C. 7:9-4 and N.J.A.C. 7:9-5 and replace the material in those two subchapters with the material contained in this proposal. Highlights of the proposed revisions are discussed below:

1. Format—The existing Surface Water Quality Standards (WQS) have been rewritten with the goal of producing a clearer, more useable document. One of the major problems with the existing document is the way water quality policies and requirements are found in both Subchapters 4 and 5. The major thrust of the proposal is to make the regulations more cohesive and understandable. While some changes were made in response to Federal mandates, the bulk of the modifications was effected in order to refine and streamline the present procedures, and reflects departmental experience. The present standards are proposed for repeal because they were not functioning efficiently and hindered the Department in the administration of its duties. Changes in format and wording proved so extensive that a complete repeal of both subchapters was the most efficient method of correction. As revised, all the water quality related policies and requirements have been consolidated into N.J.A.C. 7:9-4. N.J.A.C. 7:9-5 has been limited to discharge requirements concerning minimum treatment, (N.J.A.C. 7:9-5.8), disinfection, (N.J.A.C. 7:9-5.4), the use of TOC/COD as surrogates for BOD, (N.J.A.C. 7:9-5.8), and Statewide effluent limitations for Toxicity and Phosphorus (N.J.A.C. 7:9-5.7).

2. Classifications—Three major changes have been made to the classifications: 1) The TW classification which referred to Tidal Waters with a salinity of greater than 3.5 ppt has been changed to SE to represent Saline Estuarine waters; 2) The CW classification which referred to Coastal Waters has been changed to SC to represent Saline Coastal waters; and 3) The two Central Pinelands Categories have been combined into one PL classification to represent the Pinelands Area as defined in the State Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq.). (Present N.J.A.C. 7:9-4.4, 4.10; Proposed N.J.A.C. 7:9-4.4, 4.12, 4.14, Indexes A-F).

3. Antidegradation Policy—The existing Antidegradation Policy contained a policy protecting Outstanding National Resource Waters (ONRW) from change. It also established two special antidegradation categories within the Pinelands Area. The State Pinelands Protection Act and the corresponding Federal Act clearly indicate that the Pinelands Area is an

ONRW as discussed in the EPA Water Quality Standards Regulations, November 8, 1983; the proposed regulations reflect that designation. The existing WQS set numerical criteria and an antidegradation policy that appears to be inconsistent with the Federal policy; these items have been replaced in the proposal with narrative criteria and antidegradation policy applicable to the entire Pinelands Area. (Present N.J.A.C. 7:9-4.5, 4.6; Proposed N.J.A.C. 7:9-4.5(d)).

Category I waters were limited to "High Quality Waters" in the 1981 WQS. The Department used exceptional use and exceptional value in deciding which waters would be considered Category I under the 1981 WQS. Additionally, the Federal Water Quality Standards Regulations (Nov. 1983) clarified the types of waters that should be given stringent antidegradation protection and included both "High Quality Waters" and waters with exceptional recreational, ecological, and scenic, values. The proposed Antidegradation Policy has reflected this by establishing a new definition for Category I that includes those waters discussed in the Federal Regulations and limiting Category I waters to those that have been officially designated Category I in the WQS. (Present N.J.A.C. 7:9-4.5; Proposed N.J.A.C. 7:9-4.4, 4.5(d)6).

Category II and III waters were contained in the 1981 WQS and dealt respectively with waters that were better than and worse than the WQS. In practice this proved unworkable because almost all waters are better than the WQS for some parameters and worse than the WQS for other parameters. The proposed policy consolidates Categories II and III into a single Category II that deals with parameters that are better than and worse than the WQS. (Present N.J.A.C. 7:9-4.4, 4.5(d), 4.6(c); Proposed N.J.A.C. 7:9-4.5(d)).

Only instream uses were protected in the 1981 WQS. The proposed policy would protect all uses. (Present N.J.A.C. 7:9-4.5(d); Proposed N.J.A.C. 7:9-4.5(a)1).

4. Water Quality Based Effluent Limitations—Previously called Wasteload Allocations, this section has been rewritten to reflect the actual practices of the Department in establishing limitations. Previously, existing dischargers were covered under one set of procedures while new or modified dischargers were covered under another set. Since the Federal regulations require the establishment of water quality based effluent limitations that protect the uses, the distinction between existing and new or modified dischargers has been removed. (Present N.J.A.C. 7:9-5.5, 5.6; Proposed N.J.A.C. 7:9-4.5).

The existing procedures to be followed when setting limitations as part of Water Quality Management Planning activities and those to be followed when setting limitations under the NJPDES program have been revised so that there is one procedure to be followed in establishing Water Quality Based Effluent Limitations.

Whole effluent toxicity was regulated exclusively by use of acute toxicity testing under the 1981 WQS. The proposed regulations would allow the use of chronic toxicity tests to characterize and regulate discharges. (Present N.J.A.C. 7:9-4.6, 5.4, 5.6; Proposed N.J.A.C. 7:9-4.4, 4.5, 4.6, 4.14(c)).

5. Modification Procedures—The 1981 WQS incorporated the test contained in Section 8 of the State Water Pollution Control Act. In the proposed regulations the test has been replaced by the test required by the EPA Water Quality Standards Regulations that calls for a showing that complying with the WQS would require more than technology based treatment and would result in widespread social and economic impacts.

Exemptions were allowed in the 1981 WQS from effluent limitations established to protect potable uses of the waters

where the waters in question were not planned for such use over the next 20 years. This approach has been deleted. (Present N.J.A.C. 7:9-5.9, 5.12; Proposed N.J.A.C. 7:9-4.8, 4.9).

6. **Reclassification Procedures**—The existing procedures have been expanded to allow petitions for more restrictive uses in addition to petitions for less restrictive uses. All petitions received between triennial reviews of the Surface Water Quality Standards would have to be sponsored by, or endorsed by, local or county governing bodies in order to be considered before the next triennial review. Additionally, in order to petition for a less restrictive use a petitioner will have to show that the designated use is nonexistent. Otherwise relief may be requested via a modification of Water Quality Based Effluent Limitations. (Present N.J.A.C. 7:9-5.13; Proposed N.J.A.C. 7:9-4.10, 4.11).

7. **Designated Uses**—Under the Federal WQS Regulations the States must perform use attainability analyses for any waters that do not have the uses contained in Section 101(a) of the Clean Water Act. After reviewing our classifications the 101(a) uses have been added to the FW1 and the old CW2 (now SC) classifications. The designated uses for TW2 (SE2), TW3 (SE3), and the Delaware River Zones 2 through 5, most of which are interstate waters, have not been changed to include all the 101(a) uses. (Present N.J.A.C. 7:9-4.8, 4.9; Proposed N.J.A.C. 7:9-4.2, 4.13).

8. **Criteria**—Narrative criteria statements for the mainstem Delaware River and Delaware Bay have been put into a table. The criteria have also been modified to more closely reflect the Delaware River Basin Commission's regulations. (Present N.J.A.C. 7:9-4.9; Proposed N.J.A.C. 7:9-4.13, 14(d)).

The various criteria tables covering freshwaters, tidal waters and coastal waters have been combined into one comprehensive table. This has eliminated repetitive text and allowed a clearer understanding of the differences in criteria between classifications. (Present N.J.A.C. 7:9-4.6, 4.7, 4.8; Proposed N.J.A.C. 7:9-4.12, 4.14(c)).

The numerical criteria for the two Central Pinelands categories from the 1981 WQS have been deleted. Instead, a narrative criteria statement has been added that sets the criteria at ambient water quality. This reflects the new PL antidegradation classification of these waters. (Present N.J.A.C. 7:9-4.6(e); Proposed N.J.A.C. 7:9-4.12, 4.14(b)).

Total Coliform criteria for all shellfish waters have been changed to reflect the applicable criteria for approved shellfish waters. The old criteria varied with the Bureau of Shellfish Control classification of the waters relative to harvesting. The old approach would not meet the requirements of the Federal WQS Regulations that, "States must adopt those water quality criteria that protect the designated use . . . For waters with multiple use designations, the criteria shall support the most sensitive use." The criteria for Fecal Coliforms have also been changed so that they apply in shellfish waters in addition to the Total Coliform criteria, instead of being replaced by the Total Coliform criteria as was the case under the 1981 WQS. (Present N.J.A.C. 7:9-4.7, 4.8; Proposed N.J.A.C. 7:9-4.14(c)).

Numerical criteria for Phosphorus in the 1981 WQS have been supplemented by a nutrient policy and an effluent standard. The criteria for Phosphorus has been the most frequently violated of the water quality criteria. Promulgation of a nutrient policy will give the Department the flexibility to develop site-specific criteria for Phosphorus and Nitrogen when necessary. The effluent standard formalizes the existing

practice of setting interim Phosphorus limitations of 1.0 mg/l for discharges to selected waterbodies. This interim limitation is necessary due to delays in the processing of construction grants applications because of EPA's review requirements for proposed advanced wastewater treatment facilities. (Proposed N.J.A.C. 7:9-4.5(g), 4.14(c)).

Guidelines for heavy metals have been changed to criteria which will apply to FW2 waters. The criteria for the 6 organic chemicals in the 1981 WQS have been modified to reflect the information contained in the EPA criteria documents. Criteria have been proposed for 4 additional organic chemicals. Finally, the criteria for Un-ionized Ammonia have been changed from maximum to 24 hour average criteria. (Present N.J.A.C. 7:9-4.5, 4.6, 4.7, 4.8; Proposed N.J.A.C. 7:9-4.14(c)).

In general the table at 7:9-4.4 contains a small number of proposed standards which are more stringent than the present guidelines. Some changes were made in response to Federal guidelines, while other modifications reflect the experience and examination by the State Department of Environmental Protection. The specific changes in the standards are discussed in the Basis and Background Report, which may be reviewed at the libraries at the addresses listed in the Office of Administrative Law Note at 7:9-4.14(d).

9. **Stream Classification Listings**—In the 1981 WQS, stream listings were divided by sub-basins and then by classification. In the proposed Standards the waters have been listed alphabetically within Major Basins. Additionally, Category I antidegradation waters have been listed for the first time.

N.J.A.C. 7:9-5—In the existing regulations, seasonal disinfection was allowed for most of the area under the jurisdiction of the Interstate Sanitation Commission. A year-round disinfection policy has been included in the proposed Standards. (Present N.J.A.C. 7:9-4.4(b); Proposed N.J.A.C. 7:9-5.4(b)).

10. **Minimum treatment requirements** have been converted from a lengthy narrative section to a one page table. The minimum treatment requirements, which had been absolute, now would apply only where Water Quality Based Effluent Limitations have not been developed. These BOD objectives have been changed to criteria which will be suitable for use in permits. (Present N.J.A.C. 7:9-5.11; Proposed N.J.A.C. 7:9-5.8).

11. An effluent standard for Phosphorus has been proposed for addition to N.J.A.C. 7:9-5. This effluent standard would apply to discharges upstream of, or into, lakes, ponds, or reservoirs. (Proposed N.J.A.C. 7:9-5.7(b)).

Social Impact

The major goal of the Federal Clean Water Act (P.L. 92-500), is the restoration of the biological, physical, and chemical integrity of all the nation's waters and to make them fishable and swimmable. The proposal discusses the ambient water quality of New Jersey. The entire State population will be affected by the proposal, especially with reference to benefits from improved public health and drinking water, as well as advantages derived from improved and increased recreational opportunities.

The segment of the public which will be most directly affected by the proposal is the dischargers, as defined in N.J.S.A. 58:10A-1 et seq., the New Jersey Water Pollution Act. The proposal regulates the use of industrial process waters, which will benefit particular companies, who will not have to use waters containing illegal types and amounts of substances which have been discharged by other companies.

The impact of compliance with the proposal will vary with the situation of each individual discharger, and will depend upon the nature of the substances discharged and the site. As no new programs are being introduced, it is expected that the impact on dischargers will not will not be radical. Some responses to the proposal by dischargers may include modification in operating procedures and the construction of new treatment facilities.

The commercial fishing industry of the State is expected to be impacted, as the proposed regulations contain coastal water standards which are geared to upgrade and support the shellfish population.

The State's Pinelands region will similarly benefit, as the proposal contains standards which maintain and preserve the existing high water quality and the unique ecological balance of that system.

With reference to the Department, it is expected that the regulations will, due to their reorganization and streamlining, result in increased ability to protect public health, welfare, and the environment through the more efficient enforcement and administration. Moreover, the proposal specifically includes the provision that the Department may request additional toxicity tests (See N.J.A.C. 7:9-4.4, 4.5(f) and 4.14).

Economic Impact

With reference to public health, the State's population will benefit economically due to a reduction in medical expenses occasioned by an increase in water quality. The shell fishing industry will benefit because the proposal specifically encourages the growth of the shellfish population. The economy of the State will derive benefit from increased revenues due to the improvement of tourism, recreational, and fishing opportunities.

The economic impact upon specific dischargers will vary on a case-by-case basis. The proposal does not set forth general requirements for large expenditures in order to achieve compliance. Possible economic impact includes modification of operating procedures and the building of new treatment facilities. Some requirements may be more stringent, some may be less stringent, but most requirements for most dischargers should remain the same. The increased clarity of the proposed regulations over the current version will make it easier to comply with them, and should eliminate any costs incurred as a result of confusion.

Environmental Impact

The Water Quality Standards were formulated in order to protect the health of the public as well as the aquatic biota, or ecological system of the State's waters. The proposal is intended to restore, maintain, and enhance the chemical, physical, and biological integrity of New Jersey's waters, as well as to protect scenic and ecological values, and to enhance the domestic, municipal, recreational, and other reasonable uses of the State's waters. (See Policy Statement at N.J.A.C. 7:9-4.5). The regulation of the discharge process will aid in the accomplishment of these goals.

Full text of the proposed repeal appears in the New Jersey Administrative Code at N.J.A.C. 7:9-4 and 5.

Full text of the proposed new rule follows.

SUBCHAPTER 4. SURFACE WATER QUALITY STANDARDS

7:9-4.1 Scope of subchapter

Unless otherwise provided by rule or statute, this subchapter shall constitute the rules of the Department of Environmental Protection governing matters of policy with respect to the protection and enhancement of surface water resources, class definitions and quality criteria, use designation and quality criteria for the main stem of the Delaware River including the Delaware Bay, the classification of surface waters of the State, procedures for establishing water quality based effluent limitations, modification of water quality based effluent limitations, procedures for reclassifying specific segments for less restrictive uses and procedures for reclassifying specific segments for more restrictive uses pursuant to N.J.S.A. 13:1D-1 et seq., the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

7:9-4.2 Construction

This subchapter shall be liberally construed to permit the department and its various divisions to discharge its statutory functions.

7:9-4.3 (Reserved)

7:9-4.4 Definitions

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

"Acute toxicity" means a lethal or adverse sublethal effect to an organism exposed to a toxic substance for a relatively short period of time. Acute toxicity is measure by Short-Term Bioassays.

"Agricultural water supply" means water used for field crops, livestock, horticulture, and silviculture.

"Ambient temperature" means the temperature of a waterbody beyond the portion of the waterbody that is affected by the localized heated waste discharge or discharge complex; or the temperature of a waterbody that would exist without the addition of heated discharges.

"Anadromous fish" means fish that spend most of their life in saline waters and migrate to fresh waters to spawn.

"Application factor" means a number applied to an LC50 or an EC50 to estimate the concentration of a substance that will not be harmful to any life stage(s) of the test organisms in waters of varying quality, or to other organisms within the aquatic environment that may be more sensitive than the test organism.

"Appropriate sanitary survey" means a survey that will be designed by the Department or its designee on a case-by-case basis to accurately identify bacterial or other related sources of contamination in a cost efficient, timely manner.

"Aquatic substrata" means soil material and associated biota underlying the water.

"Bioaccumulation" means the uptake and retention by an organism of toxic substances from the water or from consumption of other organisms.

"Bioassay" means a toxicity test using aquatic organisms to determine the concentration or amount of a toxic substance causing a specified response in the test organisms under stated test conditions.

"Biota" means the animal and plant life of an ecosystem; flora and fauna collectively.

"Calculable changes" means changes to water quality characteristics as demonstrated by any acceptable mathematical, predictive method.

"C1" means Category One waters.

"C2" means Category Two waters.

"Category one waters" means those waters designated in Indexes B, C, D, E and F incorporated in this subchapter, for purposes of implementing the Antidegradation Policies in this subchapter, for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resource(s). These waters may include, but are not limited to: 1) Waters originating wholly within Federal, Interstate, State, County, or Municipal parks, forests, fish and wildlife lands, and other special holdings that have not been designated as FW1 in this subchapter; 2) Waters classified in this subchapter as FW2 Trout Production waters and their tributaries; 3) Surface waters classified in this subchapter as FW2 Trout Maintenance or FW2 Nontrout that are upstream of waters classified in this subchapter as FW2 Trout Production; 4) Shellfish waters of exceptional resource value; or 5) Other waters and their tributaries that flow through, or border, Federal, State, County or Municipal parks, forests, fish and wildlife lands, and other special holdings.

"Category two waters" means those waters not designated as Nondegradation, Pinelands Waters, or Category One in this subchapter for purposes of implementing the Antidegradation Policies.

"Chronic toxicity" means death or other adverse impacts that affect the growth, survival, or reproductive success of an organism or its progeny after a relatively long exposure period to toxic substances. Chronic toxicity is measured using Intermediate-Term or Long-Term Bioassays.

"Cumulative substance" means a substance that may be bioaccumulated within an organism to concentrations that exert a toxic effect on that organism or render it unfit for consumption.

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

"Designated use" means those surface water uses, both existing and potential, that have been established by the Department for a waterway or waterbody.

"Diadromous fish" means fish that spend most of their life in one type of water, either fresh or saline, and migrate to the other type to spawn.

"Disinfection" means the removal, destruction, or inactivation of pathogenic and indicator organisms.

"DRBC" means Delaware River Basin Commission.

"EC50" means the median effective concentration of a toxic substance expressed as a statistical estimate of the concentration that has a specified effect on 50 percent of the test organisms under specified test conditions.

"Epilimnion" means the freely circulating upper region of a thermally stratified waterbody extending from the surface to the thermocline.

"Existing uses" means those uses actually attained in the waterbody on or after November 28, 1975, whether or not they are included in the Water Quality Standards.

"Flow-through bioassay" means a toxicity test in which the test solutions flow into and out of the test chambers on a once-through basis for the duration of the test.

"Fresh water(s)" means all nontidal and tidal waters generally having a salinity, due to natural sources, of less than or equal to 3.5 parts per thousand at mean high tide.

"FW" means the general surface water classification applied to fresh waters.

"FW1" means those fresh waters that originate in and are wholly within Federal or State parks, forests, fish and wildlife lands, and other special holdings, that are to be maintained in their natural state of quality (set aside for posterity) and not subjected to any man-made wastewater discharges, as designated in Index A incorporated into this subchapter.

"FW2" means the general surface water classification applied to those fresh waters that are not designated as FW1 or Pinelands Waters.

"Heat dissipation area" means a mixing zone, as may be designated by the Department, into which thermal effluents may be discharged for the purpose of mixing, dispersing, or dissipating such effluents without creating nuisances, hazardous conditions, or violating the provisions of this subchapter.

"Hypolimnion" means the lower region of a stratified waterbody that extends from the thermocline to the bottom of the waterbody, and is isolated from circulation with the upper waters, thereby receiving little or no oxygen from the atmosphere.

"Important species" means species that are commercially valuable (for example, within the top ten species landed, by dollar value); recreationally valuable; threatened or endangered; critical to the organization and/or maintenance of the ecosystem; or other species necessary in the food web for the well-being of the species identified in this definition.

"Industrial water supply" means water used for processing or cooling.

"Intermittent stream" means a stream with a MA7CD10 flow of less than one-tenth (0.1) cubic foot per second.

"Lake, pond, or reservoir" means any impoundment, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water, excluding sedimentation control and stormwater retention/detention basins.

"LC50" means the median lethal concentration of a toxic substance, expressed as a statistical estimate of the concentration that kills 50 percent of the test organisms under specified test conditions.

"Limiting nutrient" means a nutrient whose absence or scarcity exerts a restraining influence upon an aquatic biological population.

"MA7CD10" means the minimum average 7 consecutive day flow with a statistical recurrence interval of 10 years.

"Measurable changes" means changes measured or determined by a biological, chemical, physical analytical method, conducted in accordance with USEPA approved methods as identified in 40 C.F.R. 136 or other analytical methods (for example, mathematical models, ecological indices, etc.) approved by the Department, that might adversely impart a water use (including, but not limited to aesthetics).

"Mixing zones" means localized areas of surface waters, as may be designated by the Department, into which wastewater effluents may be discharged for the purpose of mixing, dispersing, or dissipating such effluents without creating nuisances or hazardous conditions, or violating the provisions of this subchapter.

"Natural flow" means the water flow that would exist in a waterway without the addition of flow of artificial origin.

"Natural water quality" means the water quality that would exist in a waterway or a waterbody without the addition of water or waterborne substances from artificial origin.

"NOEC" means the "no observable effect concentration", which is the highest concentration of a toxic substance that has no adverse effect(s) on survival, growth, or reproduction of species based upon the results of chronic toxicity testing.

"Nondegradation waters" means those waters set aside for posterity because of their clarity, color, scenic setting, other characteristic of aesthetic value, unique ecological significance, exceptional recreational significance, or exceptional water supply significance. These waters include all waters designated as FW1 in this subchapter.

"Nonpersistent" means degrading relatively quickly, generally having a half-life of less than 96 hours.

"Nontrout waters" means fresh waters that have not been designated in this subchapter as trout production or trout maintenance. These waters are generally not suitable for trout because of their physical, chemical, or biological characteristics, but are suitable for a wide variety of other fish species.

"NJPDES" means National Pollutant Discharge Elimination System.

"NT" means nontrout waters.

"Nutrient" means a chemical element or compound, such as nitrogen or phosphorus, which is essential to and promotes the growth and development of organisms.

"Outstanding national resource waters" means high quality waters that constitute an outstanding national resource (for example, waters of National and State Parks and Wildlife Refuges) and waters of exceptional recreational or ecological significance, including segments classified as FW1 or PL in this subchapter.

"Persistent" means relatively resistant to degradation, generally having a half life of over 96 hours.

"Pinelands waters" means all waters within the boundaries of the Pineland Area, except those waters designated as FW1 in this subchapter, as established in the Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq. and shown on Plate 1 of the "Comprehensive Management Plan" adopted by the New Jersey Pinelands Commission in November 1980.

"PL" means the general surface water classification applied to Pinelands Waters.

"Primary contact recreation" means recreational activities that involve significant ingestion risks and includes, but is not limited to, wading, swimming, diving, surfing, and water skiing.

"Public hearing" means a legislative type hearing before a representative or representatives of the Department providing the opportunity for public comment, but does not include cross-examination.

"River mile" means the distance, measured in statute miles, between two locations on a stream, with the first location designated as mile zero. Mile zero for the Delaware River is located at the intersection of the centerline of the navigation channel and a line between the Cape May Light, New Jersey, and the tip of Cape Henlopen, Delaware.

"Saline waters" means waters having salinities generally greater than 3.5 parts per thousand at mean high tide.

"SC" means the general surface water classification applied to coastal saline waters.

"SE" means the general surface water classification applied to saline waters of estuaries.

"Secondary contact recreation" means recreational activities where the probability of water ingestion is minimal and includes, but is not limited to, boating and fishing.

"Shellfish" means those mollusks commonly known as clams, oysters, or mussels.

"Shellfish waters" means waters classified as Approved, Seasonally Approved, Special Restricted, Seasonally Special Restricted or Condemned that support or possess the potential to support shellfish which are within the Coastal Area Facility Review Act (C.A.F.R.A.) zone as delineated in 1973, (excluding: 1—The Cohansey River upstream of Brown's Run; 2—The Maurice River upstream of Route 548; 3—The Great Egg Harbor River upstream of Powell Creek; 4—The Tuckahoe River upstream of Route 50; 5—The Mullica River upstream of the Garden State Parkway) plus the adjacent areas between Route 35 (from its juncture with the C.A.F.R.A. zone just north of Red Bank to its juncture with the C.A.F.R.A. zone just south of Keyport) and the C.A.F.R.A. zone and the area from the C.A.F.R.A. zone on the south northwesterly along Route 35 to the northern shore of the Raritan River, then easterly along the northern shore of the Raritan River to the southeast point of Perth Amboy, then due east to the New Jersey jurisdictional limit, and seaward along the jurisdictional limit to the Atlantic Ocean.

"Stream temperature" means the temperature of a stream outside of a designated heat dissipation area.

"Surface water classifications" means names assigned by the Department in this subchapter to waters having the same designated uses and water quality criteria (e.g., FW1, PL, FW2-NT, SE1, SC, Zone 1C).

"Thermal alterations" means the increase or decrease in the temperature of surface waters, above or below the natural, that may be caused by the activities of man.

"Thermocline" means the plane of maximum rate of change in temperature with respect to depth.

"Tidal waters" means fresh or saline water under tidal influence, up to the head of tide.

"TM" means trout maintenance.

"TP" means trout production.

"Total residual chlorine" means all chemical species of dissolved gaseous chlorine and its oxidation products that can be detected by methods approved by the Department for the analysis of chlorine in waters and wastewaters.

"Toxic substances" means those substances, or combination of substances, which upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly through food chains, will, on the basis of the information available to the Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring.

"Trout maintenance waters" means waters so designated in this subchapter because they support trout throughout the year or have high potential for such use pending the correction of short term environmental alterations.

"Trout production waters" means waters designated in this subchapter, that are used by trout for spawning or nursery purposes during their first summer or have high potential for such use pending the correction of short term environmental alterations.

"USEPA" means the United States Environmental Protection Agency.

"Water quality based effluent limitations" means effluent limitations established so that the quality of the waters receiving a discharge will meet the Water Quality Criteria and Policies of this subchapter after the introduction of the treated wastewaters.

"Zone" means the general surface water classification applied to the mainstem Delaware River and Delaware Bay.

7:9-4.5 Statements of policy

(a) The following constitute general policies of this subchapter.

1. These Surface Water Quality Standards apply to all surface waters of the State.

2. Water is vital to life and comprises an invaluable natural resource which is not to be abused by any segment of the State's population or economy. It is the policy of the State to restore, maintain and enhance the chemical, physical and biological integrity of its waters, to protect the public health, to safeguard the aquatic biota, protect scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial, agricultural and other reasonable uses of the State's waters.

3. Toxic substances in waters of the State shall not be at levels that are toxic to humans or the aquatic biota, or that bioaccumulate in the aquatic biota so as to render them unfit for human consumption.

4. The introduction of substances into the waters of the State in concentrations that are known to be carcinogenic, mutagenic, or teratogenic shall not be permitted. The Department shall direct its control efforts to require the removal of such substances from wastewater discharges which are shown to contain such substances in concentrations that violate this policy.

5. Existing uses shall be maintained and protected. Designated uses shall, as soon as technically and economically feasible, be attained wherever these uses are not precluded by natural conditions. Where existing criteria are inadequate to support the existing or designated uses, the criteria shall be changed to support the existing uses.

6. The restoration of saline waters to levels which permit unrestricted shellfish harvesting is an objective of the Department.

(b) The following are interstate waters policies:

1. The designated uses and water quality criteria for the fresh and saline waters under the jurisdiction of the Delaware River Basin Commission shall be established in this subchapter, or in accordance with the prevailing "Basin Regulations—Water Quality" adopted by the Delaware River Basin Commission as part of its Comprehensive Plan, whichever are more stringent.

2. The designated uses and water quality criteria for waters under the jurisdiction of the Interstate Sanitation Commission in the New Jersey/New York metropolitan area shall be as established in this subchapter, or in accordance with the prevailing Water Quality Regulations of the Interstate Sanitation Commission, whichever are more stringent.

(c) The following are general technical policies:

1. The natural water quality shall be used in place of the promulgated Water Quality Criteria of N.J.A.C. 7:9-4.14 for all water quality characteristics that do not meet the promulgated Water Quality Criteria as a result of natural causes.

2. Water quality criteria are expected to be maintained during periods when stream flows are at or greater than the MA7CD10 flow.

3. Water quality criteria are expected to be maintained in intermittent streams during all natural flow conditions. When an intermittent stream does not contain natural flow of sufficient magnitude to determine water quality, the criteria to be maintained in the intermittent stream will be those pertaining to the measurable natural flow immediately downstream of the intermittent stream.

4. Mixing zone policies are as follows:

i. Water quality within a mixing zone may be allowed to fall below applicable water quality criteria provided the existing and designated uses are not adversely impacted.

ii. Mixing zone requirements will be determined by the Department on a case-by-case basis taking into special consideration the extent and nature of the receiving waters so as to meet the intent and purpose of the criteria and standards.

iii. The total area and volume of a waterway or waterbody assigned to mixing zones shall be limited to that which will not interfere with biological communities or populations of important species to a degree which is damaging to the ecosystem or which diminishes other beneficial uses disproportionately. Furthermore, significant acute mortality of aquatic biota shall not occur within the mixing zone.

iv. Zones of passage shall be provided for the passage of free-swimming and drifting organisms wherever mixing zones are allowed.

v. Temperature changes in designated heat dissipation areas shall not cause mortality of the aquatic biota nor create conditions which allow the introduction or maintenance of populations of undesirable organisms.

vi. Adjacent heat dissipation areas: Where waste discharges would result in heat dissipation areas in such close proximity to each other as to impair protected uses, additional limitations shall be prescribed to avoid such impairment.

vii. No heat dissipation areas shall be permitted in waters classified as FW2-TP or within 1500 feet of the shoreline in SC waters.

5. All analytical data to be incorporated by the Department in water quality monitoring or other activities shall be from laboratories approved or certified by the Department for the analysis of those specific parameters. If certification is not offered for the specific parameter the laboratory performing the analysis shall, at a minimum hold certification in the category of certification covering that type of parameter.

(d) The following are antidegradation policies:

1. These antidegradation policies apply to all surface waters of the State.

2. Existing uses shall be maintained and protected. Designated uses shall be maintained or, as soon as technically and economically feasible, be attained wherever these uses are not precluded by natural conditions.

3. No irreversible changes may be made to existing water quality that would impair or preclude attainment of the designated uses of a waterway.

4. No changes shall be allowed in waters which constitute an outstanding National or State resource or in waters that may affect these outstanding resource waters.

5. Where water quality exceeds levels necessary to support the designated uses, including but not limited to, propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Department finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Department's continuing planning process as set forth in this subchapter, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

6. These antidegradation policies shall be applied as follows:

i. The quality of Nondegradation waters shall be maintained in their natural state (set aside for posterity) and shall not be subject to any man-made wastewater discharges.

ii. For Pinelands waters, the Department shall not approve any activity which alone or in combination with other activities, might cause degradation in the existing surface water quality characteristics. This policy shall apply as follows:

(1) This policy is not intended to interfere with water control in the operation of cranberry bogs or blueberry production.

(2) Dischargers holding valid NJPDES permits as of the date of promulgation of these regulations shall be allowed to continue discharging under the terms of their existing NJPDES permits provided that the discharge is not creating any water quality problems and that the designated uses are being attained. If a water quality problem has been created or the designated uses are not being attained the NJPDES permit shall be modified to eliminate the water quality problem or attain the designated uses.

(3) The water quality criteria for existing discharges are the water quality criteria contained in "Surface Water Quality Standards" as adopted in March 1981 except that the criteria for Phosphorus and Toxic Substances promulgated herein apply instead of the 1981 criteria, as though the freshwater portions of the Pinelands were classified as FW2 and the saline portions were classified as SE1, and for Nitrate Nitrogen a level of 2 mg/1 shall be maintained in the surface waters unless it is shown that a lower level must be maintained to protect the existing surface water quality.

(4) Existing dischargers shall be subject to all the provisions of this subchapter when they apply for modification or expansion of their existing discharge.

iii. Category One waters shall be protected from any measurable changes (including calculable or predicted changes) to the existing water quality that might be detrimental to the maintenance of existing uses or to the attainment or maintenance of the designated uses. Water quality characteristics that are generally worse than the water quality criteria, except as due to natural conditions, shall be improved to maintain or provide for the designated uses where this can be accomplished without adverse impacts on organisms, communities or ecosystems of concern.

iv. For Category Two waters, water quality characteristics that are generally better than, or equal to, the water quality standards shall be maintained within a range of quality that shall protect the existing/designated uses, as determined by studies acceptable to the Department, relating existing/designated uses to water quality. Where such studies are not available or are inconclusive, water quality shall be protected from changes that might be detrimental to the attainment of the designated uses or maintenance of the existing uses. Water quality characteristics that are generally worse than the water quality criteria shall be improved to meet the water quality criteria.

7. Where a lower classification of water (including the different antidegradation waters) may impinge upon a higher classification of water the Department shall ensure that the quality and uses of the higher classification water are protected.

8. A waterway or waterbody from which water is pumped to another waterway or waterbody shall be treated as a tributary to the waterway or waterbody receiving the pumped water.

9. Modifications of water quality based effluent limitations established to implement this antidegradation policy may be granted pursuant to N.J.A.C. 7:9-4.8 and 4.9.

(e) The following are water quality based effluent limitation policies:

1. Water quality based effluent limitations may be established so as to minimize total expenditures, subject to social and environmental constraints, so that the provisions of the water quality standards (which includes the antidegradation policies) are met. This policy may result in the assignment of different levels of treatment to different dischargers where this proves more beneficial on a study area basis.

2. Levels of treatment established as a result of water quality studies shall take precedence over the Minimum Treatment Requirements of N.J.A.C. 7:9-5.8.

3. The Department may establish seasonal effluent limitations when it determines that such seasonal limitations are necessary due to seasonal variations in treatment performance caused by ambient conditions and, that the seasonal limitations will not cause or contribute to violation of the Water Quality Standards.

4. Whenever discharges of pollutants from a point source or group of point sources, after the application of effluent limitations at least as stringent as those required pursuant to sections 301, 306 and 307 of the Federal Clean Water Act or effluent limitations based upon the provisions of N.J.A.C. 7:9-5.1 et seq. (whichever are more stringent), would interfere with the attainment and maintenance of the water quality standards (which includes the antidegradation policies), the Department shall establish more stringent, water quality based, effluent limitations that will ensure the attainment and maintenance of the water quality standards (which includes the antidegradation policies).

5. Modifications of water quality based effluent limitations established to implement the water quality standards (which includes the Antidegradation Policies) granted pursuant to section N.J.A.C. 7:9-4.8 and 4.9, shall provide for effluent limits at least as stringent as those required pursuant to sections 301, 306, and 307 of the Federal Clean Water Act or the Minimum Treatment Requirements of N.J.A.C. 7:9-5.8, where applicable, whichever are more stringent.

6. When a discharge is made to a tidal waterway in the reach where the salinity varies from less than 3.5 ppt. to greater than 3.5 ppt., or the salinity data is inconclusive, the Department shall establish as water quality based effluent limitations the more stringent of the limitations, on a parameter specific basis, required for the upstream, FW, waters or the downstream, SE, waters.

(f) The following are bioassay and biomonitoring policies:

1. Bioassay test species selection follows:

i. The objective of the Department is to use test species for toxicity testing bioassays that are representative of the more sensitive aquatic biota from the different trophic levels of the waters in question.

ii. Test species need not be indigenous to, nor occur in the waters in question.

iii. When the bioassay test protocol being utilized falls under the scope of N.J.A.C. 7:18 the Department shall designate the approved representative species considered to be the most sensitive to the discharge.

2. Acute definitive bioassay tests, in accordance with N.J.A.C. 7:18, will routinely be utilized in determining the toxicity of a discharge to the aquatic biota.

3. The Department, in order to further characterize the toxicity of a discharge, may allow or require the use of other procedures including, but not limited to:

i. Chronic bioassay testing;

ii. Bioaccumulation testing;

iii. Mutagenicity testing;

iv. Measures of the structure and function of the aquatic community in the receiving waters.

4. The Department may allow or require the use of alternative application factors based upon acute and chronic toxicity testing of specific discharge-receiving water combinations.

5. Parameter specific water quality criteria for toxic substances in a waterbody may be established by the Department when adequate data, from appropriate bioassays or scientific literature, is available.

i. Appropriate bioassays, for purposes of this policy, shall include both acute definitive and chronic definitive bioassays.

ii. The amount of bioassay data or scientific literature needed to support adoption of a parameter specific criterion in a given waterbody will be determined by the Department on a case-by-case basis.

(g) The following are nutrient policies:

1. These policies apply to all FW waters of the State.

2. Except as due to natural conditions, nutrients shall not be allowed in concentrations that cause objectionable algal densities, nuisance aquatic vegetation, or otherwise render the waters unsuitable for the designated uses.

3. The Department may establish site-specific Water Quality Criteria for nutrients in lakes, ponds, reservoirs or streams, in addition to or in place of the criteria in N.J.A.C. 7:9-4.14, when necessary to protect existing or designated uses. Such criteria shall become part of these Water Quality Standards.

4. The Department shall establish water quality based effluent limits for nutrients, in addition to or more stringent than, the effluent standard in N.J.A.C. 7:9-5.7, as necessary to meet the quality criteria.

5. Activities resulting in the non-point discharge of nutrients shall implement the best management practices determined by the Department to be necessary to protect the existing or designated uses.

6. The Department may allow or require the use of algal biostimulation assays, to determine the limiting nutrient in a lake, pond, reservoir or stream.

7:9-4.6 Establishment of water quality based effluent limitations

(a) Water quality based effluent limitations are established where technology based effluent limitations, established pursuant to Sections 301(b) and 306 of the Federal Clean Water Act, or toxic effluent standards, established pursuant to Section 307 of the Federal Clean Water Act, and/or Minimum Treatment Requirements set out in N.J.A.C. 7:9-5.8, are insufficient to attain, maintain and protect the designated and existing uses, water quality criteria and policies of N.J.A.C. 7:9-4.

(b) The conditions of a Draft NJPDES Permit or a Draft DAC shall include any water quality based effluent limitations developed pursuant to (c) below, in addition to any other appropriate conditions. The water quality based effluent limitations may be modified as a result of hearings held on the Draft NJPDES Permit or Draft DAC provided that the water quality based effluent limitations incorporated into the Final NJPDES Permit or DAC must be consistent with the provisions of N.J.A.C. 7:9-4 (including, but not limited to, 7:9-4.5, 4.6(c), 4.8, and 4.9).

(c) The Department may develop water quality based effluent limitations for a single point source discharger on a case-by-case basis. The procedure to be followed by the Department in developing such effluent limitations shall be as follows:

1. For Category One Waters, as defined in N.J.A.C. 7:9-4.4, draft water quality based effluent limitations shall be assigned to a point source discharger so as to protect the existing water quality from any measurable or calculable changes. The Department shall establish draft water quality based effluent limitations, as appropriate, for those parameters contained in N.J.A.C. 7:9-4.14, as well as any other parameters the Department believes may have a detrimental effect on the designated or existing uses.

2. For Category Two Waters, as defined in N.J.A.C. 7:9-4.4, draft water quality based effluent limitations shall be assigned to a point source discharge so as to:

i. Maintain water quality characteristics that are generally better than or equal to the water quality standards at a level that will protect the existing and designated uses, and;

ii. Bring water quality characteristics that are generally worse than the water quality criteria, except as due to natural conditions, up to the water quality criteria.

3. The following information shall be submitted by the applicant for a water quality based effluent limitation:

i. Type of waste (domestic or industrial) to be discharged, accompanied by an analysis of the treated and untreated wastewater characteristics.

ii. Type of treatment process and level of treatment being considered.

iii. United States Geological Survey Topographic Maps, 7.5 Quadrangle series, showing treatment facility locations, discharge point, and the location of other treatment facilities on the receiving stream within five miles of the proposed discharge.

iv. Name and classification of receiving stream including a description of the stream's existing beneficial uses.

v. Stream analysis, which shall include:

(1) A flow analysis to determine the MA7CD10 flow, and;

(2) A water quality analysis program to be developed in coordination with the Department and to include, at a minimum, sampling stations upstream and downstream of all existing discharges, as well as the proposed discharge.

4. The Department will utilize the following methodologies in the development of chemical specific water quality based effluent limitations for point source discharges:

i. The Department shall take into consideration the contribution of nonpoint source loading(s) and the need for some reserve capacity in the stream segment. The parameters to be considered will vary with the type of discharge, the existing and designated uses of the waters, and the ambient water quality.

ii. Scientifically defensible technical approaches, such as, calibrated and verified mathematical water quality models developed or adapted for a particular stream, simplified modelling approaches, as outlined in "Water Quality Assessment" (EPA-600/6-82-004), a simple mass balance, or bioassay procedures, as contained in N.J.A.C. 7:9-18, shall be utilized by the Department in developing water quality based effluent limitations.

5. The following methodologies may be utilized by the Department in developing water quality based whole effluent toxicity limitations for point source discharges.

i. When using acute definitive bioassays as the measure of whole effluent toxicity, the following effluent toxicity limitation formula may be utilized:

$$L_A = 1/F (100)$$

Where: L_A = Toxicity limitation expressed as an acute definitive LC50 or EC50, in percent effluent.

F = Application factor, 0.05 where toxicity is due to non-persistence substances or 0.01 where toxicity is known or suspected to be due to persistent substances.

I = Critical instream waste concentration, determined in accordance with the methods in ii below.

(1) A draft limitation must meet the requirements of the effluent standard for toxic discharges found in N.J.A.C. 7:9-5.7.

(2) If the calculated limit, I_a , is greater than 100 percent effluent, the draft limit shall require that no measurable acute toxicity occur in any bioassay test concentration, including 100 percent effluent, above normal background mortality levels for the test organism population.

ii. The critical instream waste concentration, I , is determined as follows:

(1) For non-tidal streams, or small tidal streams with a cross-sectional area not greater than 1,000 square feet at mean sea level and a freshwater inflow MA7CD10 not greater than 10 cfs:

$$I = \frac{Q_e}{Q_e + Q_s}$$

Where: Q_e = Effluent flow
 Q_s = Upstream freshwater MA7CD10 flow

(2) For all other waterbodies the instream waste concentration, I , will be determined on a case-by-case basis utilizing applicable scientific methods, including but not limited to, plume models and the mixing zone concept.

iii. When utilizing chronic bioassays as the measure of whole effluent toxicity, the following effluent toxicity limitation formula may be utilized:

$$L_c = I (100)$$

Where: L_c = Toxicity limitation expressed as a chronic NOEC in percent effluent.

I = Critical instream waste concentration, determined in accordance with the method in ii above.

7:9-4.7 Water quality based effluent limitations and water quality management planning

(a) Water quality based effluent limitations established under the procedures of N.J.A.C. 7:9-4.6 shall be amendments to appropriate Water Quality Management Plans.

1. Water quality based effluent limitations established as a NJPDES permit condition under N.J.A.C. 7:14A-8.6, may be adopted as an amendment to the Statewide Plan pursuant to N.J.A.C. 7:15-2.1(c) 4 and 2.2(b)2 without further adoption proceedings as long as proper notice is given with the NJPDES notice.

2. Water quality based effluent limitations established as an amendment to the Statewide or appropriate Areawide Plan under N.J.A.C. 7:15-3.4 and 3.5 must be consistent with all of the provisions of this subchapter, and shall be adopted pursuant to N.J.A.C. 7:15-3.5.

(b) The Department shall not issue any permit for a discharge that conflicts with an Areawide Plan.

7:9-4.8 Procedures for modifying water quality based effluent limitations for individual dischargers to Category One Waters

(a) The criteria for modifying water quality based effluent limitations established on a case-by-case basis are:

1. The applicant must demonstrate, to the satisfaction of the Department, after public notice (including notice to affected municipalities) and a public hearing (where sufficient public interest exists), that:

i. Some change in ambient water quality should be allowed because of necessary and justifiable social or economic development; and

ii. Alternative effluent limitations, at least as stringent as the technology based effluent limitations required by either sections 301, 306, and 307 of the Federal Clean Water Act, or the effluent limitations resulting from application of the mini-

mum treatment requirements in N.J.A.C. 7:9-5.8 (where applicable), whichever are more stringent, will not interfere with nor be injurious to the existing or designated uses; and

iii. Where the requested modified effluent limitations would result in contravention of the water quality criteria or the degradation of the natural water quality, whichever is less stringent;

(1) The water quality criteria are not attainable because of natural background; or

(2) The water quality criteria are not attainable because of irretrievable man-induced conditions; or

(3) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

(4) Controls more stringent than those required by Sections 301(b) and 306 of the Federal Clean Water Act would result in substantial and widespread adverse social and economic impact.

(b) It is the responsibility of the applicant to provide the Department with all of the information needed to evaluate the requested modification(s).

(c) In no case shall changes to water quality be allowed in Outstanding National Resource Waters, such as waters of National and State parks, wildlife refuges and other waters of exceptional recreational or ecological significance.

(d) Modified effluent limitations may be granted for a time period that shall not exceed that of the permit in which the modified effluent limitations appear.

(e) Modified effluent limitations may be renewed if the discharger demonstrates, to the Department's satisfaction, after public notice (including notice to affected municipalities) and a public hearing (where sufficient interest exists), that there has been no adverse effect on water quality and the designated and existing uses.

(f) Where water quality criteria are not currently met the Department shall not grant a modification, as set forth in this subsection, establishing an effluent limitation less stringent than the limitation(s) in the existing permit, unless the criteria are not met because of natural conditions.

7:9-4.9 Procedures for modifying water quality based effluent limitations for individual dischargers to Category Two Waters

(a) The criteria for modifying water quality based effluent limitations established on a case-by-case basis are:

1. The applicant for modification of effluent limitations for parameters that are currently better than the water quality criteria must demonstrate, to the satisfaction of the Department, after public notice (including notice to affected municipalities) and a public hearing (where sufficient public interest exists), that:

i. Some degradation of water quality parameters currently better than the water quality criteria should be allowed because of necessary and justifiable social or economic development; and

ii. Alternative effluent limitations, at least as stringent as the technology based effluent limitations required by either sections 301, 306, and 307 of the Federal Clean Water Act, or the effluent limitations resulting from application of the Minimum Treatment Requirements (where applicable) in N.J.A.C. 7:9-5.1 et seq., whichever are more stringent, will not interfere with nor be injurious to the existing or designated uses.

2. The applicant for modification of effluent limitations for parameters that are currently equal to or currently do not meet the water quality criteria in this subchapter must demonstrate, to the satisfaction of the Department, after public notice (including notice to affected municipalities) and a public hearing (where sufficient public interest exists), that:

i. The water quality criteria are not attainable because of natural background; or

ii. The water quality criteria are not attainable because of irretrievable man-induced conditions; or

iii. Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the water quality criteria, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

iv. Controls more stringent than those required by Sections 301(b) and 306 of the Federal Clean Water Act would result in substantial and widespread adverse social and economic impact.

(b) Where water quality criteria are not currently met the Department shall not grant a modification, as set forth in this subsection, establishing an effluent limitation less stringent than the limitation(s) in the existing permit, unless the criteria are not met because of natural conditions.

(c) Modified effluent limitations may be granted for a time period that shall not exceed that of the permit in which the modified effluent limitations appear.

(d) Modified effluent limitations may be renewed if the discharger demonstrates, to the satisfaction of the Department, after public notice (including notice to affected municipalities) and a public hearing (where sufficient interest exists), that there has been no adverse effect on water quality and the designated and existing uses.

7:9-4.10 Procedures for reclassifying specific segments for less restrictive uses

(a) The Department may entertain petitions, sponsored or endorsed by County or Municipal Governing Bodies, for reclassification of specific segments to less restrictive uses, or decide to initiate reclassification proceedings on its own, at any time.

(b) Any reclassification proceeding will include full documentation of the items contained in (d) and (e) below. The documentation will be prepared by either the Department (where the Department has initiated the reclassification on its own) or the petitioner for the reclassification.

(c) The Department shall issue public notice to all interested parties (including affected municipalities) and shall hold public hearing(s) as part of any reclassification proceeding.

(d) The Department or the petitioner, as indicated in (b) above, shall include in the reclassification documentation appropriate water quality studies and analyses, biological studies and analyses, environmental, social, and economic studies as are necessary to demonstrate the satisfaction of at least one of the criteria listed in (e) below.

(e) The Department may establish less restrictive uses than the designated uses only after it has been demonstrated to the satisfaction of the Department that:

1. None of the uses being removed are existing uses; and

2. The uses to be removed will not be attained by implementing effluent limits required by Sections 301(b) and 306 of the Federal Clean Water Act in conjunction with implementation of cost-effective and reasonable best management requirements for nonpoint source pollution control; and

3. The existing designated use is not attainable because of natural background; or

4. The existing designated use is not attainable because of irretrievable man-induced conditions; or

5. Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

6. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or

7. Controls more stringent than those required by Sections 301(b) and 306 of the Federal Clean Water Act would result in substantial and widespread adverse social and economic impact.

(f) Any reclassification for less restrictive uses, established pursuant to this section shall be reviewed during each review of water quality standards pursuant to Section 303 of the Federal Clean Water Act (at least once every three years). Either the Department or the original petitioner, as indicated in (b) above, shall be responsible for supplying documentation showing that the bases for the reclassification still exist.

(g) In those cases in which a thermal discharge is involved, the procedures for reclassifying segments for less restrictive use shall be consistent with section 316 of the Federal Clean Water Act.

7:9-4.11 Procedures for reclassifying specific segments for more restrictive uses

(a) The Department will entertain petitions, sponsored or endorsed by County or Municipal Governing Bodies, for reclassification of specific segments, pursuant to (e) below, or may decide to initiate reclassification proceedings on its own, at any time.

(b) The Department may entertain petitions for reclassification of specific segments, pursuant to (f) below, at any time.

(c) Documentation supporting the petition for reclassification for more restrictive use(s) shall be prepared by the petitioner for such reclassification, where one exists, or by the Department, where it decides to initiate such reclassification on its own.

(d) The Department shall issue public notice to all interested parties (including affected municipalities and dischargers) and shall hold public hearing(s) as part of any reclassification proceeding.

(e) A reclassification for more restrictive uses shall be made whenever:

1. It is demonstrated to the satisfaction of the Department that there are existing uses of the specific segment that are not included in the designated uses; or

2. Where a reclassification for less restrictive uses has been granted pursuant to N.J.A.C. 7:9-4.10, the bases for that reclassification no longer exist, or:

3. It is demonstrated to the satisfaction of the Department that any uses in Section 101 (a)(2) of the Federal Clean Water Act, protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water, which are not included in the designated uses listed in this subchapter are attainable.

(f) A reclassification for more restrictive uses may be made when;

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1. It is demonstrated to the satisfaction of the Department that the waters should be set aside to represent the natural aquatic environment and its associated biota, or;

2. It is demonstrated to the satisfaction of the Department that a more restrictive use is necessary to protect a unique ecological system or threatened/endangered species.

(g) In those cases in which a thermal discharge is involved, the procedures for reclassifying segments for more restrictive uses shall be consistent with section 316 of the Federal Clean Water Act.

7:9-4.12 Designated uses of FW1, PL, FW2, SE1, SE2, SE3, and SC waters

(a) In all FW1 waters the designated uses are:

1. Set aside for posterity to represent the natural aquatic environment and its associated biota;
2. Primary and secondary contact recreation;
3. Maintenance, migration and propagation of the natural and established aquatic biota; and
4. Any other reasonable uses.

(b) In all PL waters the designated uses are:

1. Cranberry bog water supply and other agricultural uses;
2. Maintenance, migration and propagation of the natural and established biota indigenous to this unique ecological system;
3. Public potable water supply after such treatment as required by law or regulations;
4. Primary and secondary contact recreation; and
5. Any other reasonable uses.

(c) In all FW2 waters the designated uses are:

1. Maintenance, migration and propagation of the natural and established biota;
2. Primary and secondary contact recreation;
3. Industrial and agricultural water supply;
4. Public potable water supply after such treatment as required by law or regulation; and
5. Any other reasonable uses.

(d) In all SE1 waters the designated uses are:

1. Shellfish harvesting in accordance with N.J.A.C. 7:9-12;
2. Maintenance, migration and propagation of the natural and established biota;
3. Primary and secondary contact recreation; and
4. Any other reasonable uses.

(e) In all SE2 waters the designated uses are:

1. Maintenance, migration and propagation of the natural and established biota;
2. Migration of diadromous fish;
3. Maintenance of wildlife;
4. Secondary contact recreation; and
5. Any other reasonable uses.

(f) In all SE3 waters the designated uses are:

1. Secondary contact recreation;
2. Propagation and migration of fish populations;
3. Migration of diadromous fish;
4. Maintenance of wildlife; and
5. Any other reasonable uses.

(g) In all SC waters the designated uses are:

1. Shellfish harvesting in accordance with N.J.A.C. 7:9-12;
2. Primary and secondary contact recreation;
3. Maintenance, migration and propagation of the natural and established biota; and
4. Any other reasonable uses.

7:9-4.13 Designated uses of mainstem Delaware River and Delaware Bay (Summarized From the DRBC "Administrative Manual; Part III; Basin

ENVIRONMENTAL PROTECTION

Regulations; Water Quality; Including Amendments Through June 29, 1983")

(a) The designated uses for Zone 1C, 1D, and 1E are:

1. Agricultural, industrial and public water supply after reasonable treatment;
2. Wildlife;
3. Maintenance and propagation of resident gamefish and other aquatic biota;
4. Spawning and nursery habitat for anadromous fish;
5. Passage of anadromous fish;
6. Primary and secondary contact recreation.

(b) The designated uses for Zone 2 are:

1. Agricultural, industrial and public water supply after reasonable treatment;
2. Wildlife;
3. Maintenance and propagation of resident gamefish and other aquatic biota;
4. Passage of anadromous fish;
5. Primary contact recreation from R.M. 133.4 to R.M. 117.81;
6. Secondary contact recreation from R.M. 133.4 to R.M. 108.4; and
7. Navigation.

(c) The designated uses for Zone 3 are:

1. Agricultural, industrial and public water supply after reasonable treatment;
2. Wildlife;
3. Maintenance of resident fish and other aquatic biota;
4. Migration of anadromous fish;
5. Secondary contact recreation; and
6. Navigation.

(d) The designated uses for Zone 4 are:

1. Industrial water supply after reasonable treatment;
2. Wildlife;
3. Maintenance of resident fish and other aquatic biota;
4. Migration of anadromous fish;
5. Secondary contact recreation; and
6. Navigation.

(e) The designated uses for Zone 5 are:

1. Industrial water supply after reasonable treatment;
2. Wildlife;
3. Migration of anadromous fish;
4. Maintenance of resident fish and other aquatic biota;
5. Propagation of resident fish from R.M. 70.0 to R.M. 48:2;
6. Secondary contact recreation;
7. Primary contact recreation from R.M. 59.5 to R.M. 48.2; and
8. Navigation.

(f) The designated uses for Zone 6 are:

1. Industrial water supply after reasonable treatment;
2. Wildlife;
3. Maintenance and propagation of resident fish, shellfish, and other aquatic biota;
4. Migration of anadromous fish;
5. Primary contact recreation;
6. Secondary contact recreation; and
7. Navigation.

7:9-4.14 Surface water quality criteria

(a) Surface water quality criteria for FW1 classification shall be maintained as to quality in their natural state.

(b) Surface water quality criteria for PL classification shall be maintained as to quality in their existing state or that quality necessary to attain or protect the designated uses, whichever are more stringent.

7:9-4.14(c) Surface Water Quality Criteria for
FW2, SE and SC Waters

(Expressed as maximum concentrations unless otherwise noted)

Substance	Criteria	Classifications
1. Bacterial quality (Counts/100 ml)	<p>i. Total Coliforms shall not exceed, in all shellfish waters, the standard for approved shellfish waters as established by the National Shellfish Sanitation Program as set forth in its current manual of operations.</p> <p>ii. Fecal Coliforms:</p> <p>(1) Fecal coliform levels shall not exceed a geometric average of 50/100 ml.</p> <p>(2) Fecal coliform levels shall not exceed a geometric average of 200/100 ml nor should more than 10 percent of the total samples taken during any 30-day period exceed 400/100 ml.</p> <p>(3) Fecal coliform levels shall not exceed a geometric average of 770/100 ml.</p> <p>(4) Fecal coliform levels shall not exceed a geometric average of 770/100 ml.</p> <p>(5) Fecal coliform levels shall not exceed a geometric average of 1500/100 ml.</p> <p>iii. Samples shall be obtained at sufficient frequencies and at locations during periods which will permit valid interpretation of laboratory analyses. As a guideline and for the purpose of these regulations, a minimum of five samples taken over a 30-day period should be collected, however, the number of samples, frequencies and locations will be determined by the department or other appropriate agency in any particular case.</p>	<p>Shellfish Waters</p> <p>Within 1500 feet of shore-line in SC waters.</p> <p>FW2 (except as in (3) below), SE1, and SC 1500 feet to 3 miles from the shore-line.</p> <p>Tidal portion of FW2-NI tributaries to the Delaware River, between Rancocas Creek and Big Timber Creek inclusive.</p> <p>SE2</p> <p>SE3</p> <p>All Classifications</p>

7:9-4.14(c) Surface Water Quality Criteria for
FW2, SE and SC Waters

(Expressed as maximum concentrations unless otherwise noted)

Substance	Criteria	Classifications
2. Chloride (mg/l)	i. 250	FW2
3. Dissolved oxygen (mg/l)	i. Not less than 7.0 at any time.	FW2-TP
	ii. 24 hour average not less than 6.0. Not less than 5.0 at any time (see paragraph viii below).	FW2-TM
	iii. 24 hour average not less than 5.0, but not less than 4.0 at anytime (see paragraph viii below).	FW2-NT (except as in iv below), SE1
	iv. Not less than 4.0 at any time.	Tidal portions of FW2-NT tributaries to the Delaware River, between Rancocas Creek and Big Timber Creek inclusive.
	v. Not less than 5.0 at any time.	SC
	vi. Not less than 4.0 at any time.	SE2
	vii. Not less than 3.0 at any time.	SE3
	viii. Supersaturated dissolved oxygen values shall be expressed as their corresponding 100 percent saturation values for purposes of calculating 24 hour averages.	FW2-TM, FW2-NT, SE1
4. Floating, colloidal, color and settleable solids; petroleum hydrocarbons and other oils and grease	i. None noticeable in the water or deposited along the shore or on the aquatic substrata in quantities detrimental to the natural biota. None which would render the waters unsuitable for the designated uses.	All Classifications

7:9-4.14(c) Surface Water Quality Criteria for
FW2, SE and SC Waters

(Expressed as maximum concentrations unless otherwise noted)

Substance	Criteria	Classifications
	<p>ii. For "Petroleum Hydrocarbons" the goal is none detectable utilizing the Federal EPA Environmental Monitoring and Support Laboratory Method (Freon Extractable - Silica Gel Adsorption - Infrared Measurement); the present criteria, however, are those of paragraph i. above.</p>	All Classifications
5. pH (Standard Units)	<p>i. 6.5-8.5</p> <p>ii. Natural pH conditions shall prevail.</p>	FW2, All SE SC
6. Phosphorus, Total (mg/l)	<p>i. <u>Lakes</u>: Phosphorus as total P shall not exceed 0.05 in any lake, pond or reservoir, or in a tributary at the point where it enters such bodies of water.</p> <p>ii. <u>Streams</u>: Except as necessary to satisfy the more stringent criteria in paragraph i above, phosphorus as total P shall not exceed 0.1 in any stream, unless it can be demonstrated that total P is not a limiting nutrient and will not otherwise render the waters unsuitable for the designated uses.</p>	FW2 FW2
7. Radioactivity	<p>i. Prevailing regulations adopted by the U.S. Environmental Protection Agency pursuant to Sections 1412, 1445, and 1450 of the Public Health Services Act, as amended by the Safe Drinking Water Act (PL 93-523).</p>	All Classifications

7:9-4.14(c) Surface Water Quality Criteria for
FW2, SE and SC Waters

(Expressed as maximum concentrations unless otherwise noted)

Substance	Criteria	Classifications
8. Solids, Suspended (mg/l) [Non-filterable residue]	<ul style="list-style-type: none"> i. 25.0 ii. 40.0 iii. None which would render the waters unsuitable for the designated uses. 	<p>FW2-TP, FW2-TM FW2-NT All SE, SC</p>
9. Solids, Total Dissolved [Filterable Residue] (mg/l)	<ul style="list-style-type: none"> i. No increase in background which may adversely affect the survival growth or propagation of the aquatic biota or would interfere with the designated or existing uses, or 500 mg/l, whichever is more stringent. (Increases up to 133 percent of background are deemed to be in compliance with the narrative criterion above. Increases above 133 percent of background may be granted where the discharger demonstrates, to the satisfaction of the department, that the proposed increase will not adversely affect the aquatic biota.) ii. None which would render the water unsuitable for the designated uses. 	<p>FW2 All SE</p>
10. Sulfate (mg/l)	<ul style="list-style-type: none"> i. 250 	FW2
11. Taste and odor producing substances	<ul style="list-style-type: none"> i. None offensive to humans or which would produce offensive taste or odors in water supplies and biota used for human consumption. None which would render the waters unsuitable for the designated uses. 	All Classifications

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7:9-4.14(c) Surface Water Quality Criteria for
FW2, SE and SC Waters

(Expressed as maximum concentrations unless otherwise noted)

Substance	Criteria	Classifications
12. Temperature and Heat Dissipation Areas	i. Thermal Alterations (Temperatures shall be measured outside of heat dissipation areas)	
	(1) Streams	
	(i) Ambient temperatures shall prevail except where properly treated wastewater effluents are discharged. Where such discharges occur, temperatures shall not deviate more than 0.6°C (1°F) from ambient temperature.	FW2-IP
	(ii) No thermal alterations which would cause temperatures to exceed ambient by more than 1.1°C (2°F) at any time or which would cause temperatures in excess of 20°C (68°F).	FW2-IM
	(iii) No thermal deviations which would cause temperatures to deviate more than 2.8°C (5°F) at any time from ambient temperatures. No heat may be added which would cause temperatures to exceed 27.8°C (82°F) for small mouth bass or yellow perch waters, or 30°C (86°F) for other nontrout waters.	FW2-NT
	(iv) No thermal alterations which would cause temperatures to deviate from ambient by more than 2.2°C (4°F), from September through May, nor more than 0.8°C (1.5°F) from June through August, nor cause temperatures to exceed 29.4°C (85°F).	All SE

7:9-4.14(c) Surface Water Quality Criteria for
FW2, SE and SC Waters

(Expressed as maximum concentrations unless otherwise noted)

Substance	Criteria	Classifications
	(2) Lakes	
	(i) No thermal alterations except where it can be shown to be beneficial to the designated and existing uses.	FW2-TM
	(ii) No thermal alterations of more than 1.7°C (3°F) in the epilimnion of lakes and other standing waters. No discharges of heated effluent into the hypolimnion nor pumping of water from the hypolimnion (for discharge back into the same water body) shall be permitted unless it is demonstrated, to the satisfaction of the Department, that such practices will be beneficial to the existing and designated uses.	FW2-NT
	(3) No direct heat additions within 1500 feet of the shoreline. No thermal alterations which would cause temperatures to deviate from ambient temperatures by more than 2.2°C (4°F) from September through May, nor more than 0.8°C (1.5°F) from June through August, nor which would cause temperatures to exceed 26.7°C (80°F).	SC
	ii. Heat Dissipation Areas	
	(1) Streams	
	(i) Not more than one-quarter (1/4) of the cross section and/or volume of the water body at any time.	FW2-TM, FW2-NT, All SE

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7:9-4.14(c) Surface Water Quality Criteria for
FW2, SE and SC Waters

(Expressed as maximum concentrations unless otherwise noted)

Substance	Criteria	Classifications
	(ii) Not more than two-thirds (2/3) of the surface from shore to shore at any time.	
	(iii) These limits may be exceeded by special permission, on a case-by-case basis, when a discharger can demonstrate that a larger heat dissipation area meets the tests for a waiver under Section 316 of the Federal Clean Water Act.	
	(2) Lakes, Ponds, Reservoirs, Bays or Coastal Waters: Heat dissipation areas will be developed on a case-by-case basis.	FW2-IM, FW2-NT, All SE, SC
13. Toxic Substances (general)	i. None, either alone or in combination with other substances, in such concentrations as to affect humans or be detrimental to the natural aquatic biota, produce undesirable aquatic life, or which would render the waters unsuitable for the designated uses.	All Classifications
	ii. None which would cause standards for drinking water to be exceeded after appropriate treatment.	FW2
	iii. Toxic substances shall not be present in concentrations that cause acute or chronic toxicity to aquatic biota, or bioaccumulate within an organism to concentrations that exert a toxic effect on that organism or render it unfit for consumption.	All Classifications

7:9-4.14(c) Surface Water Quality Criteria for
FW2, SE and SC Waters

(Expressed as maximum concentrations unless otherwise noted)

Substance	Criteria	Classifications
	iv. The concentrations of nonpersistent toxic substances in the State's waters shall not exceed one-twentieth (0.05) of the acute definitive LC50 or EC50 value, as determined by appropriate bioassays conducted in accordance with N.J.A.C. 7:18.	All Classifications
	v. The concentration of persistent toxic substances in the State's waters shall not exceed one-hundredth (0.01) of the acute definitive LC50 or EC50 value, as determined by appropriate bioassays conducted in accordance with N.J.A.C. 7:18.	All Classifications
14. Toxic Substances (ug/l):		
i. Aldrin/Dieldrin	(1) 0.0019	All Classifications
ii. Ammonia, un-ionized (24 hr. average)	(1) 20 (2) 50 (3) 0.1 of acute definitive LC50 or EC50	FW2-TP, FW2-TM FW2-NF All SE, SC
iii. Arsenic, Total	(1) 50	FW2
iv. Barium, Total	(1) 1000	FW2
v. Benzidine	(1) 0.1	All Classifications
vi. Cadmium, Total	(1) 10	FW2
vii. Chlordane	(1) 0.0043 (2) 0.0040	FW2 All SE, SC

7:9-4.14(c) Surface Water Quality Criteria for
FW2, SE and SC Waters

(Expressed as maximum concentrations unless otherwise noted)

Substance	Criteria	Classifications
viii. Chlorine, Total Residual [TRC]	(1) 3.0 (2) 10.0	FW2 A11 SE, SC
ix. Chromium, Total	(1) 50	FW2
x. DDT and Metabolites	(1) 0.0010	A11 Classifications
xi. Endosulfan	(1) 0.056 (2) 0.0087	FW2 A11 SE, SC
xii. Endrin	(1) 0.0023	A11 Classifications
xiii. Heptachlor	(1) 0.0038 (2) 0.0036	FW2 A11 SE, SC
xiv. Lead, Total	(1) 50	FW2
xv. Lindane	(1) 0.080 (2) 0.004	FW2 A11 SE, SC
xvi. Mercury, Total	(1) 2	FW2
xvii. Polychlorinated biphenyls [PCB's]	(1) 0.014 (2) 0.030	FW2 A11 SE, SC
xviii. Selenium, Total	(1) 10	FW2
xix. Silver, Total	(1) 50	FW2
xx. Toxaphene	(1) 0.013 (2) 0.005	FW2 A11 SE, SC

7:9-4.14(c) Surface Water Quality Criteria for
FW2, SE and SC Waters

(Expressed as maximum concentrations unless otherwise noted)

Substance	Criteria	Classifications
15. Turbidity (Nephelometric Turbidity Unit-NTU)	i. Maximum 30-day average of 15 NTU, a maximum of 50 NTU at any time.	FW2, SE3
	ii. Maximum 30-day average of 10 NTU, a maximum of 30 NTU at any time.	SE1, SE2
	iii. Levels shall not exceed 10.0 NTU.	SC

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7:9-4.14 (d) Surface Water Quality Criteria for the Mainstem
Delaware River and Delaware Bay - Zones 1C through 6

Substance	Criteria	Zones
1. General Criteria	<p>i. The waters shall not contain substances attributable to municipal, industrial, or other discharges in concentrations or amounts sufficient to preclude the specified water uses to be protected. Within this requirement:</p> <p>(1) the waters shall be substantially free from unsightly or malodorous nuisances due to floating solids, sludge deposits, debris, oil, scum; and substances in concentrations or combinations which are toxic or harmful to human, animal, plant, or aquatic life, or that produce color, taste, or odor in the water, or that taint fish or shellfish flesh.</p>	All Zones
	<p>ii. In no case shall concentrations of substances exceed those values given for rejection of water supplies in the United States Public Health Service Drinking Water Standards.</p>	All Zones
2. Alkalinity	<p>i. Not less than 20 mg/l.</p> <p>ii. Must be maintained between 20 and 100 mg/l.</p> <p>iii. Must be maintained between 20 and 120 mg/l.</p>	<p>1E</p> <p>2</p> <p>3,4,5,6</p>
3. Bacterial Quality	<p>i. Total Coliforms: Most Probable Number not to exceed U.S. Public Health Service's shellfish standards in designated shellfish areas.</p>	6

7:9-4.14 (d) Surface Water Quality Criteria for the Mainstem
Delaware River and Delaware Bay - Zones 1C through 6

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Substance	Criteria	Zones
	ii. Fecal Coliforms:	
	(1) Maximum geometric average not to exceed 200 per 100 ml. Samples shall be taken at such frequency and location as to permit valid data interpretation.	1C,1D,1E,6
	(2) Maximum geometric average not to exceed 200 per 100 ml above R.M. 117.81, and 770 per 100 ml below R.M. 117.81. Samples shall be taken at such frequency and location as to permit valid data interpretation.	2
	(3) Maximum geometric average of 770 per 100 ml. Samples shall be taken at such frequency and location as to permit valid data interpretation.	3,4
	(4) Maximum geometric average of 770 per 100 ml from R.M. 78.8 to 59.5, and of 200 per 100 ml from R.M. 59.5 to 48.2. Samples shall be taken at such frequency and location as to permit valid interpretation.	5
4. Chlorides	i. Maximum 15-day average of 50 mg/l.	2
	ii. Maximum 30-day average concentration of 180 mg/l at R.M. 98.	3
5. Detergents, Synthetic [Methylene blue active substances (MBAS)]	i. Not to exceed 0.5 mg/l.	1C,1D,1E
	ii. Maximum 30-day average of 0.5 mg/l.	2

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7:9-4.14 (d) Surface Water Quality Criteria for the Mainstem Delaware River and Delaware Bay - Zones 1C through 6

Substance	Criteria	Zones
6. Dissolved Oxygen	iii. Maximum 30-day average of 1.0 mg/l.	3,4,5,6
	i. Not less than 4.0 mg/l at any time; minimum 24-hour average concentration of 5.0 mg/l.	1C,1D,1E
	ii. Minimum 24 hour average concentration shall not be less than 5.0 mg/l. During periods from April 1 to June 15 and September 16 to December 31 the seasonal average shall not be less than 6.5 mg/l.	2
	iii. Minimum 24 hour average concentration of 3.5 mg/l. During periods from April 1 to June 15 and September 16 to December 31, the seasonal average shall not be less than 6.5 mg/l.	3,4
	iv. Minimum 24 hour average concentration of 3.5 mg/l at R.M.78.8, 4.5 mg/l at R.M. 70.0 and 6.0 mg/l at R.M. 59.5. During the periods from April 1 to June 15 and September 16 to December 31, the seasonal average shall not be less than 6.5 mg/l over the entire zone.	5
v. Minimum 24 hour average concentration of 6.0 mg/l, with a minimum concentration of 5.0 mg/l at any time, unless due to natural conditions.	6	

7:9-4.14 (d) Surface Water Quality Criteria for the Mainstem
Delaware River and Delaware Bay - Zones 1C through 6

Substance	Criteria	Zones
7. Hardness	i. Maximum 30-day average of 95 mg/l.	2
	ii. Maximum 30-day average of 150 mg/l.	3
8. pH (standard units)	i. Must be maintained between 6.0 and 8.5.	1C,1D,1E
	ii. Must be maintained between 6.5 and 8.5.	2,3,4,5,6
9. Phenols	i. Maximum of 0.005 mg/l, unless exceeded due to natural conditions.	1C,1D,1E,2,3
	ii. Maximum of 0.02 mg/l, unless exceeded due to natural conditions.	4
	iii. Maximum of 0.01 mg/l, unless exceeded due to natural conditions.	5,6
10. Radioactivity	i. Alpha emitters - maximum 3 pc/l (picocuries per liter);	All Zones
	ii. Beta emitters - maximum 1,000 pc/l.	All Zones
11. Sodium	i. Maximum 30-day average concentration of 100 mg/l at R.M. 98.	3
12. Solids, Total Dissolved [Filterable Residue]	i. Not to exceed 133 percent of background or 500 mg/l, whichever is less. (Background is 90 mg/l for Zones 1C and 1D and 200 mg/l for Zones 1E and 2)	1C,1D,1E,2,3
	ii. Not to exceed 133 percent of background.	4,5,6

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ENVIRONMENTAL PROTECTION

7:9-4.14 (d) Surface Water Quality Criteria for the Mainstem Delaware River and Delaware Bay - Zones 1C through 6

Substance	Criteria	Zones
13. Temperature and Heat Dissipation Areas	i. Temperature, except in designated heat dissipation areas:	
	(1) Shall not be raised more than 5°F (2.8°C) above ambient temperature until stream temperatures reach 87°F (30.6°C); above 87°F (30.6°C) natural temperature will prevail.	1C,1D,1E
	(2) Shall not be raised more than 5°F (2.8°C) above the average 24 hour temperature gradient displayed during the 1961-1966 period, or to a maximum of 86°F (30.0°C), whichever is lower.	2,3,4
	(3) Shall not be raised above ambient temperature by more than 4°F(2.2°C) during the period from September through May nor more than 1.5°F(0.8°C) during the period from June through August, nor shall maximum temperatures exceed 86°F(30.0°C) in Zone 5 or 85°F(29.4°C) in Zone 6.	5,6
	ii. Heat Dissipation Areas: Temperature limitations may be exceeded by special permission in heat dissipation areas designated on a case-by-case basis, subject to the following conditions:	

7:9-4.14 (d) Surface Water Quality Criteria for the Mainstem
 Delaware River and Delaware Bay - Zones 1C through 6

PROPOSALS

Substance	Criteria	Zones
	(1) Maximum Length:	
	(i) 1000 feet or twenty times the average width of the stream, whichever is less, measured from the point where the waste discharge enters the stream.	1C
	(ii) 3500 feet or twenty times the average width of the stream, whichever is less, measured from the point where the waste discharge enters the stream.	1D,1E
	(iii) 3500 feet measured from the point where the waste discharge enters the stream.	2,3,4,5,6
	(2) Maximum Width:	
	(i) One-half the surface width of the stream or the width encompassing one-half of the entire cross-sectional area of the stream, whichever is less. Within any one heat dissipation area only one shore shall be used in determining the limits of the area.	1C,1D,1E

ENVIRONMENTAL PROTECTION

7:9-4.14 (d) Surface Water Quality Criteria for the Mainstem
 Delaware River and Delaware Bay - Zones 1C through 6

Substance	Criteria	Zones
	(ii) Two-thirds the surface width measured from shore to shore at any stage of tide. Within any one heat dissipation area only one shore shall be used in determining the limits of the area.	2,3,4
	(3) Maximum Cross-section: One quarter of the cross-sectional area of the stream.	2,3,4
14. Threshold Odor Number	i. Not to exceed 24 at 60°C.	All Zones
15. Turbidity (Nephelometric Turbidity Unit - NTU)	i. Maximum 30-day average of 20 NTU, and a maximum of 150 NTU at any time, unless exceeded due to natural conditions.	1C,1D
	ii. Maximum 30 day average of 30 NTU, and a maximum of 150 NTU at any time, unless exceeded due to natural conditions.	1E
	iii. Maximum 30-day average of 40 NTU and a maximum of 150 NTU at any time, except in Zone 2 above R.M. 117.81 during the period from May 30 to September 15 when the turbidity shall not exceed 30 NTU, unless exceeded due to natural conditions.	2,3,4,5,6

OAL NOTE: Due to reasons of economy, the concluding portion of N.J.A.C. 7:9-4, Indexes A through F, has not been reprinted, but is available for inspection at the addresses listed below. These proposed Indexes constitute a more accurate and accessible classification of the State's waters than is available in the present Stream Classification listings. Index A lists all the FW1 waters in the State. The proposed Indexes delineate the antidegradation categories of the waters, divide the State into five major waterways, and alphabetize the entries. When using the present system, it is difficult to locate the waterway, and no information was furnished concerning its relation to the antidegradation policy. Due to changes in the proposed antidegradation policy, Category I waters are those so identified in the Index. This constitutes a departure from past practice, which described which waterways were covered by category I, but left individual determinations to a case by case basis.

- NJ State Library, Trenton, NJ
- Atlantic County Library, Mays Landing, NJ
- Burlington County Library, Mount Holly, NJ
- Camden County Library, Echelon Urban Complex, Voorhees, NJ
- Cape May County Free Library, Cape May Court House, NJ
- Cumberland County Library, Bridgeton, NJ
- Monmouth County Library, Freehold, NJ
- Morris County Free Library, Whippany, NJ
- Ocean County Library, Toms River, NJ
- Somerset County Library, Somerville, NJ
- Sussex County Library, Newton, NJ
- Bloomfield, NJ, Public Library
- East Brunswick, NJ, Public Library
- East Orange, NJ, Free Public Library
- Elizabeth, NJ, Free Public Library
- Hackensack, NJ, Johnson Free Public Library
- Jersey City, NJ, Free Public Library
- Linden, NJ, Public Library
- Newark, NJ, Public Library
- Paterson, NJ, Public Library
- Phillipsburg, NJ, Public Library
- Plainfield, NJ, Public Library
- Ridgewood, NJ, The Library
- Trenton, NJ, Public Library
- Trenton, NJ, Public Library
- Wayne, NJ, Public Library
- Woodbridge, NJ, Free Public Library

SUBCHAPTER 5. WASTEWATER DISCHARGE REQUIREMENTS

7:9-5.1 Scope of rules

(a) Unless otherwise provided by rule or statute, this subchapter shall constitute the rules of the Department of Environmental Protection concerning matters of policy with respect to the protection and enhancement of surface waters of the State, disinfection, and minimum treatment requirements pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

(b) This subchapter shall apply to effluent limitations and other requirements applicable to discharges into the surface waters of the State.

7:9-5.2 Construction

These rules shall be liberally construed to permit the Department and its various divisions to discharge its statutory functions.

7:9-5.3 Definitions

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

“BOD” means biochemical oxygen demand.

“COD” means chemical oxygen demand.

“Commissioner” means the Commissioner of the Department of Environmental Protection.

“Department” means the New Jersey Department of Environmental Protection.

“Discharge” means the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of the State or onto land or into wells from which it might flow or drain into said waters.

“Discharger” means any person, corporation, municipality, sewerage authority or other legal entity, who causes, suffers, or allows any discharge.

“Disinfection” means the removal, destruction or inactivation of pathogenic and indicator organisms.

“EC50” means the median effective concentration of a toxic substance. Generally, this is a statistical estimate of the concentration that has a specified effect on 50 percent of the test organisms under specified test conditions.

“Lake, pond, or reservoir” means any impoundment, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water, excluding sedimentation control and stormwater retention/detention basins.

“LC50” means the median lethal concentration of a toxic substance. Generally, this is a statistical estimate of the concentration that has a specified effect on 50 percent of the test organisms under specified test conditions.

“Level of treatment” means the degree of waste removal and accompanying residual wastewater effluent to be attained by any discharger.

“MG/L” means milligrams per liter.

“Pollutant” means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, grease, sewage sludge, munition, chemical waste, biological material, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, or agricultural waste or other residue discharged or otherwise entering into the waters of the State.

“TOC” means total organic carbon.

“Toxic substance” means those substances, or combination of substances, which upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly through food chains, will, on the basis of information available to the Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformation in such organisms or their offspring.

“Water quality standards” means the designated uses and the physical, chemical, biological and esthetic characteristics of a water body as described by ambient water quality criteria, set forth in N.J.A.C. 7:9-4.1 et seq.

7:9-5.4 Statements of policy

(a) The following are general statements of policy:

1. It shall be unlawful for any person to discharge any pollutant into waters of the State, except in conformity with a valid permit issued by the Commissioner or by the Administrator of the United States Environmental Protection Agency.

2. It shall be unlawful for any person to build, install, modify or operate any facility for the collection, treatment or discharge of any pollutant, except after approval by the Department pursuant to regulations adopted by the Commissioner.

3. The protection and enhancement of the quality and function of the waters of this State into which effluents are discharged is a principal concern of the Department when considering the approval of permits to discharge or the designs of proposed facilities for the collection, treatment or discharge of pollutants.

4. The minimum level of treatment required for any wastewater must be such that discharges will meet effluent limitations established pursuant to N.J.A.C. 7:9-5.8 (where applicable) or Sections 301, 306 and 307 of the Federal Clean Water Act, whichever are more stringent, and shall not cause any of the provisions contained in N.J.A.C. 7:9-4.1 et seq. to be contravened.

5. No discharger shall have the privilege of using the entire theoretical capacity of a surface water to receive waste discharges.

6. The policies for interstate waters are:

i. The minimum level of treatment for wastewater treatment facilities that discharge treated wastewater to the Delaware River, including freshwater and saline water tidal tributaries to the Delaware River and Delaware Bay, shall be as established in N.J.A.C. 7:9-5.8 (where applicable) or pursuant to Sections 301, 306 and 307 of the Federal Clean Water Act whichever is more stringent.

ii. The minimum level of treatment for wastewater treatment facilities that discharge treated wastewaters to waters under the jurisdiction of the Interstate Sanitation Commission in the New Jersey-New York Metropolitan area shall be as established in N.J.A.C. 7:9-5.8 (where applicable), or in accordance with the current Interstate Sanitation Commission's Water Quality Regulations (and subsequent revisions), or in accordance with Sections 301, 306 and 307 of the Federal Clean Water Act, whichever is more stringent.

(b) The following are statements of policy concerning disinfection of wastewater:

1. All wastewaters that could contain pathogenic organisms shall receive continuous year round disinfection prior to their discharge into waters of the State.

2. In order to maintain adequate disinfection of all treated wastewaters while protecting both human health and the

aquatic biota from the deleterious effects of chlorine and its disinfection by-products, the Department requires the efficient use of chlorine when it is used as a disinfectant.

3. The Department encourages the use of alternatives to chlorination for disinfection provided that the following can be demonstrated:

i. The alternative method is effective in the removal of viable pathogens and indicators of pathogenic organisms; and

ii. The alternative method is safe and will have a less deleterious effect on the health of humans who may ingest or come into contact with waters receiving these discharges than chlorination would; and

iii. The alternative method will have a less deleterious effect on the aquatic environment, including its biota, than chlorination would and will not result in a contravention of prevailing surface water quality standards.

4. Dechlorination may be required to protect or attain the designated uses set forth in N.J.A.C. 7:9-4.12 and 4.13.

5. Unless it can be demonstrated that a disinfectant and its by-products are nonpersistent, the disinfectant and its by-products shall be considered to be persistent for purposes of determining water quality based effluent limitations.

7:9-5.5 Use of indicators of pollution levels

In applying the minimum treatment requirements of N.J.A.C. 7:9-5.8, the Department may use TOC or COD in place of, or in combination with, BOD when, in the Department's judgement, it would be more appropriate to use them as indicators of pollution levels.

7:9-5.6 Dilute industrial process wastewater

For dilute industrial process wastewater, the percent BOD (or other indicator) reduction, as set forth in N.J.A.C. 7:9-5.8, may be modified, upon request, provided it has been demonstrated to the satisfaction of the Department that the highest degree of waste treatment determined to be practicable by the Department will be applied.

7:9-5.7 Effluent standards

(a) The effluent standard for toxic discharges is that, at a minimum, no effluent shall be more toxic than an LC50 or EC50 of 50 percent (by volume) as determined by acute definitive bioassay(s) conducted in conformance with N.J.A.C. 7:9-18.

(b) The effluent standard for phosphorus discharged to freshwater lakes, ponds, reservoirs, or tributaries to these waterbodies is that, at a minimum, no effluent shall contain, as a monthly average, more than 1.0 mg/l total phosphorus (as P), unless the discharger can demonstrate that it will not result in a violation of Water Quality Standards.

7:9-5.8 Minimum Treatment Requirements

These minimum treatment requirements apply in all cases where effluent limitations based upon water quality studies acceptable to the Department have not been developed.

Watershed	Classifications	% BOD Removal*	BOD Maximum (mg/l)**	Discharge Type
Atlantic Coastal Plain	FW2,SE1	95	15	All
	SC	85	40	Domestic or Domestic in combination with Industri
	SC	85	--	Industrial
Delaware River Basin	FW2,SE1,SE2	90	25	All
	Main Stem - All Zones	As set forth in Water Quality Standards for the Delaware River Basin;; Resolu- tion 67-7 of the DRBC; April 26, 1967 and subsequent revisions		All
Hackensack River Basin	FW2,SE1	90	25	All
	SE2,SE3	85	40	All
Passaic River Basin (including Newark Bay)	FW2	90	25	All
	SE2,SE3	85	40	All
Raritan River Basin (including Raritan Bay and Sandy Hook Bay)	FW2	90	--	All
	SE1	85	--	All
Wallkill River Basin	FW2	95	15	All
Hudson River, Kill Van Kull, and Arthur Kill Basins	FW2,SE2,SE3	85	--	All

* Minimum percent reduction of BOD at all times including any four-hour period of a day when the strength of the wastes to be treated might be expected to or actually exceeds average conditions.

** Average over any four-hour period of a day, including periods when the strength of the wastes to be treated might be expected to or actually exceeds average conditions.

(a)

Shellfish-Growing Water Classification**Proposed Amendments: N.J.A.C. 7:12-1.3,
and 7:12-2**

Authority: N.J.S.A. 13:1D-1 et seq. and 58:24-1 et seq.
DEP Docket No: 064-84-10.
Proposal Number: PRN 1984-611.

Address comments and inquiries to:

William J. Eisele Jr., Chief
Bureau of Shellfish Control
Department of Environmental Protection
Division of Water Resources
Stoney Hill Rd, Leeds Point
Star Route
Absecon, New Jersey 08201

The agency proposal follows:

Summary

The Department of Environmental Protection proposes to update its special permits which are issued by the Bureau of Shellfish Control, in the Division of Water Resources, under N.J.A.C. 7:12-2. These permits specify the controlled conditions under which clams or oysters may be harvested, processed, and in some cases marketed from shellfish growing waters that do not meet the sanitary guidelines for Approved waters established by the State and United States Food and Drug Administration.

Certain resource recovery programs, such as Relay and Depuration, allow for the safe utilization via purification of shellfish from Condemned or Special Restricted waters that would otherwise be unavailable to the consuming public. In addition, special permits are issued to harvest shellfish for bait purposes, transfer for growth, and scientific research.

The proposed updates to the programs are for the most part either administrative or informative in nature with only minor changes to the actual program itself.

In addition, two minor changes are proposed for Subchapter 1. The first change clarifies the areas designated for use in the Relay Program. The second corrects the classification of a portion of Lakes Bay. This addition is not the result of a classification change. A previous proposal inadvertently deleted this item. In fact, the classification described has been in effect for many years. Further, typographical errors have also been proposed for correction.

Social Impact

The Department of Environmental Protection does not anticipate any negative social impact to be associated with the proposed changes to the special permit programs. In fact, just the opposite would be true since these changes will more clearly clarify the permittees' responsibilities, and also assist the State in being more efficient and responsive in managing the programs.

Economic Impact

The proposed changes to the special permit will have little economic impact on the special permit program as it currently

exists. The overall effect of the program over the years has been positive to the economy of the State. Through the controlled harvest and sale of a shellfish product from Condemned, Special Restricted, and Seasonal Special Restricted waters, both the shellfish industry and the public have benefited.

Environmental Impact

The proposed changes to the special permits will have an insignificant adverse environmental impact. Although the special permit programs make available to the public shellfish that would not otherwise be utilized, they are renewable resource under direct State management. Consequently, it is not expected that a sustained harvest of these shellfish will deplete or endanger the fishery.

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

7:12-1.3 Growing water condemnations

(a) (No change).

1. General:

i-ii. (No change.)

iii. Designated areas **utilized in conjunction with one of the Special Permit programs** [(lots)] **which may be leased from the State and which may contain shellfish harvested from the Condemned, Seasonal Special Restricted or Special Restricted area** [under special permit].

2.-26. (No change.)

27. Pleasantville-Northfield-Linden-Margate-Ventnor-Longport area (Portions are designated as Special Restricted and Seasonal. See: N.J.A.C. 7:12-1.4.)

i.-v. (No change.)

vi. **Lakes Bay (a portion is designated as Seasonal. See: N.J.A.C. 7:12-1.4): All of Lakes Bay north of a line from the Pleasantville Yacht Club and following the channel markers F1 G "15", F1 G "13", F1 G "11", F1 R "8" to F1 G "7", then bearing approximately 061 degrees T across the northernmost tip of a small unnamed island to Great Island.**

28.-39. (No change.)

[40. All those waters of the Atlantic Ocean within New Jersey's jurisdictional three mile limit southwest from a line extending from the standpipe at Surf City and bearing 122 degrees T to a line bearing 306 degrees through F1 G4 sec. GONG at Absecon Inlet.

i. In addition, all those estuarine, inlet, channel and other waters enclosed by a line from the southwest side of Absecon Inlet and bearing approximately 321 degrees T to the Intra-coastal Waterway (as shown on nautical chart 12316) than following and including the Intra-coastal Waterway in a northerly direction to F1 8 ft "25" at the mouth of Main Marsh thorofare, then bearing approximately 043 degrees T to FIR "2" (at Long Point), then bearing approximately 129 degrees T to the tower at Spray Beach, then following the coastline in a southerly direction, across Beach Haven Inlet and Little Egg Inlet and along the coastline of Brigantine to its origin in Absecon Inlet;

ii. The above described closures include all connecting waterways between the Atlantic Ocean and the bays described.]

SUBCHAPTER 2. SPECIAL PERMIT

7:12-2.1 General provisions

(a) (No change.)

(b) Said permits may be issued to persons making application for purposes of transplanting, relaying, [deletion] **deple-**

tion, bait harvesting, depuration/controlled purification, research or other purposes approved by the department.

(c) Each application shall be accompanied by a fee in the amount of \$25.00 (check or money order made payable to New Jersey [State] Department of Environmental Protection). Forms may be obtained from the New Jersey Department of Environmental Protection, Division of Water Resources, Bureau of Shellfish Control, [Richards Lane] **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 Shellfish Control 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) Said permits may contain special conditions relating to their purpose, duration, area limitations, time limitations, methods of handling, identification and disposition of the shellfish, limitation on species and/or size of shellfish, and/or any other conditions deemed necessary by the department to protect the health, safety and welfare of the public.

(e) Conviction of a shellfish violation as provided in N.J.S.A. 58:24-1 et seq., N.J.S.A. 24:2-1 et seq., and N.J.S.A. 50:2-1 et seq. shall be adequate cause for the suspension and denial of all special permits issued by the New Jersey Department of Environmental Protection involving the harvesting, **possession, and/or processing** of shellfish from the waters of the State.

7:12-2.3 Bait program; sea clams

(a) The purpose of Permit No. 2a ("Sea Clam Bait Permit") is to allow Sea or Surf Clams to be harvested from the Condemned [W]aters in the Atlantic Ocean within the State of New Jersey jurisdictional three mile limit and ultimately sold for bait purposes only (N.J.S.A. 58:24-3).

(b) Permit No. 2a 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.-4. (No change.)

5. The permit does not supersede current laws, regulations and rules promulgated by other agencies of the State of New Jersey [Included in this category is] **including, but not limited to, N.J.S.A. 50:2-6.1 et seq. and N.J.A.C. 7:25.**

6.-15. (No change.)

16. The harvester shall, **prior to harvesting**, verbally notify, on a day to day basis, the [applicable area New Jersey Marine Police Station] **designated enforcement unit(s)** as to the area and hours he intends to work under the provisions of this permit.

17. (No change.)

18. **This permit shows on its face specific conditions that are deemed necessary for the proper operations of the Sea Clam Bait program. These permit conditions are hereby incorporated in this paragraph by reference, and violation(s) of said conditions shall be deemed violation(s) of these regulations. The permittee is also required to comply with all other applicable statutes and regulations.**

7:12-2.4 Bait program; soft clams **and/or hard clams**

(a) The purpose of Permit No. 2b ("Soft Clam **and/or Hard Clam** Bait Permit") is to allow a depuration/controlled purification facility **holding Permit Nos. 8b and/or 10** to sell, for bait purposes only, unmarketable soft clams **and/or hard clams** that have been damaged during harvesting or depuration/controlled purification processing.

(b) Permit No. 2b 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.

1. Species limited under said permit to soft clams (*Mya arenaria*) **and hard clams** (*Mercenaria mercenaria*).

2. (No change.)

(f) **Any participant violating the regulations or the terms of the special permits issued by the Division of Water Resources may be subject to prosecution under the provisions of N.J.S.A. 58:24-3 and may incur the penalties prescribed for the offenses specified by N.J.S.A. 58:24-9 and 58:24-10.**

(g) **Any person who shall gather any oysters, clams or other shellfish from a place which has been condemned by the department pursuant to N.J.S.A. 58:24-2 or who shall distribute, sell, offer or expose for sale or have in his possession any such shellfish so gathered unless he shall first have secured a permit in writing from the department to distribute, sell, offer or expose for sale or have in his possession any such shellfish so taken, is guilty of a petty disorderly persons offense and any subsequent offense is guilty of a disorderly persons offense (N.J.S.A. 58:24-9). Additionally, the vessel, vehicle and all equipment used to violate this law, regulation or permit may be subject to seizure or forfeiture (N.J.S.A. 58:24-10).**

(h) **Due to the necessity to closely monitor this program for the purpose of protecting public health, the Division of Water Resources shall immediately suspend the Special Permit of any participant who violates any condition of the permit or any of these regulations. Right to a post-suspension hearing shall be granted by the Division of Water Resources in accordance with the procedures established by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Practice N.J.A.C. 1:1-1 et seq. The hearing shall be held within 10 days of the participant's request for a hearing unless an adjournment is requested by the participant.**

(i) **Discrimination against any harvester on the basis of race, sex, creed, domicile, or any other non-work related factor shall be adequate cause for revocation of this permit.**

7:12-2.2 Applications

(a) Applications for said permits shall be submitted on forms supplied by the Department as follows:

1.-7. (No change.)

8. Hard clam Depuration/Harvester [(pilot)] program (WR-009).

9. Hard clam possession and/or processing plant [(pilot)] program (WR-010).

(b) **Applicants shall provide a copy of their valid commercial shellfish harvesters license with the application.**

(c) **It is the responsibility of the permittee to keep the Bureau of Shellfish Control 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 to the Leeds Point office within one week of change.**

3. [Soft clams (*Mya arenaria*)] **Clams** shall have been originally acquired from the harvester holding a duly issued Permit No. 4 **and/or Permit No. 9.**

[4. The harvester shall possess a valid commercial shellfish harvesting license issued by the New Jersey Division of Fish, Game and Wildlife.]

[5.] 4. (No change.)

[6.] 5. Harvesting from the specified Special Restricted **and Seasonal Special Restricted** waters [shall] **may be permitted**

Monday through Sunday of each week [between] **and** the hours **limited as conditions of the harvester's permit.** [of sunrise and sunset, as listed in Trenton.]

[7.] **6.** Areas such as walk-in boxes, truck bodies, etc., which are used for storage of shellfish harvested from [the Condemned] **Special Restricted and Seasonal Special Restricted** [area] **Areas**, shall not be used for storage of other food products if such food products are to be utilized for human consumption.

[8.] **7.** (No change.)

[9.] **8.** (No change.)

[10.] **9.** (No change.)

[11.] **10.** Said damaged [soft] clams from [Condemned] **Special Restricted and Seasonal Special Restricted** waters shall not be used or sold as food for human consumption.

[12.] **11.** (No change.)

12. This permit shows on its face specific conditions that are deemed necessary for the proper operations of the Soft Clam and Hard Clam Bait Programs. These permit conditions are hereby incorporated in this paragraph by reference, and violation(s) of said conditions shall be deemed violation(s) of these regulations. The permittee also required to comply with all other applicable statutes and regulations.

7:12-2.5 (No change.)

7:12-2.6 [Depuration/harvester program;] **Soft clam depuration harvester [Permit] Program**

(a) The purpose of Permit No. 4 ("**Soft Clam** Depuration Harvester Permit") is to allow soft clams to be harvested from [certain moderately polluted (Special Restricted)] **Special Restricted and Seasonal Special Restricted** waters and ultimately marketed after processing through a State permitted and certified depuration/controlled purification facility.

(b) Permit No. 4 shall be valid only under the following specific requirements or conditions. Violation may subject the holder to prosecution under N.J.S.A. 58:24-1 et seq., (P.L. 1979, Chapter 321, Section 3).

1. (No change.)

2. [Areas] **Sections** of harvest are limited to specified **Special Restricted and Seasonal Special Restricted waters.** [in Sandy Hook Bay, Navesink River and Shrewsbury River.] Included with every permit are charts of the harvest sites showing specific sections within the estuaries that may be harvested on any particular day. The depuration/controlled purification plant owner or manager shall orally notify, on a day to day basis, the designated enforcement unit(s) as to section(s) and hours they intend to work under the provision of this permit. All harvesters [from] **transferring clams** to the same depuration/controlled purification are required to work in the same section as the associated mother craft or buy-boat at any given time.

3.-5. (No change.)

6. Harvesting from the specified [Special Restricted waters] **sections** shall be subject to all State laws and regulations applicable to the harvester of oyster, clams or mussels from **Approved waters.**

7. Harvesting from the specified [Special Restricted waters shall] **sections may** be permitted Monday through Sunday of each week between the hours of sunrise and sunset, as listed in Trenton.

8.-14. (No change.)

[15. Permittees must comply with special rules regarding certain waters of the Shrewsbury River that are subject to quality changes. These special rules will be provided with the permit. These special rules are as follows:

i. Although water quality throughout the Shrewsbury River allows us to classify the estuary as Special Restricted, whereby clams may be harvested for further processing, it is felt that certain section of this estuary must, of necessity, be considered as prohibited to shellfish harvesting if a depuration/controlled purification process is to be used as the cleansing method.

ii. These areas, so listed below and on the attached chart, have been found to exhibit an undesirable variability in water quality. This condition holds the consequence of reducing the effectiveness or, more properly perhaps, the reliability of the depuration/controlled purification process in shellfish harvested from such areas. Therefore, in considering potential areas for soft clam (*Mya arenaria*) harvesting in the Shrewsbury River, the following sites or sections of this estuary shall be avoided. Avoid all:

- (1) Shaded areas on attached chart;
- (2) Lagoons (man-made or natural);
- (3) Creeks or streams;
- (4) Dead-end harbors such as Oyster Bay or Blackberry Creek;
- (5) Marinas and Anchorages;
- (6) Storm drain discharge locations]

15. Violations of these conditions may subject the violator to prosecution under N.J.S.A. 58:24-1 et seq.

16. This permit shows on its face specific conditions that are deemed necessary for the proper operation of the soft clam depuration program. These permit conditions are hereby incorporated in this paragraph by reference, and violation(s) of said conditions shall be deemed violation(s) of these regulations. All permittees are also required to comply with all other applicable statutes and regulations. Included with every permit are charts of the harvest sites showing specific sections within the estuaries that may be harvested on a particular day as determined by the designated enforcement unit(s).

[(c) The State Department of Environmental Protection reserves the right to suspend or revoke this permit at any time its continued use may imperil the public health. Conviction of shellfish violation as provided in N.J.S.A. 58:24-3 and N.J.S.A. 50:2-1 et seq., of the New Jersey statutes shall be adequate cause for the suspension and denial of all Special Permits issued by the New Jersey Department of Environmental Protection involving the harvest of shellfish from the waters of the State.]

7:12-2.7 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. (No change.)

2. **Sections** [Areas] of harvest are limited to those delineated on the chart attached to each permit **or amended charts sent to current mailing address of permittee on record at the Leeds Point office.** These areas specified for harvest may consist of Special Restricted, Seasonal Special Restricted or Condemned waters as classified by this department.

3. (No change.)

4. The harvester must possess a valid **NEW JERSEY COMMERCIAL SHELLFISH HARVESTING LICENSE** issued by the New Jersey Division of Fish, Game and Wildlife.

5. (No change.)

6. The relay of hard clams from the waters designated for relay purposes shall be permitted as established by N.J.A.C.

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7:25-15.1. Hard clams shall be planted on the specified leased plots [lots] in Approved waters as scheduled by the department. The shellfish shall be removed from the bags at time of planting.

7. (No change.)

8. This permit shall apply only to the waters specified [in] on an attached chart provided with each permit and further specified [in] on a schedule determined by the department to manage the resource and protect the public health, safety and welfare.

9. All hard clams taken from the designated relay waters shall be relayed to the special relay leased plots on a schedule set by this department and shall remain upon said leased [lots] plots until written permission for harvest has been granted by the Bureau of Shellfish Control. 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 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 Shellfish Control. Reharvesting of the relayed shellfish will be regulated by the Department of Environmental Protection's Division of Water Resources, Bureau of Shellfish Control. Reharvesting of shellfish from the special relay leased plots may commence only after receipt of written permission from this office.

10.-14. (No change.)

15. Shellfish taken from the designated relay section [area] shall be bagged by the participant, three-quarter bushel to the bag, in bags available to the participant from the department. These bags will be provided, at cost, to the participant through the Leeds Point office of this Bureau. No unmarked bags will be allowed in the harvesters' or buyers' vehicles or boat except during reharvest. Each bag shall have a tag attached, marked with the harvester's and/or buyer's name and permit number. Shellfish not in compliance with the bagging requirements will be seized and returned to Condemned waters by the designated enforcement unit. Participants will place the shellfish in vehicles provided by them and approved by the department. The vehicles will be sealed by the department, or New Jersey State employee designated by the department, at the harvest landing site and opened by the department at the off-loading site. Each participant shall inform the designated enforcement unit(s) of the route he will routinely follow from the harvest area to the planting area.

16.-20. (No change.)

21. This permit shows on its face specific conditions that are deemed necessary for the proper operation of the shellfish relay program. **These permit conditions are hereby incorporated in this paragraph by reference, and violation(s) of said conditions shall be deemed violation(s) of these regulations.** All permittees are also required to comply with all other applicable statutes and regulations. Included with every permit are charts of the harvest sites showing specific sections within the estuaries that may be harvested on a particular day as determined by the designated enforcement unit(s).

i.-ii. (No change.)

22.-24. (No change.)

7:12-2.8 Transfer program

(a) The purpose of Permit No. 6 (Transfer [Shellfish] **Permit**) is to allow for the harvest and transfer of shellfish from leased lots in **waters classified other than Approved** [Condemned waters to leased lots in Approved waters] **to other**

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leased lots for culturing and/or purging of pollutants and ultimate marketing.

(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. (No change.)

2. This permit is limited to persons having leased shellfish lots [in Condemned and Approved waters] **and a valid New Jersey Commercial Shellfish Harvesting License issued by the New Jersey Division of Fish, Game and Wildlife. The applicant shall provide a chart delineating the leased grounds from which the shellfish are to be harvested and the leased grounds to which the shellfish are to be transferred. This chart shall be validated by the appropriate Bureau of Shellfisheries office at Nacote Creek or Bivalve.**

3.-4. (No change.)

5. Lots being planted shall be staked, **by the leasee**, and maintained in that condition during the effective period of the permit.

6. Shellfish transferred to leased lots in Approved **or Seasonally 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 Shellfish Control.

7. To facilitate compliance with [(b)] **paragraph 6** above, the permittee shall notify the Bureau of Shellfish Control 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 Shellfish Control.

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 **not located in Condemned waters** shall be marked at the corners with **Condemned Area** signs (supplied by the Bureau of Shellfish Control) during the condemned period.

9. [The harvester shall verbally notify, on a day-to-day basis, the designated enforcement unit(s) as to the area and hours he intends to work under the provisions of this permit.] **The permittee shall notify the designated enforcement unit(s) 24 hours prior to each day's harvesting from lots in Condemned waters.**

10. (No change.)

11. This permit shows on its face specific conditions that are deemed necessary for the proper operation of the shellfish transfer program. These permit conditions are hereby incorporated in this paragraph by reference, and violation(s) of said conditions shall be deemed violation(s) of these regulations. All permittees are also required to comply with all other applicable statutes and regulations.

[(c) Any permittee violating these regulations or the terms of N.J.S.A. 58:24-3 by taking shellfish from Condemned waters in violation of the permit may incur the penalties prescribed by N.J.S.A. 58:24-9. In addition, conviction of a shellfish violation as provided in N.J.S.A. 58:24-1 et seq., or N.J.S.A. 50:2-1 et seq., shall be adequate cause for the suspension and denial of all special permits issued by the New Jersey Department of Environmental Protection involving the harvesting of shellfish from the waters of this State.]

7:12-2.9 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 [condemned] 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 Shellfish Control. 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 Shellfish Control.

(b) Permit No. 7 shall be valid only under the following specific requirements of conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1. (No change.)

2. [The harvester of seed oysters from condemned waters shall possess] **This permit is limited to persons having a leased shellfish lot(s) in Approved waters and/or Seasonally Approved waters and a valid commercial shellfish harvesting license issued by the New Jersey Division of Fish, Game and Wildlife. The applicant shall provide a chart delineating the leased grounds for which the shellfish are to be transplanted. This chart shall be validated by the appropriate Bureau of Shellfisheries Office at Nacote Creek or Bivalve.**

3. (No change.)

4. The permittee shall verbally notify [on a day to day basis] the designated enforcement unit(s) [as to the area and hours he intends to work under the provision of this permit] **24 hours prior to each day's harvesting from waters other than Approved.**

5. The permittee shall have this [special] permit in his possession while working in [condemned] **specified** waters and while transporting seed oysters taken from [condemned] **specified** waters.

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 Shellfish Control.

7. To facilitate compliance with [item] **paragraph 6** above, the permittee shall notify **the Bureau of Shellfish Control [Office]** by letter after the final [planting on] **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 Shellfish Control.

8. Lots being planted will be staked, **by the lessee**, and maintained in that condition during the effective period of the **special** permit. [Transfer] **Transplant** lot(s) shall be marked at the corners with **Condemned Area** signs (supplied by the Bureau of Shellfish Control) during the condemned period.

9. (No change.)

10. This special permit shows on its face specific conditions that are deemed necessary for the proper operation of the shellfish transplant program. These permit conditions are hereby incorporated in this paragraph by reference, and violation(s) of said conditions shall be deemed violation(s) of these regulations. All permittees are also required to comply with all other applicable statutes and regulations.

(c) Any permittee violating these regulations or the terms of the special transplant permit issued by the Division of Water Resources shall be subject to prosecution under the provisions of N.J.S.A. 58:24-3, taking shellfish from Condemned waters in violation of the permit, and may incur the penalties prescribed by N.J.S.A. 58:24-9. Conviction of a shellfish violation as provided in N.J.S.A. 58:24-1 et seq. and N.J.S.A. 50:2-1 et seq. shall be adequate cause for the suspension and denial of all special permits issued by the New Jersey

Department of Environmental Protection involving the harvesting of shellfish from the waters of this State.]

7:12-2.10 Possession and/or plant program; bait store

(a) The purpose of Permit No. 8a ("Bait [Shore] Store Permit") is to allow sea or surf clams, soft clams and hard clams that have been harvested from [Condemned Waters] **waters other than Approved** to be sold, for bait purposes only, by a person other than the original harvester or depuration/controlled purification plant processor.

(b) Permit No. 8a 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.

1. (No change.)

2. [Purchase of said shellfish are limited to State permitted/certified harvesters or depuration/controlled purification facilities that have been authorized to harvest and/or sell shellfish harvested from Condemned Special Restricted waters.] **Permittees shall purchase sea or surf clams, soft clams and hard clams solely from State-permitted harvesters, other bait stores, or depuration/controlled purification facilities that have been authorized to harvest and/or sell shellfish harvested from waters other than Approved.**

3. (No change.)

4. **The yellow tags from [the above State permitted/certified/harvesters or depuration/controlled purification facilities] holders of Permit Nos. 2a, 2b and/or 8a that state: "CLAMS HARVESTED FROM CONDEMNED WATERS FOR BAIT PURPOSES ONLY. NOT TO BE USED FOR HUMAN CONSUMPTION [, —NAME AND ADDRESS, DATE AND QUANTITY (of sale) shall remain on the container holding the clams until the container is empty]. TAG NOT TO BE REMOVED FROM CONTAINER UNTIL CONTAINER IS EMPTY." Name, address, date of sale, and quantity of sale shall be printed on tag.**

5.-6. (No change.)

7. Storage areas which are used for the storage of clams harvested from [a Condemned area], **waters other than Approved**, shall not be used for the [S]storage of other food products if the latter are to be utilized for human consumption.

8. Records of purchase of said clams, including: [harvester's **harvester's, other bait store's** or depuration/controlled purification facility's name, date of purchase, quantity of purchase, and wholesale sales shall be maintained for a period of not less than 90 days and made available for inspection by any authorized agent of the State.

9. (No change.)

10. This permit shows on its face specific conditions that are deemed necessary for the proper operations of the bait store program. These permit conditions are hereby incorporated in this paragraph by reference and violation(s) of said conditions shall be deemed violation(s) of these regulations. The permittee is also required to comply with all other applicable statutes and regulations.

7:12-2.11 Possession and/or processing plant program; depuration plant

(a) The purpose of permit no. 8b ("Depuration Plant Permit To Purchase Soft Clams") is to allow a depuration/controlled purification facility to purchase soft clams harvested from Special Restricted and **Seasonal Special Restricted** waters for further processing. This permit also completes the control link between the initial or harvest phase of the depuration/controlled purification program and the

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next or processing phase, the latter which is regulated by the New Jersey Department of Health.

(b) Permit No. 8b shall be valid only under the following specific requirements of conditions. Violation may subject the holder to prosecution under N.J.S.A. 58:24-3.

1. (No change.)

2. Purchases are limited to shellfish harvested from specified [Special Restricted waters in Sandy Hook Bay, Navesink and Shrewsbury River] **sections**. Included with every permit are charts of the harvest sites showing specific sections within the estuaries that may be harvested on any particular day. The depuration/controlled purification plant owner or manager shall orally notify, on a day-to-day basis, the designated enforcement unit(s) as to the section(s) and hours they intend to work under the provisions of this permit. All harvesters [from] **transferring clams to the** same depuration/controlled purification plant are required to work in the same section as the associated mother craft or buy-boat at any given time.

3. This permit shall apply only to the waters [noted above] **delineated on a chart provided by the Bureau of Shellfish Control** 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 [p]Permit No. 4 issued by the Bureau of Shellfish Control of the Division of Water Resources.

6. (No change.)

7. Purchases of clams from the specified [Special Restricted waters] **sections** shall be subject to all State laws and regulations applicable to the purchases of oysters, clams or mussels from Approved waters.

8.-15. (No change.)

16. Harvesting from the **specified sections** [specific Special Restricted waters shall] may be permitted Monday through Sunday of each week between the hours of sunrise and sunset as listed in Trenton.

[17. Permittees must comply with special rules regarding certain waters of the Shrewsbury River that are subject to rapid changes in water quality. These special rules will be provided with the permit. These special rules include but are not limited to the following:

i. Although water quality throughout the Shrewsbury River allows us to classify the estuary as Special Restricted, whereby clams may be harvested for further processing, it is felt that certain sections of this estuary must, of necessity, be considered as prohibited to shellfish harvesting if a depuration/controlled purification process is to be used was the cleansing method.

ii. These areas, so listed below and on the attached chart, have been found to exhibit extreme variability in water quality. This condition holds the consequence of reducing the effectiveness or, more properly perhaps, the reliability of the depuration/controlled purification process in shellfish harvested from such areas. Therefore, in considering potential for soft clam (*Mya arenaria*) harvesting in the Shrewsbury River, the following sites or sections of this estuary shall be avoided.

(1) AVOID ALL:

- (A) Shaded areas on attached chart;
- (B) Lagoons (Man-made or natural);
- (C) Creeks or streams;

ENVIRONMENTAL PROTECTION

(D) Dead-end harbors such as Oyster Bay or Blackberry Creek;

(E) Marinas and anchorages;

(F) Storm drain discharge locations

18. Discrimination against any harvester on the basis of race, sex, creed, domicile, or any other non-work related factor shall be adequate cause for revocation of this permit.]

17. Violations of these conditions may subject the violator to prosecution under N.J.S.A. 58:24-1 et seq.

18. This permit shows on its face specific conditions that are deemed necessary for the proper operation of the soft clam depuration program. These permit conditions are hereby incorporated in this paragraph by reference, and violation(s) of said conditions shall be deemed violation(s) of these regulations. All permittees are also required to comply with all other applicable statutes and regulations. Included with every permit are charts of the harvest sites showing specific sections within estuaries that may be harvested on a particular day as determined by the designated enforcement unit(s).

[(c) The State Department of Environmental Protection reserves the right to suspend or revoke this permit at any time its continued use may imperil the public health. Conviction of a shellfish violation as provided in N.J.S.A. 58:24-3 and N.J.S.A. 50:2 of the New Jersey statutes shall be adequate cause for the suspension and denial of all Special Permits issued by the New Jersey Department of Environmental Protection involving the purchase of shellfish from the waters of the State. The transport and processing of shellfish are also subject to New Jersey Department of Health regulations found at N.J.A.C. 8:13-2. Conviction of any violation of the certificate issued by the New Jersey Department of Health for depuration under N.J.A.C. 8:13-2 is grounds for suspension of special permits to possess (No. 8b)) or harvest (No. 4) shellfish.]

7:12-2.12 Possession and/or processing plant program; seed oysters

(a) The purpose of Permit No. 8c ("Possession Permit for Seed Oysters") is to allow the leasee of shellfish grounds to purchase seed oysters harvested in [Condemned] 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 Shellfish Control.

(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. (No change.)

2. [Purchase of said shellfish are limited to leasees of shellfish grounds in Approved waters/] **This permit is limited to persons having leased shellfish lots in Approved and/or Seasonally Approved waters. The applicant shall provide a chart delineating the leased grounds upon which the shellfish are to be planted. This chart shall be validated by the appropriate Bureau of Shellfisheries Office at Nacote Creek or Bivalve.**

3. The harvester from which said [shellfish] **see oysters** are purchased shall possess [a valid commercial shellfish harvesting license issued by the New Jersey Division of Fish, Game and Wildlife and] a valid [Special] permit No. 7 issued by the Bureau of Shellfish Control [of the Division of Water Resources].

4. (No change.)

5. Records of purchases including the harvester's name **and permit number**, date, quantity of purchase, harvest site and transplant lot numbers shall be maintained **by the permittee**

for a period of not less than 90 days and shall be available for inspection by any authorized agent of the State.

6. Seed oysters transplanted to leased lots in Approved waters and/or Seasonally 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 Shellfish Control.

7. To facilitate compliance with item 6 above, the permittee shall notify the Bureau of Shellfish Control [Office (by letter)] by letter after the final planting on a particular leased lot. The minimum 30-day purging period will not begin until the latter of both notice of final [transplanting] planting is received and the water temperature of the Approved waters is maintained at or above 13 degrees centigrade (55 degrees Fahrenheit).

[8. Lots being planted will be staked and maintained in that condition during the effective period of the permit.]

[9.] **8. From the time the [Transplant Permit] Possession Permit for Seed Oysters is issued until written notification for reharvest is received by their permittee, the transplant lot(s) which appear on the permit shall be considered condemned for the harvest of shellfish. Transplant lots shall be staked and marked at the corners with Condemned areas signs (supplied by the Bureau of Shellfish Control) during the Condemned period.**

[(c) Any permittee violating these regulations or the terms of the special transfer permit issued by the Division of Water Resources shall be subject to prosecution under the provisions of N.J.S.A. 58:24-3, taking shellfish from Condemned waters in violation of the permit, and may incur the penalties prescribed by N.J.S.A. 58:24-9. Conviction of a shellfish violation as provided in N.J.S.A. 58:24-1 et seq., and N.J.S.A. 50:2-1 et seq., and shall be adequate cause for the suspension and denial of all special permits issued by the New Jersey Department of Environmental Protection involving the harvesting of shellfish from the waters of this State.]

9. This permit shows on its face specific conditions that are deemed necessary for the proper operation of the shellfish transplant program. These permit conditions are hereby incorporated in this paragraph by reference, and violation(s) of said conditions shall be deemed violation(s) of these regulations. All permittees are also required to comply with all other applicable statutes and regulations.

HEALTH

The following proposals are authorized by J. Richard Goldstein, M.D., Commissioner of Health, with the approval of the Health Care Administration Board.

(a)

PARENTAL AND CHILD HEALTH SERVICES

Birth Defects Registry: Live Births

Proposed New Rule: N.J.A.C. 8:20-1

Authority: N.J.S.A. 26:8-40.20 et seq., specifically 26:8-40.26.

Proposal Number: PRN 1984-651.

(CITE 16 N.J.R. 3118)

Address comments and inquiries to:

Barbara Kern, Chief
Special Child Health Services Program
Department of Health
CN 364
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 26:8-40.20, the Department of Health is required to establish and maintain a Birth Defects Registry which shall contain a confidential record of all birth defects that occur in New Jersey and any other information that the department deems necessary and appropriate in order to conduct thorough and complete epidemiologic survey of birth defects that occur in this State, and to plan for services needed by the children and their families. The reporting requirements shall apply to all infants from birth through one year of age, spontaneously aborted fetuses and electively aborted fetuses after 15 weeks gestation. Physicians, dentists and certified nurse midwives shall be responsible for reporting a child diagnosed as having a birth defect to the Department of Health. The information to be reported shall be provided upon forms supplied by the Department. Birth defects occur in approximately three percent of all birth and are related to over 25 percent of all infant deaths. Though the cause of most birth defects is unknown, there is concern that some may be related to preventable environmental factors. In order to effectively address this public health problem of birth defects it is necessary to collect and compile complete and accurate information concerning the occurrence of birth defects in this State. A birth defects registry would provide a needed base of information to analyze this problem and plan for and provide services to children with birth defects and their families. To carry out the purposes of this legislation, the Department proposes to establish reporting procedures for live born infants. Separate regulations will be developed for the reporting of fetuses with birth defects.

Social Impact

It is estimated that three percent of infants born each year in this State have a birth defect. Approximately 2,000 or two percent are expected to have a defect which affects the survival or physical well-being of the affected children. Birth defects are the second most common cause of infant deaths in the State and the leading cause of death next to accidents in children age one to four years.

With the growing public concern about birth defects and questions about possible environmental causes, a complete and accurate birth defects registry will enable the Department to monitor rates of birth defects that occur in this State and when indicated, to conduct epidemiologic surveys in order to effectively address this public health problem.

Effects of birth defects are not limited only to deaths in early childhood, but are life long health effects among those children who survive. The birth defects registry will enable the Department to provide for timely identification of affected children, and to promptly plan for and provide services to these children and their families. Children who have a birth defect are frequently in need of special health and educational services which can assist them to develop to their fullest potential as productive members of society.

Economic Impact

The economic value of the birth defects registry should be measured according to its impact on the lives and health of

the residents of this State. The registry will serve as a tool for the search of etiology of birth defects, and study of mechanism to prevent and treat those malformations. Early identifications of affected children through the birth defects registry will ensure the provision of appropriate health care and other support services for these children. Appropriate and prompt medical treatment can prevent the development of complications, longterm illness, disability or death which result in unfavorable economic outcomes.

The proposed rule, if adopted, would not cause any significant financial burden to the State or health care system. To the contrary, early identification and intervention strategies can lead to significant savings in public health and family dollars.

Full text of the proposed new rule follows.

CHAPTER 20
BIRTH DEFECTS REGISTRY

SUBCHAPTER 1. LIVE BIRTHS

8:20-1.1 Definitions

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

“Birth defect” means an abnormality of the body’s structure or inherent function which is present at birth, whether such abnormality is manifest at the time of delivery or becomes apparent later in life.

“Infant” means a child from birth to one year of age.

8:20-1.2 Reporting requirement

(a) Any infant who is born to a resident of the State of New Jersey, or who becomes a resident of the State before one year of age, and who shows evidence of a birth defect either at birth or any time during the first year of life shall be reported to the State Department of Health, Special Child Health Services Program.

1. For reporting purposes, the conditions listed as Congenital Anomalies (Diagnostic Codes 740.00 through 759.90) in the most recent revision of the International Classification of Diseases, Clinical Modification, and other congenital defects specified by the Commissioner of Health shall constitute reportable defects. The Commissioner of Health shall promulgate a list of required reporting defects.

(b) Any live born infant with a birth defect and who subsequently expires shall be reported. Such reports shall indicate the infant has expired.

(c) The administrative officer of every health care facility shall be responsible for establishing the reporting procedures for that facility. The reporting procedures must insure that every infant who is initially diagnosed as having a birth defect shall be reported to the Department. If an infant is transported from one health care facility to another, the health care facilities at which the diagnosis is made shall be responsible for reporting.

(d) Every physician, dentist and certified nurse midwife shall report to the Department on initial diagnosis, each infant diagnosed as having a birth defect, not known to be previously reported.

(e) The director of every clinical laboratory shall report to the Department results of postmortem examination from any infant indicating the existence of a birth defect, not known to be previously reported.

(f) The information to be reported shall be provided upon forms supplied by the State Department of Health:

Special Child Health Services Program
CN 364
Trenton, New Jersey 08625

(g) The reports made pursuant to these rules are to be used only by the Department of Health and other agencies that may be designated by the Commissioner of Health and shall not otherwise be divulged or made public so as to disclose the identity of any person; and such reports shall not be included under materials available to public inspection pursuant to P.L. 1963, c.73 (C.47:1A-1 et seq.).

(h) All registrations shall be made within 30 days of the date when the birth defect was diagnosed.

(i) When a live infant is registered, the Department shall inform the parent or legal guardian of the registration.

(j) Every health care facility and independent clinical laboratory shall allow access to, or provide necessary information on infants with birth defects and other patients specified by characteristics for research studies related to birth defects conducted by the State Department of Health and which have been approved by the State Commissioner of Health after appropriate review for assuring protection of human subjects. This shall include patients who came under the care of the Health care facility prior to the effective date of the regulations.

(a)

HOSPITAL REIMBURSEMENT

Diagnosis Related Groups (DRG) List
Regulation

Proposed Amendment: N.J.A.C. 8:31B-5.2

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

Proposal Number: PRN 1984-650.

Address comments and inquiries to:

Joseph I. Morris, Assistant Commissioner
Health Planning and Resource Development
New Jersey Department of Health
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

To assure conformance of all references on the same subject, that appear in different subchapters of N.J.A.C. 8:31B, this amendment to 8:31B-5.2 is being proposed. Categories of patients known as “outliers,” which means patients displaying atypical characteristics relative to other patients in a DRG, have been changed. Patients who discharge themselves against medical advice; patients who died; and, same day surgery patients will no longer be considered as atypical patients for financial purposes. The language for the definition of “transfer of patients” has been clarified for uniformity. This pro-

posed amendment will be compatible with the language in N.J.A.C. 8:31B-3.38.

Social Impact

Identical language referring to the same subject in different rules will serve to eliminate confusion for the hospital and the data/fiscal intermediary.

There is no discernible social impact for the consumer.

Economic Impact

The proposed amendment results in a re-classification of designated categories of patients into specific Diagnosis Related Groups (DRGs). The clarification process has no economic impact on the hospital or the consumer; however, the change in reimbursement mechanisms as described in N.J.A.C. 8:31B-3.38 may have some economic impact which will vary according to the volume of cases that are deemed outliers. The cost to patients who would be classified as outliers according to the proposal may be lower.

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

8:31B-5.2 Outliers

(a) Outliers are patients displaying atypical characteristics relative to other patients in a DRG. Payment for outliers is based on the methodology established in the Procedural and Methodological regulations (N.J.A.C. 8:31B-3.38).

(b) Outliers are defined as:

1. Patients assigned to a DRG but whose Length of Stay (LOS) is beyond the trim points established for the DRG (shorter than the low LOS trim point or longer than the high LOS trim point);

[2. Patients who discharge themselves against medical advice;

3. Patients who died;]

[4.] **2.** Patients admitted and discharged on the same date; **exclusive of Same Day Surgery patients as defined in N.J.A.C. 8:31B-3.11.**

[5.] **3.** Patients assigned to DRGs defined as "clinical outlier" DRGs in N.J.A.C. 8:31B-5.3. Clinical outlier DRGs are DRGs with poorly defined clinical characteristics precluding valid comparison of patients within a DRG. Clinical outlier DRGs are generally those reserved for patients whose clinical characteristics are not comparable to any other established DRGs. Patients identified as having unrelated surgery are also considered clinical outliers.

[6. As stated in the Procedural and Methodological Regulations (N.J.A.C. 8:31B-3), DRGs with 5 or fewer merged cases in the base year for a hospital will not have a payment rate in that hospital. Patients in such DRGs are billed and reconciled as outliers.]

[7.] **6.** Transfer patients: The circumstances under medical advice in which a patient needing continued acute care is transferred from one [New Jersey] **Acute Care Facility** [General Hospital] to another [General Hospital] **Acute Care Facility** for diagnostic and/or therapeutic reasons. [Each hospital reporting on a UB-PS for the same patient shall reflect charges and the patient will be considered an outlier.]

(a)

THE COMMISSIONER

Certificate of Need: Cardiac Facilities Cardiac Surgical Centers

Proposed New Rule: N.J.A.C. 8:33E-2

Authorized By: Allen N. Koplin, M.D., Acting Commissioner of the Department of Health.
Authority: N.J.S.A. 26:2H-5 and 26:2H-8.
Proposal Number: PRN 1984-671.

Address comments and inquiries to:

John A. Calabria, Coordinator
New Jersey Department of Health
Health Planning Services, Room 604
CN 360
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Cardiac Surgical rules apply to the provision of open heart cardiac surgical services in settings that also include the provision of invasive and non-invasive cardiac diagnostic services. A companion subchapter, identified at N.J.A.C. 8:33E-1, establishes rules for the provision of invasive cardiac diagnostic services where cardiac surgery is not offered.

This proposed new rule will require periodic updating based upon the review and recommendations of the Commissioner's Cardiac Advisory Committee (CCAC).

This new rule contains fourteen sections which describe a variety of requirements for the provision of cardiac surgical services.

N.J.A.C. 8:33E-2.1 describes the purpose of the rule as the establishment of standards and general criteria for the planning and certificate of need review of regional cardiac surgical centers. This section also defines such a center and the types of services it offers.

N.J.A.C. 8:33E-2.2 identifies specific utilization criteria that regional cardiac surgical centers must meet. Seventy-five surgical procedures are required in the first year of operation rising to 200 procedures by the end of the third year for each operating room utilized for open heart surgery procedures. In addition, this section also identifies utilization standards for cardiac diagnostic services.

N.J.A.C. 8:33E-2.3 describes the kinds and qualifications of personnel that each cardiac surgical center must have, as well as the personnel required for the provision of cardiac diagnostic services at the surgical center.

N.J.A.C. 8:33E-2.4 identifies the inpatient facilities requirements of the cardiac surgical center, as well as describing the capabilities of the required intensive care/cardiac care unit.

N.J.A.C. 8:33E-2.5 describes the role, responsibilities, and membership of the Commissioner's Cardiac Advisory Committee.

N.J.A.C. 8:33E-2.6 identifies the referral requirements of cardiac surgical centers and requires that each center mail a notice to appropriate institutions and physicians stating that the services of the center are available; requires that each

center provide written documentation that it will accept referrals from physicians not ordinarily having access to the center's facilities, and requires that each center have written transfer agreements to receive appropriate patients from the "free-standing" cardiac diagnostic facilities in its area.

N.J.A.C. 8:33E-2.7 requires that any applicant requesting to be designated a cardiac surgical center to document the need for such services in its service area. At a minimum, the regional service area for an adult surgical program must include a population of one million adjusted for accessibility, while a population base of three million must be documented for a pediatric program.

N.J.A.C. 8:33E-2.8 requires that an applicant for designation as a cardiac surgical center provide evidence that such a request is consistent with the hospital's own approved long-range plan submitted to the department under N.J.A.C. 8:31-161, as well as the health systems plan and annual implementation plan for the health service area in which the applicant is located.

N.J.A.C. 8:33E-2.9 requires an applicant to provide full, written documentation of the project implementation and operational costs of the proposed cardiac surgical center.

N.J.A.C. 8:33E-2.10 requires every cardiac surgical center to maintain and provide basic statistical data on its operations and report such data to the department on a quarterly basis on a form prepared by the department.

N.J.A.C. 8:33E-2.11 requires each applicant for a cardiac surgical center to provide written certification of compliance with all Federal and State laws in regard to nondiscriminatory practices such that no patient will be refused treatment on the basis of race, religion, sex, age, or ability to pay.

N.J.A.C. 8:33E-2.12 requires that each applicant for cardiac surgical services to describe its mechanism for peer review and quality control.

N.J.A.C. 8:33-2.13 notes that all certificate of need applications for new adult or pediatric cardiac surgical centers must meet the minimum standards and criteria contained in this subchapter. It also notes that new centers will not be approved in health services area that include existing centers that are not in full compliance with the minimum utilization requirements in this subchapter.

N.J.A.C. 8:33E-2.14 notes that this entire subchapter will be reviewed and evaluated within three years by the Commissioner's Cardiac Advisory Committee.

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 New Jersey State Health Plan recognizes the underutilization of inpatient beds, specialty services, and expensive equipment as an important factor contributing to the rapidly escalating costs of health care. Regionalization of specialty services and equipment is viewed as an important mechanism for promoting health by improving the capabilities of services

and quality of care offered, by improving the solvency of hospitals offering these expensive services, and by containing the rising costs of health care services.

A Department of Health analysis of the State's existing cardiac surgery programs from 1979 to 1983 has shown a dramatic increase in the number of programs that meet minimum State utilization standards as referenced at N.J.A.C. 8:33E-2.2(a). During 1979 and 1980, three out of the nine existing adult cardiac surgical centers met the minimum State utilization requirements (200 open heart patients). During 1983, a total of six out of nine existing adult cardiac surgical centers met the minimum State utilization requirement. In addition, all three of the adult cardiac surgical centers currently not in compliance with minimum State utilization requirements have exhibited increasing utilization trends over the past three years (1981 to 1983).

This new rule policy, is not expected to have any negative impact on services currently operating within the State that meet the minimum requirements contained in this subchapter.

The rules are important for quality and cost reasons. Not only do they minimize risks to patients, but, in their absence, the unrestricted addition of cardiac surgical programs would likely drive utilization levels down still further, adding enormously and unnecessarily to the costs of providing these services in a manner which may threaten the solvency of some facilities and services.

Economic Impact

The proposed rules will continue to allow on a limited basis additional competition in the provision of cardiac care. It proposes to do so, however, only in health service areas where all existing cardiac surgical centers satisfy minimum standards and criteria contained in this subchapter (N.J.A.C. 8:33E-2.1 thru 8:33E-2.14).

This approach is important since the cost of providing cardiac surgical services is largely determined by the spreading of fixed costs over the number of cases performed. A cardiac surgical center lacking sufficient patient volumes represents a less than efficient use of a costly resource.

In the absence of these rules the growth of new cardiac surgical services would be unrestricted. To allow this to occur would be to encourage a reduction in the utilization of existing cardiac surgical centers, offending quality of care considerations and promoting significant cost inefficiencies in the provision of this important service.

Full text of the proposed new rule follows.

8:33E-2.1 Scope

(a) The purpose of this subchapter is to establish standards and general criteria for the planning of a regional cardiac surgical center and for the preparation of an application for a certificate of need for such a facility. A regional approach to the provision of cardiac services is necessary to provide safe, complete patient care, efficiently and effectively, at the lowest cost to the consumer.

(b) A regional cardiac surgical center is defined as a medical facility which specializes in most aspects of cardiac service, including at a minimum, cardiovascular surgical services as well as diagnostic services.

(c) In the regional cardiac surgical center, the primary diagnostic services are provided by a cardiac catheterization and coronary angiographic laboratory and a non-invasive laboratory. A cardiac catheterization/coronary angiographic laboratory is one which provides a service devoted to achieving physiological and angiographic studies of optimal quality.

(d) At a minimum the non-invasive laboratory should include the following facilities:

1. ECG and VCG instruments;
2. Exercise stress testing;
3. Phono/pulse tracing/echo equipment;
4. Holter type monitoring.
5. Nuclear cardiology.

(e) Before heart surgery is performed, every patient must undergo diagnosis through a recognized diagnostic service, except in an extreme emergency as in the case of open wounds to the heart.

(f) The cardiovascular surgical services include open heart, closed heart and coronary artery surgery as well as surgery of the great vessels and also cardiac assist devices such as the intra-aortic balloon pump. The facilities, personnel and equipment required by this regulation for open heart surgery are minimal for all cardiovascular surgical procedures. For the purpose of this regulation open heart surgery is herein defined as a procedure which uses a heart-lung by-pass machine to perform the functions of circulation during surgery.

8:33E-2.2 Utilization of cardiac surgical centers

(a) The following shall apply to cardiovascular surgical units:

1. An applicant for a certificate of need as a regional cardiac surgical center must provide written documentation that the center will perform 75 surgical procedures in the first year and 200 by the end of the third year for each operating room utilized for open heart surgery procedures.

2. The regional cardiac surgical center shall continue to perform at least 200 open heart surgical procedures per year per operating room to insure the competency of the surgical services team and to provide for efficient and economical operation.

3. Failure to achieve an average minimum utilization level, as defined in 1 and 2 above, during 36 consecutive months for cardiac surgery programs obtaining Certificate of Need approval after December, 1984 and during 24 consecutive months for cardiac surgery programs in existence prior to December, 1984, may result in a recommendation for denial of reimbursement for the service by the department to the Hospital Rate-setting Commission and/or the loss of licensure for the service.

4. Each cardiac surgical center should establish a minimum caseload per physician and team in order to ensure a consistent level of proficiency within the surgical program. The Commissioner's Cardiac Advisory Committee (CCAC) has recommended that a minimum of 50 cases per year is adequate to maintain the professional skills of a cardiac surgeon and team. It is recommended that cardiac surgeons and teams not performing this minimum caseload should work under the direct supervision of a physician who has achieved this minimum volume consistently.

(b) The following shall apply to cardiac diagnostic services:

1. Utilization standards for the diagnostic services are based on the number of patients upon whom invasive cardiac diagnostic procedures are performed. The minimum acceptable number of adult cardiac catheterization patients per laboratory is 250 per year in a laboratory which is shared with other specialized radiographic procedures, while the number for a fully dedicated laboratory is 500 per year in order to maintain the efficiency and the skills of the catheterization team. Of this number, 150 must be coronary arteriographic patients in a shared laboratory.

i. The optimal utilization level for a laboratory dedicated to cardiac catheterization/coronary angiographic examinations is 500 adult patients per year, including 400 coronary arteriographic patients, in order to maximize quality of care and minimize unit cost per examination (250 adult patients per year is to be considered optimal utilization for a shared laboratory). All diagnostic facilities will be evaluated in light of this optimal level by the CCAC.

ii. Each cardiac diagnostic facility should establish a minimum number of procedures for each physician with laboratory privileges in order to maintain a consistent level of proficiency within the laboratory. The CCAC recommends that each physician should perform a minimum of 50 cases each year or be under the supervision of a physician who has performed this minimum number of cases.

2. If a pediatric surgical program is being considered, the minimum acceptable number of pediatric cardiac catheterization patients per laboratory is 150 per year.

3. The laboratory must be prepared to perform pre and postoperative examinations on a scheduled basis and emergency examinations at all times.

4. As a planning guideline the accepted ratio of examinations to cardiac operations shall be at least two examinations to one operation.

8:33E-2.3 Cardiac surgery center personnel

(a) The following shall apply to cardiovascular surgical units:

1. Cardiac surgery is most successful when performed by a smoothly functioning team. Based on 200 open heart procedures the basic team of the regional cardiac surgical center for each operation will consist of the following permanently assigned staff:

i. One physician in charge, board-certified by the American Board of Thoracic and Cardiovascular Surgery as a cardiovascular surgeon who directs the team or the surgical unit;

(1) Exceptions for incumbent directors to this requirement for board certification may be granted by the Commissioner upon application by an institution providing proper documentation as to the physician's qualifications;

ii. One assistant to the physician in charge who will be a board eligible cardiovascular surgeon (a third assistant may be a Thoracic Surgical Resident or fellow);

iii. One anesthesiologist, certified by the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology, and assisted by one other qualified person, that is, resident or nurse anesthetist or board-certified anesthesiologist. "Qualified" implies special training and experience with cardiac surgical problems in addition to normal certification;

iv. There will be at least three trained operating room technicians or trained nurses in each operating room. One of the three must be a registered nurse;

v. Two perfusionists will be available, for each operation, one of whom will be certified and one qualified.

vi. Cardiovascular nurse specialists (one for every 100 open heart procedures) may be used to supplement the cardiovascular surgical team.

2. The operating cardiac surgeon in conjunction with the attending cardiologist is responsible for overseeing and integrating all details of preoperative evaluation and preparation of the operation procedures and of post-operative care.

(b) The intensive care cardiac recovery room (or Surgical Critical Care Unit, (SCCU) is the area where cardiac patients are held for postoperative care. At a minimum patient cover-

age in this area shall be on a one specially trained cardiac nurse to one patient basis for the first 24 hours after surgery or in accordance with the diagnosis. During this period, the operating surgeon and team or qualified alternate shall be on call. After a full 24 hours following the operative day, and in accordance with patient diagnosis, nursing coverage may be reduced to a maximum of three patients to two nurses during the second and third days following the operative day.

(c) The following shall apply to cardiac diagnostic facilities:

1. Each diagnostic facility shall be minimally staffed by the following full-time personnel:

- i. One physician;
- ii. One nurse;
- iii. Three technicians.

2. While the following functions shall be performed within each facility, more than one function may be executed by a single individual appropriately cross-trained to perform the required functions:

i. Laboratory director (physician in charge): The chief diagnostician within the unit, certified in cardiology by the Sub-Specialty Board of Pediatric Cardiology of the American Board of Pediatrics or the Cardiovascular Sub-Specialty Board of the American Board of Internal Medicine. In addition to board certification the director must have broad experience and training in cardiac diagnostic procedures.

(1) Exceptions for incumbent directors to this requirement for board certification may be granted by the Commissioner upon application by an institution providing proper documentation as to the physician's qualifications;

ii. Associate physician: Assigned to assist the laboratory director. One of these physicians will be trained in cardiovascular catheterization;

iii. Registered nurse: To assist with administration of medications and the preparation and observation of the patient. The nurse should have Intensive Care Cardiac Unit (ICCU) experience, and must have knowledge of cardiovascular medications and experience with catheterization;

iv. Cardiac catheterization technician: To handle blood samples and assist in the performance tests. The technicians will help in the maintenance of equipment and supplies.

v. Monitoring and recording technician: Responsible for constant monitoring of physiologic data, including the electrocardiogram and recording this information. This job can best be handled by a second cardiac catheterization technician or radiologic technician;

vi. Radiologic technician: Skilled in conventional radiography and has special training and skills in angiographic techniques. This technician must be competent in magnification radiography, subtraction photography, cine recording, television presentations and the use of video tape and be responsible for the care and maintenance of all radiologic equipment;

vii. Electronic and radiological repair technician: Highly trained and available for consultations regarding the operation and maintenance of all radiographic and physiologic measuring and recording instruments in the laboratory. This person must be immediately available to carry out repairs in the event of equipment failures during the course of the procedure.

3. One physician shall be present in the room during all catheterization and angiographic procedures.

(d) Outlined in (c) above are only the special personnel required by a cardiac center established within an existing hospital. Appropriate supporting staff or personnel shall be available in existing departments within the hospital.

8:33E-2.4 Use of inpatient facilities

(a) In a center performing 200 open heart surgical procedures annually the following inpatient facilities are required:

1. Because of the nature of care to be provided, cardiac surgical patients shall be grouped at the intermediate or acute care level for proper observation and treatment. During the preoperative stage when diagnostic work-ups are to be performed, four beds in a general medical/surgical unit shall be available for patients having an average length of stay of three to four days.

2. An intermediate intensive care/cardiac care unit will be available for post operative care. It will include three or four beds for patients having an average length of stay of three to four additional days following discharge from the SCCU or surgical recovery room. These beds may be located in a cardiovascular step-down unit with telemetry monitoring but reduced nursing coverage with a maximum ratio of four patients to one nurse in accordance with patient diagnosis. Suitably equipped beds will be available for the rest of the patient's stay. At a minimum the intensive care/cardiac care unit will have the following capabilities:

- i. Facilities for hemodynamic ECG monitoring;
- ii. Temporary pacemaker insertion;
- iii. C.P.R. equipment;
- iv. Arrhythmia detection equipment;
- v. Resuscitative equipment.
- vi. Cardiovascular support devices (intra-aortic balloon pump, etc.)

8:33E-2.5 Commissioner's cardiac advisory committee (CCAC)

(a) A cardiac advisory committee has been established under the authority of the Commissioner of Health to review on a regular basis the performance of all cardiac institutions.

(b) In addition to practicing specialists, the cardiac advisory committee will be comprised of representatives from third-party payors, a consumer member who is involved in the New Jersey health planning process and the administration of institutions providing the service.

(c) Mortality rate, utilization and medical practices of each regional cardiac surgical center will be reviewed regularly by the CCAC to insure quality control and accurate data reporting.

(d) To the greatest degree possible other inspection programs of cardiac services will be integrated with those of the advisory committee to minimize the number of official visits to those services.

(e) The CCAC will review certificate of need applications for new cardiac surgical centers and make recommendations to the Statewide Health Coordinating Council and Commissioner of Health.

8:33E-2.6 Referral

(a) Each applicant for a certificate of need as a regional cardiac center must agree to send out a mailing to all appropriate institutions and physicians stating that the services of the center are available. Following certificate of need approval, the center will provide written documentation that this mailing has occurred.

(b) Each applicant must provide written documentation in the form of an institutional policy statement that the center will accept referrals from physicians not ordinarily having access to the applicant's facilities.

(c) Each center will have written transfer agreements to receive appropriate patients from the "free standing" cardiac

diagnostic facilities in its service area or health services area, whichever is larger.

8:33E-2.7 Population base

An applicant for designation as a regional cardiac surgical center must document need in its service area. At a minimum, the regional service area for an adult surgical program must include a population of one million adjusted for accessibility. For a regional pediatric cardiac surgical center, a population base of three million, adjusted for accessibility, must be documented. The applicability of these minimum population bases to the specific New Jersey cardiac services environment should be closely scrutinized by the CCAC based on the utilization of cardiac surgical resources reported to the department on a quarterly basis.

8:33E-2.8 Long-range planning

The applicant must show evidence that the proposed certificate of need request is consistent with the hospital's approved long-range plan, submitted to the department under the requirements of N.J.A.C. 8:31-16.1, and with the health systems plan and annual implementation plan of the health systems area in which the applicant is located.

8:33E-2.9 Documentation of purchase and operational cost

The applicant will provide full written documentation of the projected implementation and operational costs of the proposed regional center. This documentation will include direct and indirect costs, that is, construction, equipment, supplies, personnel, maintenance, overhead costs, as well as projected costs of remodeling or renovation necessary to accommodate the center. Projections of anticipated revenues must be supplied for at least the first three years.

8:33E-2.10 Statistical data required

The center will maintain and provide basic statistical data on its operations and report that data to the Department of Health on a quarterly basis and on a standardized form prepared by the department. Copies of the full text of the required quarterly reporting form may be obtained upon written request to the New Jersey State Department of Health, Health Data Services, Room 405, CN 360 Trenton, New Jersey 08625.

8:33E-2.11 Certification on nondiscriminatory practices

Each applicant must provide written certification of compliance with all Federal and State laws in regard to nondiscriminatory practices to the effect that no patient shall be refused treatment on the basis of race, religion, sex, age or ability to pay.

8:33E-2.12 Peer review

(a) Quality control is essential for the consistent high level of performance required of any cardiac surgical service. As one means of quality control, appropriate mechanisms for peer review shall be described in each certificate of need for a regional cardiac surgical center, which shall include, but is not limited to the following:

1. Overall case selection for study (for example, rate of normal studies, rate of surgical referral);
2. Laboratory and physician performance (for example, case volume, mortality and complication rates per physician);
3. Quality of studies (for example, number of incomplete studies, diagnostic adequacy of films, number of restudies performed elsewhere).

(b) In all cases, criteria selection should be based on sound medical practice and consistency with the literature. Cardiac surgical centers with marginal utilization (10 percent above or below minimum utilization standards) will be reviewed by the local Utilization Review Organization and the CCAC, based on protocols established by the Department in conjunction with these review entities, to assure appropriate case selection has occurred.

8:33E-2.13 New facilities

(a) All certificate of need applications for new adult or pediatric cardiac surgical centers must meet the minimum standards and criteria contained in this subchapter.

(b) Certificate of need applications for new cardiac surgical centers will not be approved in health service areas that include cardiac surgical centers that are not in full compliance with the minimum utilization requirements contained herein.

8:33E-2.14 Review

This subchapter will be reviewed and evaluated within three years by the CCAC.

(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 Readoption: N.J.A.C. 8:33F

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.
Proposal Number: PRN 1984-670.

Address comments and inquiries to:
John A. Calabria, Coordinator
New Jersey Department of Health
Health Planning Services, Room 604
CN 360
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The current text of N.J.A.C. 8:33F, Standards and General Criteria for the Planning and Certification of Need for Regional End-Stage Renal Disease Services, is due to expire on January 18, 1985, in accordance with Executive Order No. 66(1978). This proposed readoption is being presented at this time in order to maintain the effective use of the current regulation and to establish a new expiration date under the provisions of Executive Order No. 66.

The Standards and General Criteria for the Planning and Certification of Need for Regional End-Stage Renal Disease Services in New Jersey were originally adopted by the Health Care Administration Board on October 6, 1977 and became

effective on October 25, 1977, as R.1977 d.398. This was in response to final regulations which were published by the Federal government for "Renal Disease: Implementation of Coverage of Suppliers of End Stage Renal Services" in the Federal Register for June 3, 1976 (Vol. 41, No. 108). These Federal regulations became effective on September 1, 1976 and were designed to implement Section 299I of the Social Security Amendments of 1972 (PL 92-603) which extended Medicare coverage to any individual who had end-stage renal disease requiring dialysis or transplantation.

The development and adoption of renal regulations in New Jersey were critical because the Federal regulations were adopted by reference with the addition of other specific standards and criteria to assure quality of care, regional accessibility, adequate utilization and cost effectiveness. The text of the regulations cover standards for utilization, personnel, acute hemodialysis, existing facilities, planning and general criteria. The regulations were subsequently amended in 1980, 1982 and 1983 in order to respond to changing technology in the field and to public need. The entire regulation underwent intense and extensive public review during each revision. This process included review and approval by the Statewide Health Coordinating Council as well as the Health Care Administration Board. Due to the fact that the current regulations had undergone extensive and thorough review approximately one year ago, the rule is being proposed as a readoption without change.

The rules have been effective in their ability to insure the quality of care, regional accessibility and the adequate utilization of end-stage renal disease services in New Jersey. Periodic public review has demonstrated that the rules are necessary, reasonable, understandable and responsive to the goals and objectives of regionalization. If the rules are not re-adopted they expire on January 18, 1985, in accordance with Executive Order No. 66(1978), and the principles for the planned development and orderly functioning of end-stage renal disease services in New Jersey will be lost.

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 New Jersey State Health Plan recognizes the underutilization of inpatient beds, specialty services, and expensive equipment as an important factor contributing to the rapidly escalating costs of health care. Regionalization of specialty services and equipment is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered, by improving the solvency of hospitals offering these expensive services, and by containing the rising costs of health care services.

The proposed readoption provides guidance to decision-makers in the Certificate of Need process and assures that there are available, well-utilized, quality services for patients with end-stage renal disease in New Jersey. Currently there

are approximately 3,000 patients in New Jersey receiving a total of 327,537 treatments per year. The availability and quality of these services cannot be assured without the re-adoption of this regulation.

Economic Impact

Federal expenditures for the payment of end stage renal services for the approximately 50,000 Federally qualified patients nationally currently exceed \$1 billion per year. Some estimates suggest that by 1985 Federal expenditures could exceed \$3 billion annually to provide services to approximately 90,000 renal patients.

Savings can be achieved by encouraging the availability of home dialysis and self-dialysis for patients who can be appropriately served through these modalities. Self-dialysis in the patient's home can achieve as much as a 50 percent savings on the costs of providing care in this, rather than an outpatient setting after the first year. Both the State Program and Federal Renal Network encourage the development of home and self-dialysis modalities by assisting with the acquisition of home machines and by covering the costs of supplies and medications. These rules reflect a strengthening of the commitment to the development of those alternatives.

The potential expansion of the availability of chronic back-up dialysis and acute hemodialysis is limited under the rules and should not lead to any significant costs increases. In fact, the emphasis in the rules on home and self-care dialysis, minimum utilization standards, and interhospital outreach programs may lead to a stabilization of renal program costs.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:33F.

(a)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**All Health Care Facilities
Commissioner's Certificate of Need
Approval Letter**

**Proposed Amendments: N.J.A.C.
8:39-2.1(c); 8:42-1.2(c); 8:42A-2.1(c);
8:42B-2.1(c); 8:43-1.5(c); 8:43A-1.3(c);
8:43B-1.7(f); and 8:43F-2.1(c)**

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

Proposal Number: PRN 1984-649.

Address comments and inquiries to:
Wanda J. Marra, Coordinator
Standards Program
Division of Health Facilities Evaluation
New Jersey Department of Health
CN 367
Trenton, New Jersey 08625

The agency proposal follows:

Summary

According to the mandates of Chapters 136 and 138, Public Law 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto, Public Law 92-603 (Section 1122 of the Social Security Act), Public Law 93-641 (The National Health Planning and Resources Development Act of 1974), and Public Law 96-79 (The Health Planning and Resources Development Amendments of 1979), the Department of Health has the responsibility for the development and administration of the State's policy with respect to health care planning and the certificate of need approval process. The proposed amendments will assist the Department in administering the State's policy for health care planning and the certificate of need approval process in accordance with the laws and the pursuant regulations.

The certificate of need legislation requires an evaluation of proposed new construction, expansion of existing health care facilities, and of proposed new health care services to determine if there is a need for the facility and/or service, if the proposal is economically feasible, and if it contributes to the development of adequate and effective health care services. If the proposal is approved, a certificate of need approval letter is issued by the Commissioner in accordance with the procedures and guidelines specified in N.J.A.C. 8:33. At the time that a certificate of need approval letter is granted to a facility, specific conditions may be imposed upon the facility by the Commissioner in order to achieve the goals of the health care planning process. The Department may need to impose certain requirements as part of the certificate of need approval to meet a specific local situation or to assure that minimum needs for health care facilities or services will provide access to needed health care and prevent unreasonable cost. Significant variations may exist among health care facilities and services, and adjustments may be required based on local or regional conditions and needs. The specific conditions that may be imposed by the Commissioner could include variables regarding, for example, the admission of patients to the facility, the construction and design of the facility, and/or the reimbursement and financial factors affecting the facility. The certificate of need approval process provides the facility the option of accepting or appealing the imposed specific conditions.

The proposed amendments require that the facility adheres to and implements the mutually agreed upon specific conditions contained in the certificate of need approval letter. If the facility fails to implement the specific conditions, the proposed amendments will allow the Department to impose sanctions upon the facility in accordance with Chapter 136 and 138, Public Law 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto.

The experience of the Department indicates both a historical need for the proposed amendments as well as a continuing need. In the past, facilities have not always adhered to or implemented the mutually agreed upon conditions, thus jeopardizing the efforts of the health care planning process and depriving the residents of the State of equal access to quality health care at a reasonable cost.

The proposed amendment will apply to all health care facilities. The text of the proposed amendment is published only once in this proposal but the amendment will appear at all subsections in the New Jersey Administrative Code where it is applicable, thereby incorporating the amendment into the ex-

isting regulations for each type of health care facility licensed by the Department.

Social Impact

The health care planning and certificate of need approval process has profound social impact since the intent is to ensure the availability, accessibility, and acceptability of health care services to residents of New Jersey. The Department is mandated by law to develop and administer the State's policy, law, and regulations with respect to the certificate of need approval process to protect and promote the health of the inhabitants of the State. The adoption of the proposed amendments will assist the Department to achieve the goals of the health care planning process. Upon the adoption of the proposed amendments, the Department can take action against a facility for not adhering to or implementing the mutually agreed upon conditions in the certificate of need approval letter. The Department currently has no mechanism to assure compliance with the conditions of the certificate of need approval letter and no practical recourse if the facility fails to adhere to or implement the conditions in the certificate of need approval letter.

The facility's failure to adhere to or implement the specific conditions in the certificate of need approval letter will hamper the health care planning and certificate of need process, thus causing hardships to both consumers and providers of health care services. The health care planning process allocates resources in the State to achieve health care planning goals and to provide equal access to quality health care to the residents of the State at a reasonable cost. Therefore, the adoption of the proposed amendments is a necessity to ensure the continuity of the health care planning process which is intended to safeguard the health and well-being of the residents of the State.

Economic Impact

The adoption of the proposed amendments will have an economic impact both on the facility and on the Department. The enforcement of the proposed amendments may involve litigation in some instances which could increase the expenditures of the Department, other State agencies, and the facility. It is difficult to estimate the actual expenditure involved in the implementation of the amendments. However, the Department contends that the protection and the promotion of the health of the inhabitants of the State far outweigh the economic impact of implementing the amendments.

At a time when health care costs are spiralling, it is necessary to allocate the health care resources to ensure the availability, accessibility, and acceptability of health care services at a reasonable cost to the residents of the State. In addition, it is necessary to contain health care costs in order to preserve resources needed to achieve health care planning goals and to maintain the quality of care through more efficient utilization of existing resources and development of alternative health care delivery systems. The proposed amendments will assist in the achievement of these health planning goals by providing the Department with a mechanism to enforce the conditions in a certificate of need approval letter.

Full text of the proposed amendment follows.

The facility shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with Chapters 136 and

138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto.

OFFICE OF ADMINISTRATIVE LAW NOTE: The proposed amendment will appear at the following subsections in the New Jersey Administrative Code:

N.J.A.C. 8:39-2.1(c); 8:42-1.2(c); 8:42A-2.1(c); 8:42B-2.1(c); 8:43-1.5(c); 8:43A-1.3(c); 8:43B-1.7(f); and 8:43F-2.1(c).

(a)

COMMUNITY HEALTH SERVICES

**Invalid Coaches and Ambulances
Manual of Standards for Licensure of
Invalid Coach and Ambulance Services**

Proposed New Rule: N.J.A.C. 8:40

Authority: N.J.S.A. 26:2H-1 et seq, N.J.S.A. 30:4D-6.2 et seq, specifically 30:4D-6.3 and 4.
Proposal Number: PRN 1984-608.

Address comments and inquiries to:
Roy W. Nickels
Director, Emergency Health Services
Department of Health
CN 363
Trenton, NJ 08625

Summary

The proposed new regulations only apply to "non-volunteer" providers of Invalid Coach and Ambulance Services. (The legislature specifically exempted volunteer services in the enabling statutes)

These regulations will affect an estimated 130 agencies, including non-volunteer municipal emergency ambulance services, hospital-operated ambulance services and private firms. At present, these agencies are neither licensed nor regulated by the Department.

In May 1981, the legislature passed N.J.S.A. 30:4D-6.2 which requires the Department to regulate Invalid Coach Services. The Department has the authority under N.J.S.A. 26:2H-1 et seq to regulate both Invalid Coach and Ambulance Services. The proposed new rules apply to both types of services.

The proposed regulations establish four types of vehicles. Each agency can select its own marketplace niche by providing any or all types of vehicles.

1. Invalid Coach Service is a "taxicab" for wheelchair patients.
2. Transport Ambulance Service is a low-cost service for stretcher-bound patients who require elective transport. It is based on the existing ambulance service presently used for Medicaid/Medicare patients, with upgrading to ensure that on-board emergencies can be handled.
3. Emergency Ambulance Service is the stereotype emergency service which cares for accident victims and patients with sudden illness.

4. Helicopter Ambulance Service is an airborne Emergency Ambulance.

The regulations are based on national standards developed by the National Academy of Sciences and various other national and Federal agencies, as well as regulations from other states.

Subchapter 1 through 3 of these regulations apply to all non-volunteer providers:

Subchapter 1 defines the terms used in these regulations. Subchapter 2 details the licensure and related requirements. Key points include:

- A Certificate of Need will be required before a service can be licensed. The Certificate of Need requirement will be a new concept to many providers.
- Where to write to get an application for a Certificate of Need or an application to operate an Invalid Coach or Ambulance.
- Fines can be imposed, or licenses can be revoked, for non-compliance with these regulations.

Subchapter 3 contains the general requirements which apply to all non-volunteer providers. This subchapter regulates the overall and day-to-day operations of all licensed providers. Key points include:

- Restrictions on certain types of advertising.
- Minimum personnel and general vehicle requirements are established.
- Specific requirements for insurance coverage.
- Respiratory and other biomedical equipment must be periodically tested.

Subchapters 4 through 7 of these regulations contain specific requirements which apply to the four types of vehicles. Key points in each subchapter include:

- Restrictions on the type of patients which may be serviced.
- Specific requirements for the vehicle, equipment and personnel.

Each subchapter regulates the day-to-day operation of a particular type of vehicle.

- Subchapter 4 applies to Invalid Coach Services.
- Subchapter 5 applies to Transport Ambulance Services.
- Subchapter 6 applies to Emergency Ambulance Services.
- Subchapter 7 applies to Helicopter Ambulance Services.

Social Impact

Adoption of the proposed regulations would enhance the care given to patients utilizing these services and would ensure that value is received for the money spent in paying for the service. Although the Department has no current regulations, sampling suggests that due to the present unregulated conditions, patients do not always receive the care they need nor the services they (or third parties) pay for. Since the services are highly competitive, the proposed regulations will create a fair marketplace by ensuring that all non-volunteer competitors meet the same standards.

Adoption of these regulations will ensure that regulated providers of Invalid Coach and Ambulance Services (who collectively received \$14 million from Medicaid and Medicare this past year) will provide quality patient care.

Economic Impact

The economic impact on providers will vary. Some existing services already exceed the requirements of these regulations. The only foreseeable additional costs to those services will be licensure fees. By contrast, there will be an economic loss to those firms which currently provide unacceptably low levels of service. Those firms would either have to upgrade or dis-

continue their operation. In extreme cases, the cost to upgrade will nearly equal the cost of starting a brand new service. There will be an adverse economic impact on any firm which is assessed a civil penalty under these regulations.

The economic impact on consumers will also vary. Consumers who currently select services based on perceived quality will probably find little change in prices. Consumers who had "price shopped" for invalid coach and ambulance services in the past will probably find that some firms will quote higher prices. Those firms are currently able to quote low prices due to their marginal service and correspondingly lower cost overhead.

The economic impact on third party payors—such as Medicaid and Medicare—is difficult to assess. The Medicaid rate for invalid coach and ambulance services has not been raised since the early 1970s. Seemingly, any further Medicaid increase would be in response to the past ten years of general cost increases rather than to any additional costs which might be due to these regulations.

Medicare costs might increase. The maximum Medicare payment for invalid coach and ambulance service is limited by the "prevailing rate" which is calculated using the billing Medicare receives from all approved providers in New Jersey.

As indicated above, marginal firms will either have to upgrade or discontinue their operation. If a marginal firm (which had been submitting low bills to Medicare) upgrades its operation, its costs—and bills—would increase. Alternately, the same firm could simply discontinue its operations. In either case, Medicare would no longer receive the low bills from that firm (which had been offsetting the higher bills from better quality firms). As a result, the Medicare prevailing rate might increase.

Several interrelated regulatory and marketplace factors should limit the potential cost increases to consumers and third party payors.

1. The regulations provide for a low cost Transport Ambulance category. The Transport Ambulance was developed as a cost-effective service to meet the needs of almost all elective ambulance patients.

2. The industry is highly competitive. If a firm charges more than the norm, it will lose market share, and—eventually—go out of business.

3. The existing better quality firms already have proven cost containment measures. Cost containment is the only way they can economically compete against marginal firms which have inherently lower costs.

4. The costs per unit of service may drop. Some firms may discontinue their operations. If that occurs, the same number of patients will be served by a fewer number of vehicles. A firm's costs are about the same if say six, rather than five, patients are transported by an ambulance each day.

Full text of proposed new rule follows.

SUBCHAPTER 1. DEFINITIONS

8:40-1.1 Definitions

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

"Advertising" means any information directly or indirectly issued, distributed, hand-delivered or implied through any medium and used for the purpose of promoting the service of a licensee.

"Administrator" means an individual who may be entitled administrator, captain, chief, director or otherwise. The ad-

ministrator may also, but need not, be the owner of the agency.

"Ambulance Service" means the provision of emergency or non-emergency medical care and transportation by certified trained personnel in a vehicle, including a helicopter, which is designed and equipped to provide medical care at the scene and while transporting sick and/or injured persons to a medical care facility.

"AMD Standard" means the standard(s) promulgated by the Ambulance Manufacturers Division of the Truck Body and Equipment Association. Copies of the cited standard(s) may be purchased from that Association at Suite 1220, 5530 Wisconsin Avenue, Washington, D.C. 20015.

"A.N.S.I. Standard" means the standard(s) promulgated by the American National Standards Institute Inc. Copies of the cited standard(s) may be purchased from that Institute at 1430 Broadway, New York, NY 10018.

"Available" means ready for immediate use (pertaining to equipment); immediately accessible (pertaining to records).

"Cleaning" means the removal by scrubbing and washing, as with hot water, soap or detergent, and vacuuming, of infectious agents and/or organic matter from surfaces on which and in which infectious agents may find conditions for surviving or multiplying.

"Commissioner" means the New Jersey State Commissioner of Health.

"Communicable disease" means an illness due to a specific infectious agent or its toxic products, which occurs through transmission of that agent or its toxic products from a reservoir to a susceptible host.

"Department" means the New Jersey State Department of Health.

"Disinfection" means the killing of infectious agents outside the body, or organisms transmitting such agents, by chemical and physical means, directly applied.

"FAR" means the Federal Aviation Regulations.

"FCC" means the Federal Communications Commission.

"Federal Specification KKK-A-1822" means the specification and amendments thereto in force at the time of vehicle manufacture and entitled "Federal Specification, Ambulance, Emergency Medical Care Surface Vehicle KKK-A-1822" as published by the Federal Supply Service, of the U.S. General Services Administration. Single copies of the specification are available, at no charge, from EmHS, CN 363, Trenton, NJ 08625.

"FMVSS" means Federal Motor Vehicle Safety Standard(s) promulgated under 49 CFR 571. Consult Superintendent of Documents, Washington, D.C., for copies of the cited standards.

"Health care facility" means a facility so defined in the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq.

"JEMS Communication Plan" means the State of New Jersey Emergency Medical Services Communication Plan published by the Department. Single copies of the plan are available, at no charge, from EmHS, CN 363, Trenton, NJ 08625.

"International symbol of access for the handicapped" means the outline form of a person in a wheelchair as illustrated in Appendix B.

"Invalid Coach Service" means the provision of non-emergency health care transportation, by certified trained personnel, for sick, infirm or otherwise disabled persons who are under the care and supervision of a physician and whose medical condition is not of sufficient magnitude or gravity to require transportation by ambulance, but does require transportation from place to place for medical care, and whose use

of an alternate form of transportation, such as taxicab, bus, other public conveyance or private vehicle, might create a serious risk to life and health.

“Licensee” means any person, public or private institution, agency or business concern granted a license under this chapter by the Department.

“Patient” means any person utilizing services licensed under this chapter.

“Pneumatic Testing Manual” means the Pneumatic Testing Manual (for Pre-Hospital Respiratory Equipment) published by the Department. Single copies are available, at no charge, from EmHS, CN 363, Trenton, NJ 08625,

“Provide” means furnishing, conducting, maintaining, advertising, or in any way engaging in or professing to engage in a service licensable under this chapter.

“Provider” means any person, public or private institution, agency or business concern which is providing Invalid Coach Service and/or Ambulance Service.

“Star of Life” means the symbol described in certification of registration number 1,058,022 which the United States Commissioner of Patents and Trademarks has issued to the National Highway Traffic Safety Administration. The Star of Life symbol is illustrated in Appendix C.

“SAE Standard” means the standard(s) promulgated by the Society of Automotive Engineers. Copies of the cited standard(s) may be purchased from that Society at 400 Commonwealth Drive, Warrendale, PA 15096.

“Valid” means current, up-to-date, in effect.

SUBCHAPTER 2. AUTHORITY AND LICENSURE PROCEDURES

8:40-2.1 Authority

(a) According to N.J.S.A. 30:4D-6.2 et seq, the Commissioner of Health is required to adopt rules, regulations and administrative orders which regulate the provision of Invalid Coach Service.

(b) According to N.J.S.A. 26:2H-1 et seq, the Commissioner of Health is authorized to adopt rules, regulations and administrative orders which regulate the provision of Invalid Coach and Ambulance Service.

8:40-2.2 Application of regulations

(a) Subchapters 1 through 4 of this chapter apply to Invalid Coach Services.

(b) Subchapters 1 through 3 and subchapter 5 of this chapter apply to Transport Ambulance Services.

(c) Subchapters 1 through 3 and subchapter 6 of this chapter apply to Emergency Ambulance Services.

(d) Subchapters 1 through 3 and subchapter 7 of this chapter apply to Helicopter Ambulance Services.

8:40-2.3 Certificate of need required

(a) According to Chapters 136 and 138, P.L. 1971 Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, or licensed to operate except upon application for and receipt of a Certificate of Need issued by the Commissioner.

(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:

- Review and Comment Program
- Division of Health Planning and Resources Development
- New Jersey State Department of Health
- CN 360
- Trenton, NJ 08625

8:40-2.4 Licensing requirements

(a) No person, public or private institution, agency or business concern shall provide Invalid Coach Service or Ambulance Service until the provider, and each of the provider’s vehicle(s), is licensed to do so by the New Jersey State Department of Health.

(b) Provider licensing shall consist of two types of licenses:

1. A temporary provider permit issued by the Department which authorizes the licensee to provide one or both of the following:

- i. Invalid Coach Services.
- ii. Ambulance Services.

2. A full provider license issued by the Department which authorizes the licensee to provide one or both of the following:

- i. Invalid Coach Services.
- ii. Ambulance Services.

(c) Vehicle licensing shall consist of a decal or a license issued by the Department for a specific vehicle which authorizes the licensee to utilize the vehicle to provide:

- 1. Invalid Coach Services; or
- 2. Transport Ambulance Services; or
- 3. Emergency Ambulance Services; or
- 4. Helicopter Ambulance Services.

(d) Vehicles licensed to provide Invalid Coach Services may be utilized to provide only that service.

(e) Vehicles licensed to provide Transport Ambulance Service may be utilized to provide Invalid Coach Service provided:

- 1. The provider is licensed to provide Invalid Coach Service, and
- 2. The vehicle, equipment, supplies and staffing comply with the requirements for Transport Ambulance Service.

(f) Vehicles licensed to provide Emergency Ambulance Service may be utilized to provide Invalid Coach Service provided:

- 1. The provider is licensed to provide Invalid Coach Service, and
- 2. The vehicle, equipment, supplies and staffing comply with the requirements for Emergency Ambulance Service.

(g) Vehicles licensed to provide Emergency Ambulance Service may be utilized to provide Transport Ambulance Service provided the vehicle, equipment, supplies and staffing comply with the requirements for Emergency Ambulance Service.

(h) Vehicles licensed to provide Helicopter Ambulance Service may be utilized to provide non-health care services provided the vehicle, equipment, supplies and staffing comply with the requirements of this chapter when the aircraft is used to provide Helicopter Ambulance Service.

8:40-2.5 Exemptions from licensing requirements

(a) In accordance with the provisions of N.J.S.A. 30:4D-6.2 et seq and N.J.S.A. 26:2H-1 et seq this chapter shall not apply to Invalid Coach Services or Ambulance Services provided by volunteer first aid, rescue and ambulance squads as defined in the “New Jersey Highway Safety Act of 1971” (N.J.S.A. 27:5F-1 et seq.).

(b) This chapter shall not apply to providers which are based in other states and which provide service in New Jersey when the provider is:

- 1. Transporting a patient through New Jersey from an out-of-state location to an out-of-state location, or
- 2. Transporting a patient from an out-of-state location to a New Jersey location and returning that same patient to an out-of-state location, or
- 3. Transporting a patient from an out-of-state location to a New Jersey location.

(c) The provisions of this chapter shall not apply to services provided by an agency of the government of the United States.

(d) In order to demonstrate compliance with the standards contained in this chapter, exempt providers may voluntarily apply for:

1. Approval of vehicle(s) and equipment, or
2. Certification of vehicle(s), equipment and personnel.

8:40-2.6 Surveys

(a) Authorized representatives of the Department shall conduct surveys to determine compliance with this chapter.

(b) Survey visits may be made at any time to any location used or occupied by the licensee.

(c) In recognition of the necessity to determine compliance with all sections of this chapter, authorized representatives of the Department may survey a vehicle whenever it is in-service provided that no representative of the Department shall stop any vehicle when it is traveling on a public road. For the purpose of such a survey, in-service shall mean:

1. The presence of the vehicle at a health care facility or other place of medical care, or
2. Picking up, transporting or discharging any patient.

(d) In recognition of the necessity to determine compliance with the vehicle and other related standards of this chapter, authorized representatives of the Department may survey an out-of-service vehicle at any time.

(e) Survey visits shall, at the discretion of authorized representatives of the Department, include:

1. A review of all required records;
2. Conferences with staff and patients;
3. Audit of business locations, vehicles, equipment and qualifications of staff;
4. Riding within a vehicle and/or accompanying staff providing services.

(f) The licensee and its employees shall permit authorized representatives of the Department to make such surveys as the Department deems necessary.

8:40-2.7 Application for licensure and/or vehicle decals or licenses

(a) Following acquisition of a Certificate of Need, any person, public or private institution, agency or business concerned desiring to be licensed or relicensed to operate Invalid Coach Services and/or Ambulance Services or to secure a vehicle decal or license shall apply to the Commissioner on forms prescribed by the Department. Forms are available from:

New Jersey State Department of Health
Division of Health Facilities Evaluation
CN 367
Trenton, NJ 08625

(b) The Department shall charge a non-refundable fee of \$50.00 for the filing of an application to license, or relicense, a provider.

(c) The Department shall charge a non-refundable fee of \$20.00 for the filing of an application to license, or relicense, each vehicle.

(d) Each set of application(s) submitted to the Department shall be accompanied by a single check in the correct amount made payable to "Treasurer, State of New Jersey."

(e) Upon receipt of the required forms, authorized representatives of the Department shall survey (or resurvey) the licensee and/or the vehicles to determine compliance with this chapter.

(f) The Department shall notify the licensee in writing of any deficiencies found during the survey.

8:49-2.8 Temporary provider permit

Upon finding that the licensee is in compliance with this chapter, the Department shall issue new applicants a temporary provider permit valid for six months. The permit shall be prominently displayed at the licensee's principal place of business.

8:40-2.9 Full provider license

(a) A full license, valid for a period of 12 months or less, shall be issued on expiration of the temporary permit, if periodic surveys by the Department have determined that the licensee is in compliance with this chapter.

(b) The full license, unless sooner suspended or revoked, shall be renewed each year on the original licensure date, contingent upon the licensee:

1. Applying for license renewal; and
2. Continuing to comply with this chapter as determined by periodic surveys by the Department.

(c) The full license shall be prominently displayed at the licensee's principal place of business.

8:40-2.10 Vehicle decals and licenses

(a) Upon finding that the vehicle and required equipment is in compliance with this chapter, the Department shall issue a decal or a license for the vehicle. Except as provided in N.J.A.C. 8:40-6.4(b), the decal shall be valid for the same period as the temporary permit or full license.

(b) The decal shall be affixed to the lower right corner of the window of the rear (curb side) door into the patient compartment of the vehicle for which the decal was issued. The license shall be displayed within the patient compartment.

8:40-2.11 Vehicle recognition number

In recognition of the need for the public to be able to identify specific vehicles licensed by the Department, each vehicle shall have a vehicle recognition number. The licensee shall, with the approval of the Department, permanently assign a unique non-duplicated one, two, or three digit Arabic number to each vehicle.

8:40-2.12 Waiver

(a) The Commissioner or his or her designee may grant a waiver of parts of this chapter if, in his or her opinion, such a waiver would not:

1. Endanger the life, safety or health of any person who utilizes the service, or
2. Adversely affect the provision of the service.

(b) A licensee seeking a waiver of part(s) of this chapter (such as to provide specialized transport) shall apply in writing to:

New Jersey State Department of Health
Division of Health Facilities Evaluation
CN 367
Trenton, NJ 08625

8:40-2.13 Non-transferability

No permit, license or decal issued by the Department under this chapter is assignable or transferable. Any permit, license or decal shall be immediately void if the ownership of the agency and/or vehicle changes.

8:40-2.14 Return of vehicle decal or license

(a) The licensee shall return to the Department the scrapings of the vehicle decal(s) or the license:

1. Concurrent with the surrender or termination of its license, or
2. When the vehicle is sold or becomes unusable.

8:40-2.15 Discontinuance of vehicle use

(a) In order to protect the public health, safety and welfare, an authorized representative of the Department is empowered to place an "Out-of-Service" sticker on any vehicle licensed under this chapter when a survey has determined that the vehicle, equipment, or staffing poses an imminent threat to the health, safety or welfare of the public or to patients using the service.

(b) For the purpose of this section, imminent threat may include, but is not limited to:

1. Serious and apparent automotive defects such as faulty brakes, exhaust system or tires, or
2. Serious and apparent equipment defects such as absent or faulty oxygen, resuscitation or aspiration equipment.

(c) The licensee shall immediately cease to utilize the vehicle to provide any services authorized under this chapter if an "Out-of-Service" sticker is placed on the vehicle. The licensee shall ensure that the "Out-of-Service" sticker is not removed from the vehicle, except as provided in (d) or (e) below. The licensee shall have the right to appeal to the Commissioner for a hearing concerning the placement of the "Out-of-Service" sticker.

(d) Except as provided (e) and (f) below, an "Out-of-Service" sticker shall only be removed by an authorized representative of the Department upon a finding that the applicable deficiencies have been corrected. Correction of deficiencies could include, but is not limited to:

1. The vehicle has been repaired or has successfully passed all tests conducted by the N.J. Division of Motor Vehicles when there was an apparent automotive defect, or
2. The equipment has been repaired or replaced when there was an apparent equipment defect.

(e) The administrator of the licensee may request the on-duty station supervisor, or acting supervisor, of a New Jersey Division of Motor Vehicles Inspection Station (operated and staffed by employees of the New Jersey Division of Motor Vehicle) to remove an "Out-of-Service" sticker when:

1. The sticker was placed upon the vehicle solely because of apparent automotive defects, and
2. The vehicle has successfully passed all tests conducted by the N.J. Division of Motor Vehicles, provided
3. The licensee advises the Department by telegram or hand-delivered written notice within 12 hours of the removal of the sticker.

(f) For purposes of (e) above, the on-duty station supervisor, or acting supervisor of a New Jersey Division of Motor Vehicles Inspection Station operated and staffed by employees of the New Jersey Division of Motor Vehicles, is authorized to, but need not, remove such an "Out-of-Service" sticker.

8:40-2.16 Action against a licensee

(a) Violation of any of the provisions of this chapter may result in action to impose a fine.

(b) Violation of N.J.A.C. 8:40-3.15 (Required insurance coverage) shall result in action to revoke the license of the provider.

(c) Violations shall be considered as a single, different occurrence for each calendar day the violation occurs or remains uncorrected.

(d) If the Department determines that operational or safety deficiencies exist, it may require that all or part of the services provided under this chapter by the licensee cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his designee shall notify the licensee in writing of such determination.

8:40-2.17 Hearings

Except as provided in N.J.A.C. 8:40-2.15, no permit, license or vehicle decal shall be suspended or revoked and no fine shall be imposed without affording the licensee an opportunity for a prior hearing. In the event an out-of-service sticker has been placed on a vehicle pursuant to N.J.A.C. 8:40-2.15, the hearing shall be held within 10 days unless an adjournment is requested by the licensee. The procedures governing all hearings shall be in accordance with the Administrative Procedure Act N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 26:2H-1 et seq. and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1 et seq.

SUBCHAPTER 3. GENERAL REQUIREMENTS

8:40-3.1 Agency ownership

(a) The ownership of the institution, agency or business concern applying for licensing and the ownership of the vehicle(s) shall be disclosed to the Department. Proof of this ownership shall be made available to representatives of the Department. Any proposed change in ownership shall be reported to the department in writing 30 days prior to the change.

(b) No licensed service shall be owned or operated by any person convicted of a crime relating adversely to the person's capability of owning or operating the service.

(c) The ownership of the agency shall assume full legal responsibility for compliance with this chapter.

8:40-3.2 Administrator required

(a) The licensee shall designate an administrator who shall be responsible for the day-to-day operation of the service.

(b) The licensee or the administrator shall designate one or more alternates to act in the administrator's absence.

(c) The Department shall be informed of the name and title of the administrator and his or her alternate(s) within 14 days of appointment.

8:40-3.3 Written policies, procedures and task outlines

(a) The licensee shall develop written policies, procedures and task outlines to ensure compliance with the requirements of this chapter.

(b) The policies, procedures and task outlines shall be utilized by all staff of the licensee.

8:40-3.4 Business locations

(a) The licensee shall maintain a principal place of business at one location. The Department shall be informed of the specific location of the principal place of business and shall be notified 30 days in advance of any change in the location of the principal place of business.

(b) The licensee may park or store its vehicles at location(s) not under the licensee's control (such as at employees' homes

or upon public streets), consistent with local ordinances. Upon request, the licensee shall inform the Department of all such locations where its vehicles are parked or stored.

8:40-3.5 Report of unusual occurrences

(a) The licensee shall immediately notify the Department by telephone, followed by a written confirmation within 72 hours, of:

1. Any death or any injury requiring hospitalization which occurred to patients being transported by the licensee's Invalid Coach or Transport Ambulance.

2. Any death, or any injury requiring hospitalization, which occurred to any on-duty personnel of the licensee.

3. Any fire on or within the licensee's vehicle(s) or business location(s) resulting in any damage to records.

4. Any removal of a vehicle from service for a period greater than 30 days.

(b) The required written confirmation shall include any additional information known to the licensee, including the condition of, and prognosis for, injured persons; copies of any official reports; and the licensee's estimate of the degree of disruption of service.

8:40-3.6 Advertising restrictions

(a) No licensee shall advertise or represent that it provides any health care service(s) other than those services it is licensed to provide.

(b) Invalid Coach licensees may advertise their services under generic headings such as "ambulances" in the Yellow Pages (R) and similar listings. The actual advertisement under such a generic heading shall clearly advertise only those services the licensee is licensed to provide.

(c) No advertisement for Invalid Coach Services shall give the impression that the licensee provides Ambulance Services and shall be void of any word or expression indicating emergency medical services, including, but not limited to, "emergency," "call direct," "immediate response" and "eliminate delay."

(d) The words "emergency," "24-hour service," "immediate response," "eliminate delay" or similar expressions shall only appear in advertisements for Emergency Ambulance Services and only when the licensee provides continuous, around-the-clock answering of telephone requests-for-service by a person qualified to:

1. Promptly summon staff (if necessary); and/or
2. Dispatch assistance.

(e) The words "Paramedic," "Mobile Intensive Care," "Intensive Care," "Coronary Care" or "Special Care," or abbreviations of such words, shall only appear in advertisements when the provider is authorized to provide Mobile Intensive Care Unit Services in accordance with N.J.S.A. 26:2K-2 et seq.

(f) All advertisements shall include the name under which the provider is licensed by the Department.

8:40-3.7 Minimum personnel requirements

(a) Each person who operates a motor vehicle licensed under this chapter shall possess a valid driver's license, as required under N.J.S.A. 39:3-10 (Title 39, Motor Vehicle and Traffic Regulations).

(b) Each person who staffs or operates a vehicle licensed under this chapter:

1. Shall be at least 18 years old;
2. Shall dress in clothing, including any outerwear, of a similar uniform appearance;
3. Shall wear the following identification:

- i. His or her first and/or last name above the left breast;
- ii. Name of licensee.

4. Shall not wear or display any identification which suggests or indicates affiliation with any other organization or agency. However, identification may be displayed which indicates the person's level of training or personal or licensee membership in a professional association or society.

5. Shall carry upon his or her person valid documentation, or other proof thereof, of his or her training as may be required in this chapter.

(c) Each person who provides patient care (as part of any service licensed under this chapter) shall possess a license, registration, certification or training certificate valid in the State of New Jersey for the type or level of patient care he or she is providing. No person shall be allowed to provide a type or level of patient care beyond the level he or she is lawfully eligible to provide in the State of New Jersey.

(d) No person shall be allowed to staff a vehicle licensed under this chapter while displaying any patch or other symbol indicating a level of training he or she has not attained or is not eligible to provide.

(e) No person shall be allowed to staff or operate a vehicle licensed under this chapter:

1. While under the influence of intoxicating liquor or narcotic or habit forming drugs; or
2. In a reckless manner; or
3. At excessive speed.

8:40-3.8 Personnel files required

A personnel file shall be maintained for each employee. The file shall include the employee's name, home address, documentation of training and expiration date of current training certification or licensure.

8:40-3.9 Maintenance of records

(a) The licensee shall maintain full, complete and accurate records as required in this chapter. No required record shall be falsified, altered or destroyed.

(b) The licensee shall keep a copy of each required record at its principal place of business. The records shall be available to authorized representatives of the Department during normal business hours.

(c) The licensee shall retain and safely store all required medical records for at least ten years and all other required records for at least five years. In the event the licensee ceases operation for any reason, the licensee shall arrange for the safe storage of required records at a place, and in a manner, acceptable to the Department.

8:40-3.10 General vehicle requirements

(a) Motor vehicles licensed under this chapter shall be registered and operated in accordance with Title 39 Motor Vehicle and Traffic Regulations of the State of New Jersey.

(b) Vehicles registered as motor vehicles in New Jersey shall display a valid motor vehicle inspection decal issued by the New Jersey Division of Motor Vehicles. The vehicle shall only be used to provide service after it has successfully passed all motor vehicle tests conducted by the New Jersey Division of Motor Vehicles, or by an authorized Reinspection Station.

(c) Vehicles registered as motor vehicles in other states shall display a valid motor vehicle inspection decal issued in accordance with the requirements of the state registering the vehicle. The vehicle shall only be used to provide service after it has successfully passed all tests conducted in accordance with the requirements of the state registering the vehicle.

(d) The vehicle shall be in safe operating condition. All required vehicle equipment shall be functional and operable when the vehicle is in service.

(e) The interior of the vehicle shall be designed for the safety of patients and staff and the patient compartment shall have the following safety and sanitary features:

1. There shall be no protruding edges.
2. Exterior corners (which are corners which "point-out") shall be "rounded" or covered with a padded material.
3. Ceiling shall be finished with a padded material or with a flat even surface.
4. The floor shall have a flat even surface and be covered with a slip resistant material.
5. All interior surfaces shall be covered with stain resistant material which is impervious to blood, vomitus, grease, oil and common cleaning materials.

(f) The speedometer and odometer shall accurately display the vehicle's speed and distance traveled in accordance with the accuracy standard contained in SAE Recommended Practice Standard J678 e—Speedometers and Tachometers.

8:40-3.11 Motor vehicle chassis, body and components

(a) The motor vehicle chassis, body and components shall be standard commercial products and shall comply with all Federal Motor Vehicle Safety Standards (FMVSS) and Federal regulations applicable or specified for the year of manufacture.

(b) The curb weight and payload weight shall not exceed the gross motor vehicle weight rating as determined by the manufacturer.

(c) Tires shall comply with FMVSS 120 and shall be appropriate for the Gross Vehicle Weight of the vehicle. Radial and non-radial tires shall not be "mixed" on the vehicle.

(d) The vehicle exhaust system shall be in accordance with Federal Motor Carrier Safety Regulation, Part 393:83. The exhaust shall discharge beyond the side(s) of the vehicle and away from fuel tank filler pipe(s) and away from door(s) to minimize the amount of fumes and contaminants entering the vehicle.

(e) The completed/modified vehicle's center of gravity shall be within the parameter recommended by the chassis manufacturer.

(f) All seats shall comply with FMVSS 207. Safety belts/restraints and anchorages for seats and for occupied wheelchairs shall comply with FMVSS 208, 209 and 210.

(g) Safety belts/restraints shall be provided for each person transported in the vehicle.

(h) All glazing shall comply with FMVSS 205.

8:40-3.12 Vehicle heater/air conditioner

(a) The vehicle shall have a functional heater and air conditioner.

1. The heater shall, within 20 minutes after initial engine start up, provide an inside temperature of 68° to 72°F when outside temperature is below 65°F.

2. The air conditioner shall, within 45 minutes after engine start up, provide an inside temperature:

- i. Of 68° to 72°F when the outside temperature is between 75° and 85°F, and
- ii. At least 13°F below the outside temperature when the outside temperature is over 85°F

8:40-3.13 Restrictions on carbon monoxide concentrations

(a) Carbon monoxide concentrations within the vehicle shall not be greater than 10 ppm (parts per million) above the outside ambient carbon monoxide concentration.

(b) The vehicle exhaust system shall be in good condition in order to limit the amount of carbon monoxide and other toxic gases and fumes which could enter the vehicle. The vehicle shall not be used to transport patients if the exhaust system has:

1. Loose or leaking joints, or
2. Holes, leaking seams, or patches, or
3. A tail pipe end which is pinched or damaged, or
4. A tail pipe end which discharges under, or at the edge of, the vehicle body.

(c) The vehicle exterior, doors, window, and related gaskets shall be in good condition in order to limit the entrance of carbon monoxide and other toxic gases and fumes into the vehicle. Carbon monoxide shall not enter the vehicle at rates greater than 10 ppm.

(d) The vehicle shall be tested for interior carbon monoxide, in a manner acceptable to the Department, at least once every 12 months.

8:40-3.14 Sanitation requirements

(a) The interior of the vehicle, including all areas used for storage, and the equipment and supplies within the vehicle, shall be kept clean and sanitary. A disinfectant shall be routinely applied to all contact surfaces. The floor, wall areas and equipment shall be free of stains and odors.

(b) Exterior surfaces of the vehicle shall be routinely cleaned.

(c) Blankets and any other material shall be kept clean and in good repair.

(d) When the vehicle has been utilized to transport a patient known or suspected to have a communicable disease, other than a common cold, the vehicle shall be cleaned and all contact surfaces, equipment and blankets shall be disinfected prior to transportation of another patient.

(e) Pillows and mattresses shall be kept clean and in good repair. The pillow(s) and mattress(es) shall have protective, waterproof, stain resistant covers.

(f) Freshly laundered linen, or disposable sheets and pillowcases, shall be used in the transport of stretcher patients and shall be changed after each use.

(g) There shall be adequate, clean, dustproof storage for clean linen or for clean disposable sheets and pillow cases.

(h) Plastic bags and/or covered containers or compartments shall be provided for any soiled supplies carried within the vehicle.

(i) Where possible, only single-service implements shall be inserted into the patient's nose or mouth. These single-service items shall be wrapped and properly stored and disposed of after use. When reusable items, other than single-service items, are required, the items shall be kept clean and sanitary.

8:40-3.15 Required insurance coverage

(a) Each licensee shall maintain the required minimum insurance as outlined in (b)-(d) below, plus such additional insurance as the licensee may deem necessary, in order to be eligible to provide services under this chapter. The licensee shall discontinue any and all services licensed under this chapter in the event any portion of the required insurance is cancelled or becomes void.

(b) The licensee shall have and maintain at least \$300,000.00 of single limit coverage of "premises and operations" type general liability insurance.

(c) The licensee shall have and maintain at least \$100,000.00 of single limit bodily injury coverage, with at least \$300,000.00 coverage per occurrence, of "malpractice" type professional liability insurance.

(d) The licensee shall have and maintain at least \$100,000.00 of single limit bodily injury coverage, with at least \$300,000.00 per occurrence, and at least \$50,000.00 property damage coverage for each vehicle licensed under this chapter.

8:40-3.16 Provision of certificate of insurance

(a) The agency shall arrange for the firm providing the insurance to send a certificate of insurance and any ten-day notice of cancellation to the Department.

(b) The certificate of insurance shall:

1. Identify the insurance company(ies) policy number(s), type and amount of coverage;
2. Certify that the insurance is in force and;
3. Provide that the Department shall be sent a copy of any ten-day notice of cancellation.

8:40-3.17 Pneumatic testing required

(a) All respiratory equipment used to provide services licensed under this chapter shall be pneumatically tested every six months, and, if required by the manufacturer, at more frequent intervals, if necessary. At a minimum, the tests shall measure the:

1. Flow rate and vacuum pressure delivered by each aspirator required in N.J.A.C. 8:40-5.13 and 8:40-6.15.
2. Flow rate and inspiratory pressure delivered by each oxygen powered resuscitator required in N.J.A.C. 8:40-5.12 and 8:40-6.14.
3. Deflating/refilling time cycles of each bag-valve-mask resuscitator required in N.J.A.C. 8:40-5.12 and 8:40-6.14.
4. Flow rate delivered by each oxygen flowmeter required in N.J.A.C. 8:40-5.11 and 8:40-6.13 and permitted in 8:40-4.9.
5. Pressure delivered by each oxygen system regulator required in N.J.A.C. 8:40-5.11 and 8:40-6.13 and permitted in 8:40-4.9.

(b) The required pneumatic test may be conducted by staff of the licensee or by an outside agency. All tests shall be conducted in accordance with the Pneumatic Testing Manual as published by and from the Department.

(c) The results of the pneumatic tests shall be kept on file at the licensee's principal place of business.

8:40-3.18 Biomedical equipment testing required

(a) In recognition that licensees may provide biomedical patient care equipment for hospital staff to use, any biomedical patient care equipment used to provide services licensed under this chapter shall be inspected and tested every six months, and, if required by the manufacturer, at more frequent intervals, if necessary.

(b) For the purposes of this section, biomedical patient care equipment includes, but is not limited to:

1. Cardiac resuscitators (that is, Thumpers (R));
2. Cardiac defibrillators and/or monitors;
3. Incubators;
4. Specialized respirators.

(c) The required tests shall be conducted by:

1. Qualified employees of the firm which manufactured the equipment; or
2. Qualified employees of a firm approved or authorized by the manufacturer; or
3. Biomedical engineering staff of a licensed New Jersey hospital; or
4. Biomedical engineering staff of the New Jersey Hospital Association (or of an affiliate); or

5. A recognized, independent testing laboratory.

(d) The requirements of (a) above do not apply to biomedical patient care equipment which is:

1. In the physical possession of a hospital, and
2. Is placed in the licensee's vehicle for treatment, during transportation, of a patient of that hospital, and
3. Is operated by the staff of that hospital.

(e) The results of the biomedical patient care equipment tests shall be kept on file at the licensee's principal place of business.

8:40-3.19 Physical behavioral restraints

(a) No patient shall be placed in, or transported in, physical behavioral restraints unless:

1. A physician or court has authorized the placement of the restraints, or
2. The patient is in the custody of a police or corrections officer, or
3. The medical condition of the patient mandates transportation to, and treatment at, a health care facility, and the patient manifests such a degree of behavior that he or she:
 - i. Poses serious physical danger to himself or herself or to others, or
 - ii. Causes serious disruption to ongoing medical treatment which is necessary to sustain his or her life or to prevent disability.

(b) No patient shall be kept in physical behavioral restraints for a period greater than one hour unless:

1. A physician or court has authorized the use of the restraints for longer than one hour, or
2. The patient is in the custody of a police or corrections officer.

(c) No physical behavioral restraint shall be of a type, or used in a manner, that causes undue physical discomfort, harm or pain to a patient. Hard restraints, such as handcuffs, are specifically prohibited unless the patient is in the custody of a police or corrections officer.

(d) The rationale for placing and/or transporting a patient in physical behavioral restraints, and the type of restraints used, shall be clearly stated in the call report required in N.J.A.C. 8:40-5.25 and 6.29.

(e) If restraints are applied by the ambulance staff after leaving the premises of the sending physician or hospital, a copy of the call report shall be provided to the sending physician or hospital within 48 hours.

(f) The provisions of (a) through (e) above do not apply to automotive safety belts, litter patient restraints, and other safety restraints specifically required in this chapter.

SUBCHAPTER 4. SPECIFIC INVALID COACH REQUIREMENTS

8:40-4.1 Patient restrictions

(a) Except as prohibited in (b) below, non-emergency health care transportation by Invalid Coach Vehicles shall be provided to patients who are under the supervision and care of a physician and who:

1. Are ambulatory, or
2. Are wheelchair bound.

(b) Service shall not be provided to a patient who requires (based upon current medical condition or past medical history):

1. Transportation in a prone or supine position or who is bed or stretcher bound; or

- 2. Constant attendance due to a medical and/or mental condition; or
- 3. Aspiration; or
- 4. Management or observation of intravenous fluids and/or intravenous medications, or
- 5. Emergency medical services or other emergency services, such as emergency inter-hospital transfer; or
- 6. Treatment in the Emergency Department of a hospital (for other than routine, non-emergency, follow-up care of a previously diagnosed condition); or
- 7. Treatment in, or admission to, the Obstetrical Unit (Labor and Delivery Suite) or the Intensive and/or Coronary Care Unit of a hospital; or
- 8. Transportation in physical behavioral restraints.

8:40-4.2 General vehicle requirements

- (a) When in-service, the Invalid Coach Vehicle shall meet the requirements of this chapter.
- (b) Each vehicle used by the licensee to provide Invalid Coach Service shall have and display a valid Invalid Coach license decal issued by the Department.

8:40-4.3 Patient compartment requirements and dimensions

- (a) The vehicle shall have a patient compartment. There need not be a partition between the driver's seating area (driver's compartment) and the patient compartment.
- (b) The patient compartment shall have the following minimum interior dimensions:
 - 1. Height: At least 52 inches between the floor and ceiling when measured at, or near, the center of the patient compartment.
 - 2. Width: At least 56 inches between the vehicle interior sides when measured at any point 42 inches above the floor. (The width of cabinets, etc. will be included when measurements are made.)
 - 3. Length: At least 92 inches between the interior surface of the rear door and the rear of the driver's seat, or, if present, the surface of any partition, when measured at floor level.
- (c) The patient compartment shall have at least two exterior doorways:
 - 1. One doorway shall be at the rear of the vehicle; the other shall be at the curbside of the vehicle.
 - 2. Each doorway shall be at least 30 inches wide and at least 44 inches high.
 - 3. The doorways shall not be obstructed except as permitted in N.J.A.C. 8:40-4.4(a).
 - 4. The door(s) to each patient compartment doorway shall be capable of being opened and being used from inside the patient compartment and from the exterior of the vehicle.
 - 5. There shall be windows in each door of the patient compartment. Rear windows shall be fixed, non-opening.

- (d) The patient compartment shall be provided with a built-in lighting system. The lighting system shall use white or clear lenses. The lighting shall not interfere with the driver's vision and shall be located so that no glare is reflected into the driver's eyes or line of vision.
- (e) There shall be wheelchair restraint positions to secure and immobilize each occupied wheelchair and/or stairchair transported in the vehicle. When in use, each wheelchair restraint position shall secure and immobilize one wheelchair and/or stairchair in a crashworthy manner and so that movement of the occupied wheelchair and/or stairchair does not exceed one inch.

8:40-4.4 Ramp or lift required

- (a) There shall be a ramp, lift or other device for the safe exit/entry of occupied standard size wheelchairs. While in use, the device shall be securely fastened to the vehicle and be capable of accommodating a load of at least 500 pounds. When in transit, the device shall be secured in a crashworthy manner and shall be positioned so as not to obstruct both of the required doorways.
- (b) Any ramp shall have a slip resistant surface and provide a rigid interlocked surface when in use.
- (c) Any device which relies on electric, hydraulic or other power for its operation shall be capable of manual operation by an unassisted person or there shall be a manually operated backup device.

8:40-4.5 Vehicle markings

- (a) The trade name which appears on the license, issued by the Department, shall appear in a size not less than three inches high on the two exterior sides of the vehicle.
- (b) The vehicle recognition number shall appear in a size not less than four inches high on the rear and the two exterior sides of the vehicle.
- (c) The International Symbol of Access for the Handicapped shall appear in a size not less than 12 inches high on the rear and the two exterior sides of the vehicle.
- (d) Signs shall appear in the patient compartment which state "Smoking Prohibited: Violator Subject to Fine."
- (e) The required markings shall appear in a color and shade which contrasts with the background on which they appear.
- (f) To avoid the appearance of an emergency vehicle, the following shall not appear on the vehicle:
 - 1. Symbol(s) consisting of or resembling the "Star of Life," a Greek cross or a Maltese cross.
 - 2. Words, or abbreviations of such words, such as "Emergency," "Emergency Medical Technician," "Paramedic," "Mobile Intensive Care," "Coronary Care" or "Intensive Care."
- (g) The word(s) "ambulance" or "emergency" or an abbreviation of the word(s) may only appear when the word is part of the lawful incorporated name of the licensee.

8:40-4.6 Emergency warning devices prohibited

No Invalid Coach vehicle shall be equipped with, or appear to be equipped with, audible or visible emergency vehicle warning devices, such as flashing or rotating lights, sirens or airhorns. No licensee shall apply for, or possess, an emergency vehicle light and siren permit (as authorized under N.J.S.A. 39:3-50) for any vehicle licensed solely as an Invalid Coach.

8:40-4.7 Litters and stretchers prohibited

No stretcher or litter shall be carried on, or within, the vehicle.

8:40-4.8 General equipment and supplies requirement

- (a) When in-service, the vehicle shall be equipped with all the required equipment and supplies.
- (b) All equipment and supplies shall be stored in a safe, crashworthy manner.

8:40-4.9 Oxygen administration devices

- (a) Oxygen administration devices may, but need not, be carried in the vehicle. If carried, the oxygen and related equipment shall comply with the requirements of this section and

the vehicle shall be staffed in accordance with the requirements of 8:40-4.12(a).

(b) Any installed oxygen system shall be capable of safely storing and supplying a minimum of 600 liters of medical oxygen. The oxygen cylinder controls shall be accessible from inside the vehicle. Cylinder opening handles or wrenches shall be affixed to, or shall be chained and clipped with, the oxygen cylinder. Any oxygen piping and/or hose shall be nonferrous and shall be suitable for medical oxygen. Any installed oxygen cylinder shall be retained in an oxygen tank holder certified by the manufacturer to comply with AMD Standard 003-Oxygen Tank Retention System.

(c) Any portable oxygen system shall be capable of safely storing and supplying at least 300 liters of medical oxygen. Cylinder opening handles/wrenches shall be chained to the regulator or affixed to the cylinder.

(d) Any oxygen system shall have a medical oxygen pressure reducing and regulating valve, an excess pressure relief valve set at 200 PSI maximum, and a gauge range of 0 to 2,500 PSI (4,000 PSI tested). The regulator shall be present at 50 + / - 10 PSI line pressure.

(e) Any oxygen system shall have an oxygen flowmeter. The oxygen flowmeter shall have a gauge or dial with a range of 0 to 15 liters per minute in calibrated increments. The flowmeter on any portable oxygen system shall be non-gravity dependent.

(f) If oxygen administration equipment is carried, there shall be three clear adult size inhalation masks of the single service, semi-open, non-rebreathing type and two single service cannulas.

(g) If oxygen humidifiers (or nebulizers) are utilized, a new, unused, single service humidifier (or nebulizer) shall be used for each patient.

(h) Each oxygen cylinder shall:

1. Contain only medical grade oxygen;
2. Be color coded green;
3. Have a current hydrostatic test date; and
4. Be tagged (Full, In Use, Empty).

8:40-4.10 Safety equipment

(a) The vehicle shall have the following minimum safety equipment:

1. Three portable red emergency reflective safety triangles;
2. One flashlight, two D cell size or larger;
3. One fire Extinguisher, U.L. rated at least 1A 10BC with current inspection tag.

8:40-4.11 Required staff

While in-service, each Invalid Coach vehicle shall be staffed by at least one person who shall meet the requirements of N.J.A.C. 8:40-3.7 and this subchapter. Any additional staff persons shall meet the requirements of N.J.A.C. 8:40-3.7.

8:40-4.12 Required training of staff

(a) If oxygen administration devices are carried in the vehicle, the required staff person shall possess valid certification as an Emergency Medical Technician-Ambulance, issued by the Department.

(b) If oxygen administration devices are not carried in the vehicle, the required staff person shall possess valid certification as:

- i. An Emergency Medical Technician-Ambulance, issued by the Department; or
- ii. An Invalid Coach Attendant, issued by the Department.

(c) In recognition of the necessity for staff to be trained, the required person may, for 24 full calendar months after the

operative date of this chapter, possess valid documentation of "Advanced First Aid and Emergency Care" training, issued by the American Red Cross, in lieu of Department certification as an Invalid Coach Attendant.

8:40-4.13 Duties of staff

(a) The collective duties of each person who staffs an Invalid Coach vehicle shall include, but are not limited to:

1. Assisting patients to enter and to leave the vehicle, supervising the well being of patients while in the vehicle and ensuring the privacy and comfort of patients;
2. Assuring that all wheelchairs are restrained in the required restraints and requiring that the driver and all vehicle occupants wear automotive safety belts;
3. Operating the motor vehicle in a safe manner, starting and stopping the vehicle slowly and smoothly, and complying with all applicable motor vehicle laws;
4. Reporting verbally to the appropriate personnel when a patient is brought to a health care facility or other place of medical care;
5. Prohibiting smoking within the patient compartment and, if there is no solid bulkhead between the driver's compartment and patient compartment, within the driver's compartment.

8:40-4.14 Call report

(a) A call report shall be completed each time a patient is transported. The call report need not be prepared by the staff assigned to the vehicle. The call report, which may be combined with another report or form, shall contain the following information typed or printed in ink:

1. Patient's name and home address;
2. Succinct description, including any observed changes, if the patient's condition worsens;
3. Vehicle recognition number, name(s) of driver and any other staff, and date.

8:40-4.15 Radio communications

(a) Any radio communications shall comply with rules and regulations of the Federal Communications Commission. The Department shall be provided with a copy of any FCC license(s) issued to the licensee.

(b) In recognition that:

1. Radio frequencies are a limited natural resource which cannot meet the needs of all health care providers (and the patients that they serve); and
2. Invalid Coach Service is elective and non-emergent and does not involve the rendition of medical services; and
3. Use of certain radio frequencies by Invalid Coach Services could cause harmful radio interference to, and delay the provision of, essential and emergent medical services to patients served by other types of health care providers (such as Emergency Ambulance Services and Mobile Intensive Care Services);

4. Any radio communications shall comply with the radio frequency allocation cited in Table 4 of the JEMS Communications Plan published by the Department. Specifically, the following radio frequencies shall not be used in radio communications to, or from, Invalid Coach vehicles:

- i. Any of the UHF radio frequencies known as "Med 1" through "Med 10."
- ii. Any of the VHF radio frequencies listed in Appendix C of this chapter.
- iii. Any of the following radio frequencies: 155.280 MHz, 155.340 MHz, 153.785 MHz.

SUBCHAPTER 5. SPECIFIC TRANSPORT AMBULANCE REQUIREMENTS

8:40-5.1 Patient restrictions

(a) Except as prohibited in (b) below, non-emergency health care transportation by Transport Ambulance vehicles shall be provided to patients who are under the supervision and care of a physician and who:

1. Are ambulatory, or
2. Are wheelchair bound, or
3. Require transportation in a prone or supine position or who are bed or stretcher bound, or
4. Require constant attendance due to a medical and/or mental condition.

(b) Service shall not be provided to a patient who requires (based upon current medical condition or past medical history):

1. Aspiration; or
2. Management or observation of intravenous fluids and/or intravenous medications, or
3. Emergency medical services or other emergency services, such as emergency inter-hospital transfer, or
4. Treatment in the Emergency Department of a hospital (for other than routine, non-emergency, follow-up care of a previously diagnosed condition), or
5. Treatment in, or admission to:
 - i. The Obstetrical Unit (Labor and Delivery Suite) of a hospital, or
 - ii. The intensive and/or Coronary Care Unit of a hospital, or
 - iii. The neonatal or newborn unit of a hospital, however
6. If a patient suddenly and unexpectedly requires emergency department treatment after transportation has begun, that patient shall be transported to an emergency Department of a hospital.

8:40-5.2 General vehicle requirements

(a) When in-service, the Transport Ambulance vehicle shall meet the requirements of this chapter.

(b) Each vehicle used by the licensee to provide Transport Ambulance Service shall have and display a valid Transport Ambulance license decal, issued by the Department.

8:40-5.3 Patient compartment requirements

(a) The vehicle shall have a patient compartment. There need not be a partition between the driver's seating area (driver's compartment) and the patient compartment.

(b) The patient compartment shall have at least two exterior doorways.

1. One doorway shall be at the rear of the vehicle; the other at the curbside of the vehicle.
2. Each doorway opening shall be at least 30 inches wide and at least 44 inches high.
3. The doorways shall not be obstructed except as permitted in N.J.A.C. 8:40-5.5(a).
4. The door(s) to each patient compartment doorway shall be capable of being opened and being used from inside the patient compartment and from the exterior of the vehicle.
5. There shall be a window in each door of the patient compartment. Rear windows shall be fixed, non-opening.

(c) The patient compartment shall be provided with a built-in lighting system. The lighting system shall use white or clear lenses. The lighting system shall not interfere with the driver's vision and shall be located so that no glare is reflected into the driver's eyes or line of vision.

(d) There shall be space and seating for an attendant within the patient compartment. The seat shall be at the head of the required litter and face rearward or shall be alongside the required litter. The seat shall be equipped with a safety belt.

(e) There shall be at least one aisle at least 10 inches wide next to the required wheeled litter.

(f) Occupied wheelchairs and/or stairchairs may, but need not, be transported in the vehicle. If transported in the vehicle, there shall be wheelchair restraint positions to secure and immobilize each occupied wheelchair or stairchair. When in use, each wheelchair restraint position shall secure and immobilize one wheelchair or stairchair in a crashworthy manner and so that movement of the occupied wheelchair or stairchair does not exceed one inch while the vehicle is in motion.

(g) There shall be sufficient crashworthy cabinets and other storage spaces to safely accommodate all equipment and supplies.

8:40-5.4 Patient compartment dimensions

(a) The patient compartment shall have the following minimum interior dimensions:

1. Height: At least 52 inches between the floor and ceiling when measured at, or near, the center of the patient compartment.
2. Width: At least 54 inches between the vehicle interior sides when measured at any point 22 inches above the floor and at least 47 inches between the sides when measured at any point 46 inches above the floor. (The width of cabinets, etc. will be included when measurements are made.)
3. Length: At least 92 inches between the interior surface of the rear door and the rear of the driver's seat, or, if present, the surface of any partition, when measured at floor level.

8:40-5.5 Ramp or lift

(a) There may, but need not, be a ramp, lift or other device for the safe exit/entry of occupied standard size wheelchairs. While in use, any such device shall be securely fastened to the vehicle and be capable of accommodating a load of at least 500 pounds. When in transit, the device shall be secured in a crashworthy manner and shall be positioned so as not to obstruct both of the required doorways.

(b) Any ramp shall have a slip resistant surface and provide a rigid interlocked surface when in use.

(c) Any device which relies on electric, hydraulic or other power for its operation shall be capable of manual operation by an unassisted person or there shall be a manually operated backup device.

8:40-5.6 Vehicle markings

(a) The trade name which appears on the license, issued by the Department, shall appear in a size not less than three inches high on the two exterior sides of the vehicle.

(b) The vehicle recognition number shall appear in a size not less than four inches high on the rear and the two exterior sides of the vehicle.

(c) The International Symbol of Access for the Handicapped shall appear in a size not less than 12 inches high on the rear and the two exterior sides of the vehicle.

(d) A sign shall appear in the patient compartment which states: "Smoking Prohibited: Violator Subject to Fine."

(e) The required markings shall appear in a color and shade which contrasts with the background on which they appear.

(f) The following shall not appear on the vehicle:

1. Symbol(s) consisting of a:

- i. "Star of Life," or
- ii. Greek Cross, or
- iii. Maltese Cross, unless the vehicle is operated by a Fire Department.

2. The following words, or abbreviations of such words: "Coronary Care," "Special Care," "Intensive Care," "Mobile Intensive Care," or "Paramedic."

(g) The words "Emergency Medical Technician," or abbreviations of such words, shall only appear when the vehicle is staffed by two Emergency Medical Technicians.

(h) The word "ambulance," or an abbreviation of the word, may only appear when:

- 1. It is accompanied by the word "Transport" and appears as "Transport Ambulance," or
- 2. It is part of the lawful incorporated name of the licensee, and
- 3. The words "Transport Ambulance" appear on the vehicle in characters the same size as the word "ambulance."

(i) The word "Emergency," or an abbreviation of the word, shall only appear when it is part of the lawful incorporated name of the licensee.

8:40-5.7 Emergency warning devices

(a) When authorized by a permit issued in accordance with N.J.S.A. 39:3-50, the vehicle shall be equipped with:

- 1. Emergency warning lights which provide 360 degrees of visibility during emergency missions and are installed in accordance with SAE Standard J595b and/or SAE Recommended Practice J845, and an
- 2. Emergency warning siren.

(b) The following warning devices are prohibited:

- 1. Emergency warning lights which are not red in color. As clarification, either the bulb or the lens shall be red; the other may be clear.
- 2. Flashing headlight devices.

8:40-5.8 Use of emergency warning devices

(a) Emergency Warning Devices ("lights and/or siren") shall only be utilized in providing pre-hospital service when:

- 1. At the scene of the call, and the use of emergency warning lights is necessary for safety reasons.
- 2. Transporting a patient and:
 - i. The patient's condition, suddenly and unexpectedly, worsens to constitute a medical emergency, and
 - ii. The use of emergency warning devices is necessary to expedite travel to a hospital in the judgment of the staff person caring for the patient, provided
 - iii. Use of emergency warning lights and/or siren does not contribute to a worsening of the patient's condition.

(b) Any airhorn shall not be used:

- 1. Between 11 P.M. and 7 A.M.
- 2. Any time a patient is being transported. This prohibition shall not apply when a test made by a qualified agency in accordance with AMD Standard 006 determines that the airhorn sound level within the patient compartment does not exceed 86 decibels (A scale).

8:40-5.9 General equipment and supplies requirement

(a) When in-service, the vehicle shall be equipped with all the required equipment and supplies at the start of each work shift. Expended supplies and/or damaged equipment shall be replaced whenever the vehicle is returned to its normal storage location. Equipment may be temporarily left on/with a patient, when medically necessary, without being replaced on the vehicle. A record shall be made on the call report (required in N.J.A.C. 8:40-5.25) of any equipment left on/with a patient.

(b) All equipment and supplies shall be stored within the vehicle in a safe, crashworthy manner. The storage location shall be dictated by the relative importance of the material. A succinct list of contents shall appear on the door of any interior storage compartment.

8:40-5.10 Standard patient transport devices

(a) There shall be a wheeled litter for the transport of stretcher bound patients. The litter shall be at least 72 inches long (when flat) and at least 20 inches wide. The litter shall have a mattress at least two inches thick. The litter and mattress shall be adjustable from a flat to a semi-sitting position. The litter shall be adjustable from a minimum height of 9 to 18 inches to a maximum height of 33 to 40 inches (measured to the top of the mattress). There shall be a pillow, pillowcase and sheet on the litter.

(b) There shall be a portable stretcher for the safe transport of stretcher bound patients up and down flights of stairs. The stretcher may be of the "Reeves" (R) type, folding type, orthopedic stretcher type or of the combination stretcher/stairchair type.

(c) There shall be a portable stairchair for the safe transport of wheelchair bound patients up and down flights of stairs. The stairchair may be of the combination stretcher/stairchair type and also satisfy the requirements of N.J.A.C. 8:40-5.10(b).

(d) Each litter and portable stretcher shall have three sets of two-inch wide patient restraints with quick release buckles (positioned at the chest, waist and knees.) The quick release buckles may be of the "slide through" or "metal to metal" type. ("Reeves" type stretchers may have other types of buckles.) Each stairchair shall have two sets of two-inch wide safety restraints with quick release metal buckles.

(e) While the vehicle is in motion, the wheeled litter and any occupied stretcher(s) shall be restrained by a litter fastener(s). The wheeled litter fastener shall be certified by the manufacturer to comply with AMD Standard 004—Litter Retention System.

8:40-5.11 Oxygen administration devices

(a) The vehicle shall have an installed oxygen system capable of safely storing and supplying a minimum of 1,200 liters of medical oxygen. (3,000-liter capacity is recommended.) The oxygen cylinder controls shall be accessible from inside the vehicle. Cylinder opening wrench(es) or handles shall be affixed to, or chained and clipped with, the oxygen cylinder(s). Components and accessories for the oxygen system shall include nonferrous piping and low pressure hose suitable for medical oxygen at a flow rate of at least 200 liters per minute. Installed oxygen cylinder(s) shall be retained in an oxygen tank holder(s) certified by the manufacturer to comply with AMD Standard 003—Oxygen Tank Retention System.

(b) There shall be a portable oxygen system capable of safely storing and supplying at least 300 liters of medical oxygen. Cylinder handles/wrenches shall be chained to the regulator or affixed to the cylinder. There shall be at least one spare cylinder of at least 300-liter capacity.

(c) Each oxygen system shall have a medical oxygen pressure reducing and regulating valve, an excess pressure relief valve set at 200 PSI maximum and a gauge range of 0 to 2,500 PSI (4,000 PSI tested). The regulator shall be present at 50 + / - 10 PSI line pressure.

(d) Each required oxygen system shall have an oxygen flowmeter. Each oxygen flowmeter shall have a gauge or dial with a range of 0 to 15 liters per minute in calibrated increments. The flowmeter on the portable oxygen system shall be non-gravity dependent.

(e) There shall be six clear inhalation masks (three each in adult and child sizes) of the single service, semi-open, non-rebreathing type and two single service type cannulas.

(f) If oxygen humidifiers (or nebulizers) are utilized, a new, unused, single service humidifier (or nebulizer) shall be used for each patient.

(g) Each oxygen cylinder shall:

1. Contain only medical grade oxygen;
2. Be color coded green;
3. Have a current hydrostatic test date; and
4. Be tagged (Full, In Use, Empty).

8:40-5.12 Resuscitation devices

(a) The vehicle shall be equipped with an oxygen powered resuscitator or with an adult size bag-valve-mask resuscitator.

(b) Any oxygen powered resuscitator shall provide:

1. 100 percent oxygen;
2. an instantaneous flow rate of at least 100 liters per minute;
3. Inspiratory pressure between 35 to 55 cm water pressure; and
4. ¹⁵/₂₂ mm fittings.

(c) Any bag-valve-mask resuscitator shall meet the following criteria:

1. Have a self-refilling bag without sponge rubber inside;
2. Bag volume shall be:
 - i. About 1,700cc for adults.
 - ii. 700 to 750cc for infants.
3. Any adult size bags shall be capable of deflating/refilling at least 25 times per minute at room temperature. Any infant size bag(s) shall be capable of deflating/refilling at least 40 times per minute at room temperature;
4. Valve shall be a true non-rebreathing valve and have ¹⁵/₂₂ mm fittings

(d) There shall be at least three transparent domed resuscitation face masks (one each in large adult, medium adult and child size) with 22 mm fittings.

(e) No resuscitation device shall be carried in the vehicle unless it is suitable for use by an Emergency Medical Technician and meets the criteria in (b) and/or (c) above.

8:40-5.13 Aspirator/suction devices

(a) There shall be an installed aspirator powered by the vehicle. (A 12 volt dc (vdc) powered vacuum supply pump is recommended. The device shall be securely mounted and located to permit aspiration of a stretcher bound patient. The device shall meet the criteria contained in (b) below during the entire normal range of vehicle operation.

(b) Any suction device shall provide:

1. A flow rate of at least 30 liters per minute at the end of the suction tube, and
2. A vacuum pressure of at least 300 mm mercury suction within four seconds and a maximum vacuum pressure of at least 400 mm.

(c) Any suction device shall be equipped with a non-breakable collection bottle, a suction rinsing water bottle, and at least three feet of transparent or translucent suction tubing with an interior bore of at least one quarter inch. Three-eighths of an inch bore is recommended. There shall be one semi-rigid pharyngeal suction tip and at least eight suction catheters for each device (two each in 8 French, 10 French, 12 French and 14 French sizes).

(d) No suction device shall be carried in the vehicle unless it is suitable for use by an Emergency Medical Technician and meets the criteria contained in (b) above or in N.J.A.C. 8:40-5.18(a)4.

8:40-5.14 Airway maintenance supplies

(a) There shall be at least the following airway maintenance supplies.

1. Two mouth gags (bite sticks) single-service type;
2. Oropharyngeal Airways which meet A.N.S.I. Standard Z 79.3 (Oropharyngeal and Nasopharyngeal Airways), single-service type. There shall be two of each of the following (in A.N.S.I. Z 79.3 sizes):
 - i. 11 cm size (large adult);
 - ii. 9 cm size (medium adult);
 - iii. 7 cm size (child);
 - iv. 5.5 cm size (infant).

8:40-5.15 External cardiac compression support

A short spine board or a specially designed rigid board (such as a "CPR Board" (R)) shall be immediately available within the patient compartment.

8:40-5.16 Spine boards, orthopedic litter and splints

(a) The following spine boards, orthopedic litter and splints shall be carried in the vehicle:

1. One long spine board made of wood at least three quarters of an inch thick, or of equivalent material, 72 inches long by 18 inches wide with associated strap holes and full length three-quarter inch runners,
2. One short spine board made of wood at least one half of an inch thick or, of equivalent material, measuring 32 inches to 34 inches high. Body section 18 inches wide by 20 inches to 22 inches high with associated strap holes;
3. Four straps, 2 inches wide by 9 feet long with quick release type metal buckles. ("Slide-through" type strongly recommended.);
4. The following padded board splints, each three inches wide with base material at least three-eighths inch thick:
 - i. Two 15 inches long;
 - ii. Two 36 inches long;
 - iii. Two 54 inches long.
5. One adult size, lower extremity traction splint either half-ring or padded ischial support type. Half-ring or ischial support about nine inches in diameter; overall length, when in use, at least 43 inches. Complete with all associated straps, heel stand and accessories.

8:40-5.17 Wound dressing and burn treatment supplies

(a) The following wound dressing and burn treatment supplies shall be carried in the vehicle:

1. Six conforming roller bandages, four or six inches wide by 5 yards long;
2. Twelve triangular bandages (cravat) measuring 36 inches by 36 inches by 51 inches when unfolded;
3. Six sterile, individually packed universal (or multi-trauma) dressings measuring at least inches by 30 inches when unfolded;
4. Twelve sterile, individually packed gauze pads at least four inches by four inches;
5. One roll three-inch wide adhesive type tape;
6. Two sterile, individually packed occlusive dressings (such as Vaseline (R) impregnated dressings);
7. One sterile, individually wrapped burn sheets;
8. One liter sterile saline solution in a plastic container(s) (for flushing injury sites).

8:40-5.18 Obstetrical kit

(a) An obstetrical kit shall be carried in the vehicle. The items shall be sterile and may be individually wrapped or be

contained in a "pack." Any pack shall have an exterior itemized list of contents. Items shall include the following:

1. Four towels;
2. Twelve gauze compresses, four inches by four inches;
3. Four cord clamps;
4. One ear syringe, soft rubber (for newborn aspiration);
5. One receiving blanket;
6. Three pairs surgeons' type gloves;
7. One pair scissors.

8:40-5.19 Poison treatment supplies

(a) The following poison treatment supplies shall be carried in the vehicle:

1. Four liquid ounces of syrup of Ipecac;
2. One packet activated charcoal.

8:40-5.20 Other patient care equipment

(a) There shall be the following other minimum patient care equipment;

1. Diaphragm-type stethoscope;
2. Aneroid-type blood pressure manometer and adult size cuff;
3. Glucose in form easily ingested by mouth (four sugar packets or one fluid ounce);
4. Four cloth blankets at least 60 inches by 80 inches in size.

(b) The licensee shall provide such other equipment and supplies as may be necessary, provided no equipment or supplies shall be carried which would permit rendering of care contrary to N.J.S.A. 45:9-1 et seq (Practice of Medicine and Surgery Act).

8:40-5.21 Safety equipment

(a) The vehicle shall have the following minimum safety equipment:

1. Three portable red emergency reflective safety triangles;
2. One flashlight, two D cell size or larger.
3. One fire extinguisher, U.L. rated at least 1A 10BC with current inspection tag.

8:40-5.22 Required staff

(a) When in-service, each Transport Ambulance vehicle shall be staffed by at least two persons who shall meet the requirements of N.J.A.C. 8:40-3.7 and this subchapter. All additional staff persons of the licensee shall meet the requirements N.J.A.C. 8:40-3.7.

(b) Staff persons of a hospital or of another agency who accompany a patient need not meet the requirements of N.J.A.C. 8:40-3.7(a) and (b).

8:40-5.23 Required training of staff

(a) Except as permitted in (b) below, each of the required staff persons shall possess current valid certification as an Emergency Medical Technician-Ambulance, issued by the Department.

(b) The second required person may possess the following training in lieu of Department certification:

1. Valid documentation of "Advanced First Aid and Emergency Care" training issued by the American Red Cross, and
2. Valid documentation of "Cardiopulmonary Resuscitation" training issued by the American Heart Association or the American Red Cross, provided
 - i. The person certified as an Emergency Medical Technician-Ambulance is in charge of patient care and accompanies patients being transported in the patient compartment.

8:40-5.24 Duties of staff

(a) The collective duties of the persons who staff a Transport Ambulance vehicle shall include, but are not limited to:

1. Providing prompt, efficient and effective emergency medical care to the patient(s);
2. Attending the patient(s) at all times and continually monitoring the patient's condition;
3. Assisting patients to enter and to leave the vehicle, supervising the well-being of patients while in the vehicle, and ensuring the privacy and comfort of patients;
4. Assuring that any stretcher, wheelchair or other patient transport device is safely restrained, patients are restrained and all vehicle occupants wear automotive safety belts. The staff person(s) caring for the patient need not wear a safety belt when providing essential life support such as CPR;
5. Operating the motor vehicle in a safe manner, starting and stopping the vehicle slowly and smoothly and complying with all applicable motor vehicle laws;
6. Reporting verbally to the appropriate personnel when a patient is brought to a health care facility or other place of medical care;
7. Summoning an emergency ambulance, if necessary, for patient care;
8. Prohibiting smoking within the patient compartment.

8:40-5.25 Call report

(a) A call report shall be completed each time a patient is transported. The call report need not be prepared by the staff assigned to the vehicle. The call report, which may be combined with another report or form, shall contain the following information typed or printed in ink:

1. Patient's name, age, sex and home address;
2. Succinct description of the patient's condition and any observed changes;
3. Succinct description of any care given to the patient;
4. Time when, and location where, patient was picked up and was discharged;
5. Vehicle recognition number, date, names of staff;
6. Whether or not emergency warning devices were used:
 - i. At the scene; or
 - ii. In transit to the medical facility.
7. Any required equipment left on/with a patient.

8:40-5.26 Radio communications

(a) Any radio communications shall comply with rules and regulations of the Federal Communications Commission. The Department shall be provided with a copy of any FCC license(s) issued to the licensee.

(b) In recognition that:

1. Radio frequencies are a limited natural resource which cannot meet the needs of all health care providers (and the patients that they serve); and
2. Normally, Transport Ambulance Service is elective and non-emergent and does not involve the rendition of medical services; and
3. Use of certain radio frequencies by Transport Ambulance Services could cause harmful radio interference to, and delay the provision of, essential and emergent medical services to patients served by other types of health care providers (such as Emergency Ambulance Services and Mobile Intensive Care Services);
4. Any radio communications shall comply with the radio frequency allocation cited in Table 4 of the JEMS Communications Plan published by the Department. Specifically, the following radio frequencies shall not be used in radio communications to, or from, Transport Ambulance vehicles:

- i. Any of the UHF radio frequencies known as "Med 1" through "Med 10."
- ii. Any of the VHF radio frequencies listed in Appendix C of this chapter.
- iii. Any of the following radio frequencies: 155.280 MHz, 155.340 MHz, 153.785 MHz.

SUBCHAPTER 6. SPECIFIC EMERGENCY AMBULANCE REQUIREMENTS

8:40-6.1 Patient restrictions

- (a) Emergency medical care and transportation shall be provided to a patient who:
 - 1. Requires, or may require, pre-hospital emergency medical services, or
 - 2. Requires, or may require, emergency inter-hospital transfer, or
 - 3. Requires, or may require, aspiration or observation of intravenous fluids and/or medications.
- (b) Health care transportation may be provided to patients who are under the supervision and care of a physician and who:
 - 1. Are ambulatory, or
 - 2. Are wheelchair bound, or
 - 3. Are bed or stretcher bound or who require transportation in a prone or supine position, or
 - 4. Require constant attendance due to a medical and/or mental condition.

8:40-6.2 General vehicle requirements

- (a) When in-service, the Emergency Ambulance vehicle shall meet the requirements of this chapter.
- (b) Each vehicle used by the licensee to provide Emergency Ambulance Service shall have and display a valid Emergency Ambulance license decal, issued by the Department.

8:40-6.3 Patient compartment requirements

- (a) The vehicle shall have a patient compartment. The patient compartment shall be separated from the driver's seating area (driver's compartment) by a bulkhead or partition, which may include a passageway.
- (b) The patient compartment shall have at least two exterior doorways:
 - 1. One doorway shall be at the rear of the vehicle; the other at the curbside of the vehicle;
 - 2. Each doorway opening shall be at least 30 inches wide and at least 44 inches high;
 - 3. The doorways shall not be obstructed except as permitted in N.J.A.C. 8:40-6.6(a);
 - 4. The door(s) to each patient compartment doorway shall be capable of being opened and being used from inside the patient compartment and from the exterior of the vehicle;
 - 5. There shall be a window in each door of the patient compartment. Rear windows shall be fixed, non-opening.
- (c) The patient compartment shall be provided with a built-in lighting system. The lighting system shall use white or clear lenses. The lighting system shall not interfere with the driver's vision and shall be located so that no glare is reflected into the driver's eyes or line of vision.
- (d) There shall be space and seating for an attendant within the patient compartment. The seat shall be at the head of the required litter and face rearward or shall be alongside the required litter. The seat shall be equipped with a safety belt.
- (e) There shall be at least one aisle at least 10 inches wide next to the required wheeled litter.

(f) Occupied wheelchairs and/or stairchairs may, but need not, be transported in the vehicle. If transported in the vehicle, there shall be wheelchair restraint positions to secure and immobilize each occupied wheelchair or stairchair. When in use, each wheelchair restraint position shall secure and immobilize one wheelchair or stairchair in a crashworthy manner and so that movement of the occupied wheelchair or stairchair does not exceed one inch while the vehicle is in motion.

(g) There shall be sufficient crashworthy cabinets and other storage spaces to safely accommodate all equipment and supplies.

8:40-6.4 Patient compartment dimensions

- (a) Vehicles manufactured up to 12 full calendar months after the operative date of this chapter, with the following patient compartment dimensions, shall be eligible for licensing and use as an ambulance as long as they comply with this chapter.
 - 1. Height: At least 54 inches between the floor and ceiling when measured at, or near, the center of the patient compartment. (A minimum of 60 inches is preferable.)
 - 2. Width: At least 56 inches between the sides when measured at any point 52 inches above the floor. (The width of cabinets, etc. will be included when measurements are made.)
 - 3. Length: At least 116 inches between the interior surface of the rear door and the surface of the bulkhead or partition, when measured at floor level.

(b) Vehicles which do not meet the requirements of (a) above, but which have the minimum patient compartment dimensions required in (c) shall be eligible for "grandfather" licensing and use as an Emergency Ambulance vehicle for 24 full calendar months after the operative date of this chapter if:

- 1. The vehicle has been regularly used to provide ambulance service in the State prior to the operative date of these regulations, and
- 2. The vehicle is "grandfather" licensed by the Department prior to the operative date of these regulations.
- (c) The patient compartment of a vehicle eligible for "grandfather" licensing under (b) above shall have the following minimum interior dimensions:

- 1. Height: At least 52 inches between the floor and ceiling when measured at, or near, the center of the patient compartment.
- 2. Width: At least 54 inches between the vehicle interior sides when measured at any point 22 inches above the floor and at least 47 inches between the sides when measured at any point 46 inches above the floor. (The width of cabinets, etc. will be included when measurements are made.)
- 3. Length: At least 105 inches between the interior surface of the rear door and the surface of the bulkhead or partition, when measured at floor level.

8:40-6.5 Certification to Federal specifications

- (a) Any vehicle manufactured 12 full calendar months after the operative date of this chapter shall be certified to meet Federal Specification KKK-A-1822.
- (b) The certification shall be made by the vehicle manufacturer in accordance with KKK paragraph 1.1.3 and KKK paragraph 3.19 of Federal Specification KKK-A-1822.
- (c) The licensee may permit the following exceptions and/or substitutions to Federal Specification KKK-A-1822:
 - 1. Spare Tire and Storage (KKK paragraph 3.6.10)—optional.

2. Tools (tire changing) (KKK paragraph 3.6.13)—optional.
3. 115 volt AC utility power (KKK paragraph 3.7.8)—optional.
4. Utility power connector (KKK paragraph 3.7.8.1)—optional.
5. Electrical 115 volt VAC receptacles (KKK paragraph 3.7.8.2.)—optional.
6. Solid state inverter (KKK paragraph 3.7.8.3.)—optional.
7. Ambulance Emergency Lighting (KKK paragraph 3.8.2.). The licensee may specify emergency lights other than those required. The "one clear light" shall be red instead of "clear."
8. Spotlight (KKK paragraph 3.8.4.)—optional.
9. Interior storage accommodations (KKK paragraph 3.11.1.)—trash receptacle optional.
10. Exterior storage accommodation (KKK paragraph 3.11.2.)—optional.
11. Extrication equipment and storage (KKK paragraph 3.11.2.1)—optional.
12. Suction Aspirators (KKK paragraphs 3.12.3 and 3.12.4)—The installed and portable aspirators shall provide a free airflow of 30 LPM (rather than 20 LPM). A 12 vdc powered vacuum supply pump is recommended for the installed aspirator system.
13. Color, Paint and Finish (KKK paragraph 3.16.2) optional, but recommended.
14. Color standards and tolerances (KKK paragraph 3.16.2.1) optional, but recommended.
15. Emblems and markings (KKK paragraph 3.16.4 B.c.). Location of additional lettering and markings (required by the purchaser) is optional.

8:40-6.6 Ramp or lift

- (a) There may, but need not, be a ramp, lift or other device for the safe exit/entry of occupied standard size wheelchairs. While in use, any such device shall be securely fastened to the vehicle and be capable of accommodating a load of at least 500 pounds. When in transit, the device shall be secured in a crashworthy manner and shall be positioned so as not to obstruct both of the required doorways.
- (b) Any ramp shall have a slip-resistant surface and provide a rigid interlocked surface when in use.
- (c) Any device which relies on electric, hydraulic or other power for its operation shall be capable of manual operation by an unassisted person or there shall be a manually operated backup device.

8:40-6.7 Vehicle markings

- (a) The trade name which appears on the license, issued by the Department, shall appear in a size not less than three inches high on the two exterior sides of the vehicle.
- (b) The vehicle recognition number shall appear in a size not less than four inches high on the rear and the two exterior sides of the vehicle.
- (c) The vehicle shall have the following other markings:
 1. The word "ambulance" in a size not less than four inches high shall be mirror image, centered above the grill, on the front of the vehicle.
 2. Block-type blue, "Star of Life" shall be in a size not less than three inches on a four-inch, white field, located both to the right and left of the word "ambulance" on the front of the vehicle.
 3. Block-type blue, "Star of Life" shall be in a size of not less than 16 inches on each side of the vehicle. A block-type blue, "Star of Life" in a size not less than 12 inches shall be

provided on each rear door window glass, or on rear door panels.

4. The word "ambulance" in a size not less than six inches high shall appear on each side and on the rear of the vehicle body. The word "ambulance" may be separate from, or may be incorporated in, the trade name required in (a) above.

(d) A sign shall appear in the patient compartment which states: "Smoking Prohibited: Violator Subject to Fine."

(e) The required markings shall appear in a color and shade which contrasts with the background on which they appear.

(f) The following shall not appear on the vehicle:

1. Symbol(s) consisting of a:

i. Greek Cross; or

ii. Maltese Cross, unless the vehicle is operated by a Fire Department.

2. The following words, or abbreviations of such words: "Coronary Care," "Special Care" or "Intensive Care."

(g) The words "Paramedic" or "Mobile Intensive Care," or abbreviations of such words, shall only appear when the licensee is authorized to provide Mobile Intensive Care Unit Service in accordance with N.J.S.A. 26:2K-2 et seq.

(h) The words "Emergency Medical Technician," or abbreviations of such words, shall only appear when the vehicle is staffed by two Emergency Medical Technicians.

8:40-6.8 Emergency warning devices

(a) When authorized by a permit issued in accordance with N.J.S.A. 39:3-50, the vehicle shall be equipped with:

1. Emergency warning lights which provide 360 degrees of visibility during emergency missions and are installed in accordance with SAE Standard J595b and/or SAE Recommended Practice J845, and an
2. Emergency warning siren.

(b) The following warning devices are prohibited:

1. Emergency warning lights which are not red in color. As clarification, either the bulb or the lens shall be red; the other may be clear; and
2. Flashing headlight devices.

8:40-6.9 Use of emergency warning devices

(a) Emergency Warning Devices ("lights and/or siren") shall only be utilized in providing pre-hospital service when:

1. Responding to the location of a patient and:
 - i. There are reasonable grounds to believe that the patient's condition is serious enough to constitute a medical emergency; and
 - ii. The use of emergency warning devices is necessary to expedite travel to the patient's location.
2. At the scene of the call, and the use of emergency warning lights is necessary for safety reasons;
3. Transporting a patient to a hospital and:
 - i. The patient's condition is serious enough to constitute a medical emergency; and
 - ii. The use of emergency warning devices is necessary to expedite travel to the receiving hospital in the judgment of the staff person caring for the patient, provided
 - iii. Use of emergency warning lights and/or siren does not contribute to a worsening of the patient's condition.

(b) Emergency Warning Devices ("lights and/or siren") shall only be utilized in providing inter-hospital transfer when:

1. Responding to the "sending" hospital, and
 - i. The "sending" or "receiving" physician or his or her designee, clearly states that "emergency response" to the hospital is necessary, and

- ii. The use of emergency warning devices is necessary to expedite travel to the "sending" hospital.
- 2. Transporting a patient to the "receiving" hospital, and
 - i. The "sending" or "receiving" physician or his or her designee, clearly states that "emergency transportation" to the "receiving" hospital is necessary, and
 - ii. The use of emergency warning devices is necessary to expedite travel to the "receiving" hospital.
- 3. Transporting a patient to another hospital and:
 - i. The patient's condition, suddenly and unexpectedly, worsens to constitute a medical emergency, and
 - ii. The use of emergency warning devices is necessary to expedite travel to a hospital in the judgment of the staff person caring for the patient, provided
 - iii. Use of emergency warning lights and/or siren does not contribute to a worsening of the patient's condition.
- (c) Any airhorn shall not be used:
 - 1. Between 11 P.M. and 7 P.M. and
 - 2. Any time a patient is being transported. This prohibition shall not apply when a test made by a qualified agency in accordance with AMD Standard 006 determines that the airhorn sound level within the patient compartment does not exceed 86 decibels (A scale).

8:40-6.10 General equipment and supplies requirements

- (a) When in-service, the vehicle shall be equipped with all the required equipment and supplies at the start of each work shift. Expended supplies and/or damaged equipment shall be replaced whenever the vehicle is returned to its normal storage location. Equipment may be temporarily left on/with a patient, when medically necessary, without being replaced on the vehicle. A record shall be made on the call report (see N.J.A.C. 8:40-6.29) of any equipment left on/with a patient.
- (b) All equipment and supplies shall be stored within the vehicle in a safe, crashworthy manner. The storage location shall be dictated by the relative importance of the material. A succinct list of contents shall appear on the door of any interior storage compartment.

8:40-6.11 Standard patient transport devices

- (a) There shall be a wheeled litter for the transport of stretcher bound patients. The litter shall be at least 72 inches long (when flat) and at least 20 inches wide. The litter shall have a mattress at least two inches thick. The litter and mattress shall be adjustable from a flat to a semi-sitting position. The litter shall be adjustable from a minimum height of 9 to 18 inches to a maximum height of 33 to 40 inches measured to the top of the mattress. There shall be a pillow, pillowcase and sheet on the litter.
- (b) There shall be a portable stretcher for the safe transport of stretcher bound patients up and down flights of stairs. The stretcher may be of the "Reeves" (R) type, folding type, orthopedic stretcher type or of the combination stretcher/-stairchair type.
- (c) There shall be a portable stairchair for the safe transport of wheelchair bound patients up and down flights of stairs. The stairchair may be of the combination stretcher/-stairchair type and also satisfy the requirements of (b) above.
- (d) Each litter and portable stretcher shall have three sets of two-inch wide patient restraints with quick release buckles positioned at the chest, waist and knees. The quick release buckles may be of the "slide through" or "metal to metal" type. ("Reeves" type stretchers may have other types of buckles.) Each stairchair shall have two sets of two-inch wide safety restraints with quick release metal buckles.

- (e) While the vehicle is in motion, the wheeled litter and any occupied stretcher(s) shall be restrained by a litter fastener(s). The wheeled litter fastener shall be certified by the manufacturer to comply with AMD Standard 004—Litter Retention System.

8:40-6.12 Special patient transport devices

- (a) When necessitated by the patient's medical conditions and required by a physician, a patient may be transported in a special device such as, but not limited to, a "Stryker" (R) frame or specially designed incubator. The special device and patient shall be restrained in a crashworthy manner and in accordance with the intent of AMD Standard 004 and applicable Federal Motor Vehicle Safety Standards.
- (b) The patient transport devices required in N.J.A.C. 8:40-6.11 may be removed from the vehicle to make room for the special transport device.

8:40-6.13 Oxygen administration devices

- (a) The vehicle shall have an installed oxygen system capable of safely storing and supplying a minimum of 1,200 liters of medical oxygen. (3,000-liter capacity is recommended.) The oxygen cylinder controls shall be accessible from inside the vehicle. Cylinder opening wrench(es) or handles shall be affixed to, or chained and clipped with, the oxygen cylinder(s). Components and accessories for the oxygen system shall include nonferrous piping and low pressure hose suitable for medical oxygen at a flow rate of at least 200 liters per minute. Installed oxygen cylinder(s) shall be retained in an oxygen tank holder(s) certified by the manufacturer to comply with AMD Standard 003—Oxygen Tank Retention System.
- (b) There shall be a portable oxygen system capable of safely storing and supplying at least 300 liters of medical oxygen. Cylinder handles/wrenches shall be chained to the regulator or affixed to the cylinder. There shall be at least one spare cylinder of at least 300-liter capacity.
- (c) Each oxygen system shall have a medical oxygen pressure reducing and regulating valve, an excess pressure relief valve set at 200 PSI maximum and a gauge range of 0 to 2,500 PSI (4,000 PSI tested). The regulator shall be preset at 50 +/- 10 PSI line pressure.
- (d) Each required oxygen system shall have an oxygen flowmeter. Each oxygen flowmeter shall have a gauge or dial with a range of 0 to 15 liters per minute in calibrated increments. The flowmeter on the portable oxygen system shall be non-gravity dependent.
- (e) There shall be at least six clear inhalation masks (three each in adult and child sizes) of the single service, semi-open, non-rebreathing type and two single service type cannulas.
- (f) If oxygen humidifiers (or nebulizers) are utilized, a new, unused, single service humidifier (or nebulizer) shall be used for each patient.
- (g) Each oxygen cylinder shall:
 - 1. Contain only medical grade oxygen;
 - 2. Be color coded green;
 - 3. Have a current hydrostatic test date;
 - 4. Be tagged (Full, In Use, Empty).

8:40-6.14 Resuscitation devices

- (a) The installed oxygen system shall be equipped with a positive pressure oxygen powered resuscitator.
- (b) Either the required portable oxygen system, or a separate portable oxygen system (which complies with N.J.A.C. 8:40-6.13(b) and (c)), shall be equipped with a positive pressure oxygen powered resuscitator.

(c) the vehicle shall be equipped with an adult size and an infant size bag-valve-mask resuscitator.

(d) Any oxygen powered resuscitator shall provide:

1. 100 percent oxygen;
2. An instantaneous flow rate of at least 100 liters per minute;
3. Inspiratory pressure between 35 and 55 cm water pressure;
4. ¹⁵/₂₂mm fittings.

(e) Any bag-valve-mask resuscitator shall meet the following criteria:

1. Have a self-refilling bag without sponge rubber inside;
2. Bag volume shall be:
 - i. About 1,700cc for adults;
 - ii. 700 to 750cc for infants.
3. Adult size bags shall be capable of deflating/refilling at least 25 times per minute at room temperature. Infant size bag(s) shall be capable of deflating/refilling at least 40 times per minute at room temperature;
4. Valve shall be a true non-rebreathing valve and have ¹⁵/₂₂mm fittings.

(f) There shall be at least nine resuscitation face masks:

1. At least three transparent domed resuscitation face masks (one each in large adult, medium adult and child size) with 22mm fittings for each of the two required oxygen powered resuscitators.
2. Two transparent domed resuscitation face masks (one each in large adult and medium adult size) with 22mm fittings for the required adult size bag-valve-mask resuscitator.
3. One transparent domed infant size mask with 22mm fittings for the required infant size bag-valve-mask resuscitator.

(g) No resuscitation device shall be carried in the vehicle unless it:

1. Is suitable for use by an Emergency Medical Technician and meets the criteria in (d) and/or (e) above, or
2. Is prescribed by a physician for a patient being transported and is operated by a physician, nurse, respiratory therapist or inhalation therapist.

8:40-6.15 Aspirator/suction devices

(a) There shall be an installed aspirator powered by the vehicle. A 12 volt dc powered vacuum supply pump is recommended. The device shall be securely mounted and located to permit aspiration of a stretcher bound patient. The device shall meet the criteria contained in (c) below during the entire normal range of vehicle operation.

(b) There shall be a portable aspirator powered by an integral battery or by gas, such as oxygen. (Battery powered is recommended.) The device shall meet the criteria contained in (c) below for at least 20 minutes.

(c) Any suction device shall provide:

1. A flow rate of at least 30 liters per minute at the end of the suction tube, and
2. A vacuum pressure of at least 30mm mercury suction within four seconds and a maximum vacuum pressure of at least 400mm.

(d) Each suction device shall be equipped with a non-breakable collection bottle, a suction rinsing water bottle, and at least three feet of transparent or translucent suction tubing with an interior bore of at least one quarter inch. Three-eighths of an inch bore is recommended. There shall be one semi-rigid pharyngeal suction tip and at least eight suction catheters for each device (two each in 8 French, 10 French, 12 French and 14 French sizes).

(e) No suction device shall be carried in the vehicle unless it:

1. Is suitable for use by an Emergency Medical Technician and meets the criteria contained in (c) above or in 8:40-6.20(a)4, or
2. Is prescribed by a physician for a patient being transported and is operated by a physician, nurse, respiratory therapist or inhalation therapist.

8:40-6.16 Airway maintenance supplies

(a) There shall be at least:

1. Two mouth gags (bite sticks) single-service type;
2. Oropharyngeal Airways which meet A.N.S.I. Standard Z 79.3 (Oropharyngeal and Nasopharyngeal Airways), single-service type. There shall be six of each of the following (in A.N.S.I. Z 79.3 sizes):
 - i. 11 cm size (large adult);
 - ii. 9 cm size (medium adult);
 - iii. 7 cm size (child);
 - iv. 5.5 cm size (infant).

8:40-6.17 External cardiac compression support

A short spine board or a specially designed rigid board (such as a "CPR Board" (R)) shall be immediately available within the patient compartment.

8:40-6.18 Spine boards, orthopedic litter and splints

(a) The following spine boards, orthopedic litter and splints shall be carried in the vehicle:

1. One long spine board made of wood at least three quarters of an inch thick, or of equivalent material, 72 inches long by 18 inches wide with associated strap holes and full length three-quarter inch runners.

2. One short spine board made of wood at least one half of an inch thick or, of equivalent material, measuring 32 inches to 34 inches high. Body section 18 inches wide by 20 inches to 22 inches high with associated strap holes.

3. Four straps, 2 inches wide by 9 feet long with quick release type metal buckles. ("Slide-through" type strongly recommended.)

4. Orthopedic litter at least 78 inches long (when extended) by at least 16 inches wide. It shall open/close (separate/rejoin) along its long axis into two halves, and be fitted with three sets of two-inch wide restraining straps with quick release (slide through or metal to metal type) metal buckles.

5. Two filled sand bags at least three inches in diameter by 12 inches long.

6. The following padded board splints, each three inches wide with base material at least three-eighths inch thick:

- i. Two 15 inches long;
- ii. Two 36 inches long;
- iii. Two 54 inches long.

7. One adult size, lower extremity traction splint either half-ring or padded ischial support type. Half-ring or ischial support about nine inches in diameter; overall length, when in use, at least 43 inches. Complete with all associated straps, heel stand and accessories.

8:40-6.19 Wound dressing and burn treatment supplies

(a) The following wound dressing and burn treatment supplies shall be carried in the vehicle:

1. Twelve conforming roller bandages, four or six inches wide by 5 yards long;
2. Twenty-four triangular bandage (cravat) measuring 36 inches by 36 inches by 51 inches when unfolded;

3. Twelve sterile, individually packed universal (or multi-trauma) dressings measuring at least nine inches by 30 inches when unfolded;
4. Twenty-four sterile, individually packed gauze pads at least four inches by four inches;
5. Two rolls three-inch wide adhesive type tape;
6. Four sterile, individually packed occlusive dressings (such as Vaseline (R) impregnated dressings);
7. Two sterile, individually wrapped burn sheets;
8. Two liters sterile saline solution in a plastic container(s) (for flushing injury sites).

8:40-6.20 Obstetrical kit

(a) An obstetrical kit shall be carried in the vehicle. The items shall be sterile and may be individually wrapped or be contained in a "pack." Any pack shall have an exterior itemized list of contents. Items shall include the following:

1. Four towels;
2. Twelve gauze compresses, four inches by four inches;
3. Four cord clamps;
4. One ear syringe, soft rubber (for newborn aspiration);
5. One receiving blanket;
6. Three pairs surgeons' type gloves;
7. One pair scissors.

8:40-6.21 Poison treatment supplies

(a) The following poison treatment supplies shall be carried in the vehicle:

1. Four liquid ounces of syrup of Ipecac;
2. One packet activated charcoal.

8:40-6.22 Other patient care equipment

(a) There shall be the following other minimum patient care equipment:

1. Diaphragm-type stethoscope;
2. Aneroid-type blood pressure manometer and adult size cuff;
3. Four super packets or one fluid ounce of glucose in form easily ingested by mouth.
4. Four cloth blankets at least 60 inches by 80 inches in size.

(b) The licensee shall provide such other equipment and supplies as may be necessary, provided no equipment or supplies shall be carried which would permit rendering of care contrary to N.J.S.A. 45:9-1 et seq. (Practice of Medicine and Surgery Act).

8:40-6.23 Extrication equipment

(a) Except as permitted in (b) below the following minimum extrication and related equipment shall be carried on the vehicle:

1. One wrench, 12-inch size, adjustable open end;
2. One screwdriver, 12-inch size, regular blade;
3. One screwdriver, 12-inch size, Phillips type;
4. One set hacksaw, 12-inch blade capability with three wire carbide blades;
5. One pliers, 10-inch size "vise grip" (R) type;
6. One hammer, five pounds with at least a 15-inch handle;
7. One fire axe, butt type, with at least a 24-inch handle;
8. One wrecking bar, at least 24-inch length; (Items 6, 7 and 8 can be combined as one tool.)
9. One crow bar, at least 51-inch length with pinch point;
10. One bolt cutter at least one and a quarter inch jaw opening;
11. One set portable hydraulic set consisting of at least one hand operated 4-ton or greater capacity hydraulic pump and

one ton capacity spreading jaws and at least one spare pint of hydraulic fluid;

12. One shovel, pointed blade, at least 49 inches long when open (either folding or non-folding type acceptable);
13. Tin snips, double action hand operated with handles at least eight inches long;
14. Two manila ropes three quarters of an inch in diameter or equivalent, 50 feet long;
15. One set hand operated ratchet hoist set ("come along" (R) type) two-ton capacity with separate 15-foot long, two-ton capacity chain (one end with grab hook, other end with running hook);
16. Sheet metal cutting tool (such as a rotary type lawn mower blade);
17. Two pairs safety goggles, clear;
18. Two hard hats, bump-type or heavier;
19. Two pair gloves, leather palm with wrist gauntlets.

(b) The extrication and related equipment required in (a) above need not be carried when:

1. The Ambulance does not respond to automobile, industrial or other accidents. However, Ambulances which do not carry extrication equipment may stop and render emergency medical care at an accident scene which they pass by chance; or,
2. A rescue vehicle is available and:
 - i. Can respond to an accident location within six minutes and;
 - ii. The rescue vehicle carries all of the equipment and related material required in (a) above and;
 - iii. Operators of the rescue vehicle agree, in writing, to provide extrication services for patients under the licensee's care under the direction of the licensee.

8:40-6.24 Safety equipment

(a) The vehicle shall have the following minimum safety equipment:

1. Three portable red emergency reflective safety triangles;
2. One flashlight, two D cell size or larger;
3. One fire extinguisher, U.L. rated at least 1A 10BC with current inspection tag.

8:40-6.25 Required staff

(a) When in-service, each Emergency Ambulance vehicle shall be staffed by at least two persons who shall meet the requirements of N.J.A.C. 8:40-3.7 and this subchapter. All additional staff persons of the licensee shall meet the requirements N.J.A.C. 8:40-3.7.

(b) Staff persons of a hospital or of another agency who accompany a patient need not meet the requirements of N.J.A.C. 8:40-3.7(a) and (b).

8:40-6.26 Required training of staff

(a) Except as permitted in (b) below and in N.J.A.C. 8:40-6.28, each of the required staff persons shall possess current valid certification as an Emergency Medical Technician-Ambulance, issued by the Department.

(b) In recognition of the necessity for staff to be trained, the second required person may, for 12 full calendar months after the operative date of this chapter, possess the following training in lieu of Department certification:

1. Valid documentation of "Advanced First Aid and Emergency Care" training issued by the American Red Cross, and
2. Valid documentation of "Cardiopulmonary Resuscitation" training issued by the American Heart Association or the American Red Cross, provided

3. The person certified as an Emergency Medical Technician-Ambulance is in charge of patient care and accompanies patients being transported in the patient compartment.

8:40-6.27 Duties of staff

(a) The collective duties of the persons who staff an Emergency Ambulance vehicle shall include, but are not limited to:

1. Providing prompt, efficient and effective emergency medical care to the patient(s);
2. Attending the patient(s) at all times and continually monitoring the patient's condition;
3. If necessary, extricating the patient from confinement;
4. Assisting patients to enter and to leave the vehicle, supervising the well being of patients while in the vehicle, and ensuring the privacy and comfort of patients;
5. Assuring that any stretcher, wheelchair or other patient transport device is safely restrained, patients are restrained and all vehicle occupants wear automotive safety belts. The staff person(s) caring for the patient need not wear a safety belt when providing essential life support such as CPR;
6. Operating the motor vehicle in a safe manner, starting and stopping the vehicle slowly and smoothly and complying with all applicable motor vehicle laws.
7. Reporting verbally (and when required in N.J.A.C. 8:40-6.29(b), in writing) to the appropriate personnel when a patient is brought to a health care facility or other place of medical care;
8. For serious patients, notifying the medical facility, prior to arrival, that special professional services and assistance will be needed;
9. Complying with N.J.S.A. 52:17B-78 et seq. on the handling of the deceased;
10. Entering data into and signing the required call report;
11. Prohibiting smoking within the patient compartment.

8:40-6.28 Special staff required

(a) When the Emergency Ambulance is utilized to provide an inter-hospital transfer of a neonatal patient, the vehicle shall be staffed by:

1. At least one of the persons required in N.J.A.C. 8:40-6.25, and
2. A physician or a nurse who has been specially trained to care for neonatal patients.

(b) When the Emergency Ambulance is utilized to transport a patient receiving intravenous fluids and/or medications, the vehicle shall be staffed by:

1. At least one of the persons required in N.J.A.C. 8:40-6.25, and
2. A physician or a registered nurse, or
3. A licensed Mobile Intensive Care Unit Paramedic providing medical care as part of a designated Mobile Intensive Care Program operated in accordance with N.J.S.A. 26:2k-2 et seq.

8:40-6.29 Call report

(a) A call report shall be completed each time a patient is transported. The call report shall be prepared by the staff assigned to the vehicle and shall contain the following information printed in ink:

1. Patient's name, age, sex and home address;
2. Succinct description of the patient's condition at the scene and in transit;
3. Succinct description of care given to the patient at the scene and in transit;
4. Time when, and location where, patient was picked up and was discharged;

5. Vehicle recognition number, date, names of staff;
6. Whether or not emergency warning devices were used:
 - i. Responding to the scene;
 - ii. At the scene;
 - iii. In transit to the medical facility;
7. Any required equipment left on/with a patient.

(b) When an emergency patient is brought to a medical facility, a copy of the call report shall be given to the appropriate person at the medical facility.

8:40-6.30 Radio communications

(a) Any radio communications shall comply with rules and regulations of the Federal Communications Commission (FCC). The Department shall be provided with a copy of any FCC license(s) issued to the licensee.

(b) In recognition that:

1. Radio frequencies are a limited natural resource which cannot meet the needs of all health care providers (and the patients that they serve); and

2. Normally, Emergency Ambulance Services which do not routinely serve a political subdivision and/or do not respond to accidents and/or do not do "street work" do not involve the rendition of essential emergency medical services; and

3. Use of certain radio frequencies by Emergency Ambulance Services which do not serve a political subdivision could cause harmful radio interference to, and delay the provision of, essential and emergent medical services to patients served by Emergency Ambulance Services which serve a political subdivision and Mobile Intensive Care Services; and

4. Use of certain radio frequencies by any Emergency Ambulance Service could cause harmful radio interference to, and delay the provision of, essential and emergent medical services to patients served by Mobile Intensive Care Services;

5. Any radio communications shall comply with the radio frequency allocation cited in Table 4 of the JEMS Communications Plan published by the Department. Specifically:

i. None of the UHF radio frequencies known as "Med 1" through "Med 10" shall be used in radio communications to, or from, any Emergency Ambulance vehicle; and

ii. None of the VHF radio frequencies listed in Appendix C of this chapter shall be used in radio communications to, or from, any Emergency Ambulance vehicle which does not routinely serve a political subdivision.

iii. The radio frequency 155.340 MHz shall only be used for essential communications between an emergency ambulance and a hospital Emergency Department.

iv. The radio frequency 155.280 MHz shall only be used for essential communications between cooperating emergency ambulances and as a "back-up" dispatch channel for Emergency Ambulance vehicles which serve a political subdivision.

(c) Each Emergency Ambulance shall be equipped with a mobile radio with the following minimum capabilities:

1. Two-way, four-frequency, VHF high-band with Effective Radiated Power (ERP) as approved by the New Jersey Office of Frequency Coordination;

2. Able to select, and to transmit and receive on, each of the four required radio frequencies from the driver's compartment.

3. Able to transmit and receive on the selected radio frequency from the patient compartment by suitable means (such as a handset-type microphone);

4. Functional, dual-tone, multi-frequency ("Touch-tone" (R) type) encoder in either the driver's or patient compartment;

5. Four operating radio frequencies and functional continuous tone coded squelch system (CTCSS) as follows when

installed in an ambulance used to provide service to a political subdivision:

- i. 155.xxx MHz (local EMS frequency and CTCSS as listed in Appendix D);
- ii. 155.340 MHz (ambulance-to-hospital emergency Department);
- iii. 155.280 MHz (statewide EMS coordination);
- iv. 153.785 MHz (statewide public safety coordination for police, fire and EMS), or

6. Two operating radio frequencies and functional continuous tone coded squelch (CTCSS) as follows when installed in other ambulances:

- i. 155.340 MHz (ambulance-to-hospital emergency Department); and
- ii. 155.280 MHz (statewide EMS coordination).

(d) In recognition of the need to budget funds, licensees are granted the following time periods to install the mobile radio(s) required in (c) above:

1. Each Emergency Ambulance used to provide service to a political subdivision(s) shall be so equipped within 18 full calendar months of the operative date of this chapter.

2. At least fifty percent of the licensee's Emergency Ambulances shall be so equipped within 18 full calendar months of the operative date of this chapter.

3. All Emergency Ambulances shall be so equipped within 30 full calendar months of the operative date of this chapter.

(e) Each in-service Emergency Ambulance used to provide service to a political subdivision shall be equipped with at least one portable radio with the following minimum capabilities:

- 1. Two-way, four-frequency, VHF high-band;
- 2. Able to select, and to transmit and receive on each of the four required radio frequencies;
- 3. The same four operating radio frequencies and CTCSS as required in (c)5 above.

(f) In recognition of the need to budget funds, licensees are granted 24 full calendar months after the operative date of this chapter to equip the affected ambulances with the portable radio(s) required in (e) above.

8:40-6.31 Disaster planning required

(a) Each licensee which provides service to a political subdivision shall develop and maintain a current up-to-date written disaster plan. The disaster plan shall be reviewed and tested at least twice a year. The method of testing the plan shall be at the discretion of the licensee. Each employee of the licensee shall be informed of his/her role and responsibilities under the disaster plan at least twice a year.

(b) The plan shall define the licensee's role in providing immediate emergency medical care as part of a community response. The plan shall be based on scenarios which can be reasonably expected to occur in the licensee's service area such as train/bus/aircraft accident, tornado or other weather induced accidents, fire or structural collapse or off-shore sinking.

(c) The plan shall describe the specific means as to how:

1. Off-duty personnel of the licensee would be summoned including specific telephone numbers and/or paging/tone alerting instructions;

2. Mutual aid ambulances would be summoned including specific telephone numbers and/or radio frequencies and encoding means.

(d) The plan shall specify when or whether the licensee's ambulance(s) and when or whether mutual aid ambulance(s) will be used to provide service to the unaffected portion of the licensee's service area. If mutual aid ambulances are to be

used, the plan shall specify what means (guide, map, police escort, etc.) will be provided to enable the mutual aid ambulances to locate sites of any calls.

SUBCHAPTER 7. SPECIFIC HELICOPTER AMBULANCE REQUIREMENTS

8:40-7.1 Patient restrictions

(a) Emergency medical care and transportation shall be provided to a patient who:

- 1. Requires, or may require, pre-hospital emergency medical services or
- 2. Requires, or may require, emergency inter-hospital transfer.

8:40-7.2 General helicopter requirements

(a) When in service, the aircraft shall meet the requirements of this chapter.

(b) Each helicopter licensed under this chapter shall be licensed and operated in accordance with Federal Aviation Regulations (FAR) Part 135.

(c) The helicopter shall be in safe operating condition. All required equipment shall be functional and operable when the helicopter is in service.

(d) Each helicopter used by the licensee to provide helicopter air ambulance service shall have and display a valid Helicopter Ambulance License, issued by the Department.

8:40-7.3 Patient compartment requirements

(a) The helicopter shall have a patient compartment. If the patient compartment is not separated from the pilot's seating area, the pilot shall be protected, by a partition, bulkhead, or similar device, from the movements of the patient.

(b) The patient compartment shall have at least two exterior doorways.

1. At least one doorway shall be large enough to allow the loading/unloading of an occupied stretcher without rotating it more than:

- i. 30 degrees about the longitudinal (roll) axis; and
- ii. 45 degrees about the lateral (pitch) axis.

2. The other doorway shall be large enough to permit the entrance/exit of an ambulatory person.

3. The door(s) to each doorway shall be capable of being opened and being used from inside the patient compartment and from the exterior of the aircraft. The exterior of each doorway shall be marked with a sign which states how the door can be opened.

(c) The patient compartment shall be provided with a built-in lighting system supplied by the aircraft power supply. The lighting system shall not interfere with the pilot's vision and shall be located so no glare is reflected into the pilot's eyes or lines of vision.

(d) There shall be space and seating for an attendant within the patient compartment. The seat shall be equipped with a safety belt.

(e) There shall be sufficient crashworthy cabinets and other storage spaces to safely accommodate all equipment and supplies.

8:40-7.4 Patient compartment dimensions

(a) The patient compartments shall have the following interior dimensions:

1. Height: at least 30 inches (40 inches preferable) between the top of the required litter and the ceiling.

2. Width: at least 24 inches from the inboard side of the required litter to the other side of the aircraft.

3. Length: at least long enough to accommodate the required litter.

8:40-7.5 Certification to manufacturer/FAA standards

The aircraft shall be certified to the aircraft manufacturers standards and to FAA standards.

8:40-7.6 Special lighting required

Each helicopter used to provide pre-hospital emergency medical services (that is, "street work" or "on-scene care") shall be equipped with an exterior high-powered floodlight ("Sun Light"—tm—or equivalent) remotely controlled by the pilot.

8:40-7.7 General equipment and supplies requirement

(a) Each helicopter used to provide prehospital emergency medical services (that is, "street work" or "on-scene care") shall be equipped with all the equipment and supplies required in this chapter at the start of each mission.

(b) Each helicopter used to provide interhospital patient transfer service shall be equipped with all the equipment and supplies required in this chapter at the start of each transfer.

(c) All equipment and supplies shall be stowed within the aircraft in a safe, crashworthy manner. The stowage location shall be dictated by the relative location of the material. A succinct list of contents shall appear on the door of any interior stowage compartment.

8:40-7.8 Standard patient transport devices

(a) There shall be a litter for the transport of stretcher bound patients. The litter shall be at least 72 inches long (when flat) and at least 20 inches wide. The litter shall have a mattress at least one inch thick. The litter shall be adjustable from a flat to a semi-sitting position. There shall be a pillow, pillow case and sheet on the litter.

(b) The litter shall have three sets of two-inch wide patient restraints with quick release buckles positioned at the chest, waist and knees. The quick release buckles may be of the "slide-through" or "metal to metal" type.

(c) While the aircraft is in motion, the litter shall be restrained by a litter fastener. The litter fastener shall be securely fastened to the aircraft, shall be installed under a FAA Supplemental Type Certificate and shall meet the same "g" requirements as those contained in FAR Part 23.561 or FAR Part 25.561 for seats.

8:40-7.9 Oxygen administration devices

(a) The aircraft shall have an oxygen system capable of safely storing and supplying a minimum of 600 liters of medical oxygen. Aviation oxygen is not acceptable. For flights longer than twenty minutes, additional oxygen supplies shall be carried to permit administration of oxygen to the patient at a rate of at least 15 liters per minute during the entire period the patient is aboard the aircraft.

(b) The oxygen cylinder controls shall be accessible from the required attendant's seat. Cylinder opening wrench(es) or handles shall be affixed to or chained and clipped with the oxygen cylinder(s).

(c) When the aircraft is in motion, each oxygen cylinder shall be secured in a safe, crashworthy manner in oxygen tank holders affixed to the aircraft frame which meet the same "g" requirements as those contained in FAR Part 23.561 or FAR Part 25.561 for seats.

(d) Each oxygen system shall comply with the requirements of N.J.A.C. 8:40-6.13(c) through (g).

8:40-7.10 Resuscitation devices

(a) The required oxygen system shall be equipped with a positive pressure oxygen powered resuscitator.

(b) The aircraft shall be equipped with resuscitation devices in accordance with N.J.A.C. 8:40-6.14(c) through (g).

8:40-7.11 Aspirator/suction devices

(a) There shall be an installed suction device powered by the aircraft's electrical system. The device shall be securely mounted and located to permit aspiration of any stretcher bound patient. The device shall meet the criteria contained in N.J.A.C. 8:40-6.15(c) through (e) during the entire normal range of aircraft operation.

(b) There shall be a portable suction device powered by an integral battery. The device shall meet the criteria contained in N.J.A.C. 8:40-6.15(c) through (e) for at least 20 minutes. In recognition of aircraft weight limitations, the portable suction device may also be used as the installed device provided it meets the requirements of (a) above.

8:40-7.12 Airway maintenance supplies

(a) There shall be at least:

1. Two mouth gags (bite sticks) single-service type;
2. Oropharyngeal Airways which meet A.N.S.I. Standard Z 79.3 (Oropharyngeal and Nasopharyngeal Airways), single-service type. There shall be two of each of the following (in A.N.S.I. Z 79.3 sizes):
 - i. 11 cm size (large adult);
 - ii. 9 cm size (medium adult);
 - iii. 7 cm size (child);
 - iv. 5.5 cm size (infant).

8:40-7.13 External cardiac compression support

A short spine board or a specially designed rigid board (such as a "CPR Board" (R)) shall be immediately available within the patient compartment.

8:40-7.14 Spine boards, orthopedic litter and splints

(a) The equipment required in N.J.A.C. 8:40-6.18 shall be available when Helicopter Ambulance Service is being provided at the scene of an accident. In recognition of the aircraft weight limitations, the equipment may be carried to the accident scene either by the aircraft or by a cooperating ground ambulance or Mobile Intensive Care Unit.

(b) In recognition of the airborne environment, splints or similar devices which rely on inflation or vacuum to provide stabilization of possible fractures are specifically prohibited.

8:40-7.15 Wound dressing and burn treatment supplies

(a) The following wound dressing and burn treatment supplies shall be carried in the aircraft:

1. Four conforming roller bandages, four or six inches wide by five yards long.
2. Four triangular bandage (cravat) measuring 36 inches by 36 inches by 51 inches when unfolded.
3. Four sterile, individually packed universal dressings measuring at least nine inches by 30 inches when unfolded.
4. Twenty-four sterile, individually packed gauze pads at least four inches by four inches.
5. One roll of three-inch wide adhesive tape.
6. Two sterile, individually packed occlusive dressings (such as Vaseline (R) impregnated dressings).
7. Two sterile, individually wrapped burn sheets.
8. One liter sterile saline solution in a plastic container(s) (for flushing injury sites).

8:40-7.16 Obstetrical kit

An obstetrical kit shall be carried in the aircraft when a patient, known to be pregnant, is being transported. The obstetrical kit shall meet the requirements of N.J.A.C. 8:40-6.20.

8:40-7.17 Other patient care equipment

(a) There shall be the following other minimum patient care equipment.

1. Doppler type stethoscope. The stethoscope shall not cause electromagnetic interference to aircraft equipment;
2. Aneroid type blood pressure manometer and cuff;
3. Four sugar packets or one fluid ounce of glucose in a form easily ingested by mouth;
4. Two cloth blankets at least 60 inches by 80 inches in size.

(b) The licensee shall provide such other equipment and supplies as may be necessary, provided no equipment or supplies shall be carried which would permit rendering of care contrary to N.J.S.A. 45:9-1 et seq. (Practice of Medicine and Surgery Act).

8:40-7.18 Required staff

(a) When in service, each Helicopter Ambulance shall be staffed by at least two persons, one of whom may be the pilot, who shall meet the requirements of N.J.A.C. 8:40-3.7 and of this subchapter. All additional staff persons of the licensee shall meet the requirements of N.J.A.C. 8:40-3.7.

(b) The pilot shall:

1. Hold a current Rotocraft Helicopter Commercial License with a current F.A.A. Class II Medical Certificate.
2. Have at least 2,000 hours experience as pilot in command; 1,500 of which must be in rotowing aircraft.

8:40-7.19 Required training of staff

(a) Except as permitted in (b) below and in N.J.A.C. 8:40-7.21, each of the required staff persons shall possess current valid certification as an Emergency Medical Technician-Ambulance issued by the Department.

(b) In recognition of the need for staff to be trained, the pilot need not possess the required Emergency Medical Technician-Ambulance certification for six full months after the operative date of this chapter provided the person certified as an Emergency Medical Technician-Ambulance is in charge of patient care and accompanies patients being transported in the patient compartment.

8:40-7.20 Duties of staff

(a) The collective duties of the persons who staff a helicopter ambulance shall include, but are not limited to:

1. The duties cited in N.J.A.C. 8:40-6.27 (excluding 8:40-6.27(a)6).
2. Assuring that all ground personnel who may help load/unload the aircraft observe appropriate safety procedures.
3. Prohibiting smoking within 100 feet of the aircraft when refueling is being done with a patient aboard the aircraft.

8:40-7.21 Special staff required

(a) When the Helicopter Ambulance is used to provide an inter-hospital transfer of a neonatal patient, the aircraft shall be staffed by:

1. The pilot, and
2. A physician or a nurse who has been specially trained to care for neonatal patients.

(b) When the Helicopter Ambulance is utilized to transport a patient receiving intravenous fluids and/or medications, the aircraft shall be staffed by:

1. The pilot; and
2. A physician or a registered nurse; or

3. A licensed Mobile Intensive Care Paramedic providing medical care as part of a designated Mobile Intensive Care Program operated in accordance with N.J.S.A. 26:2K-2.

8:40-7.22 Call report

(a) A call report shall be completed each time a patient is transported. The call report shall be prepared by the medical staff who provided in-flight patient care and shall contain the information required in N.J.A.C. 8:40-6.29 printed in ink.

(b) A copy of the call report shall be given to the appropriate person at the medical facility which receives the patient.

8:40-7.23 Radio communications

(a) All radio communications shall comply with rules and regulations of the Federal Communications Commission and shall comply with the JEMS Communications Plan. The Department shall be provided with a copy of any FCC license(s) issued to the licensee.

(b) Each Helicopter Ambulance shall be equipped with communications equipment, approved by the Office of Emergency Medical Services of the New Jersey State Department of Health, to permit direct contact with:

1. Participating hospitals; and
2. Mobile Intensive Care Units; and
3. (Ground) Emergency Ambulances,

(d) In recognition of the potential for harmful radio interference due to aircraft height, no radio equipment, which operates on the UHF radio frequencies known as "Med 1" through "Med 10", shall be used aboard the aircraft without the specific approval of the Office of Emergency Medical Services of the New Jersey State Department of Health.

8:40-7.24 Written agreements required

(a) Licensees which provide pre-hospital emergency medical services (that is, "street-work" or "on-scene care") shall have a written agreement to provide Helicopter Ambulance Service with:

1. The "receiving hospital(s)" which routinely provide hospital care to the patients transported by the licensee, and
2. The designated Mobile Intensive Care Program operated in accordance with N.J.S.A. 26:2K-2 which provides service to the geographic area, or
3. If there is no designated Mobile Intensive Care Program, the Basic Life Support Ambulance Service which provides service to the geographic area.

(b) Licensees which provide inter-hospital patient transfers shall have a written agreement to provide Helicopter Ambulance Service with:

1. The "sending hospital(s)" which routinely utilize the licensee's services to transport patients, and
2. The "receiving hospital(s)" which routinely provide hospital care to the patients transported by the licensee.

8:40-7.25 Special prohibitions

(a) In recognition of the potential hazards of the aircraft environment, the following are specifically prohibited:

1. Conducting a flight contrary to the recommendations of the aircraft pilot or the responsible FAA controller;
2. Refueling an aircraft with a patient aboard the aircraft unless prompt refueling is necessary to sustain human life;
3. Free swinging traction weights or intravenous containers;
4. Glass or rigid plastic intravenous containers;
5. Any patient care or other equipment which causes electromagnetic interference to the aircraft equipment;
6. Transport of a patient with an indwelling, air filled, balloon type device.

APPENDIX A

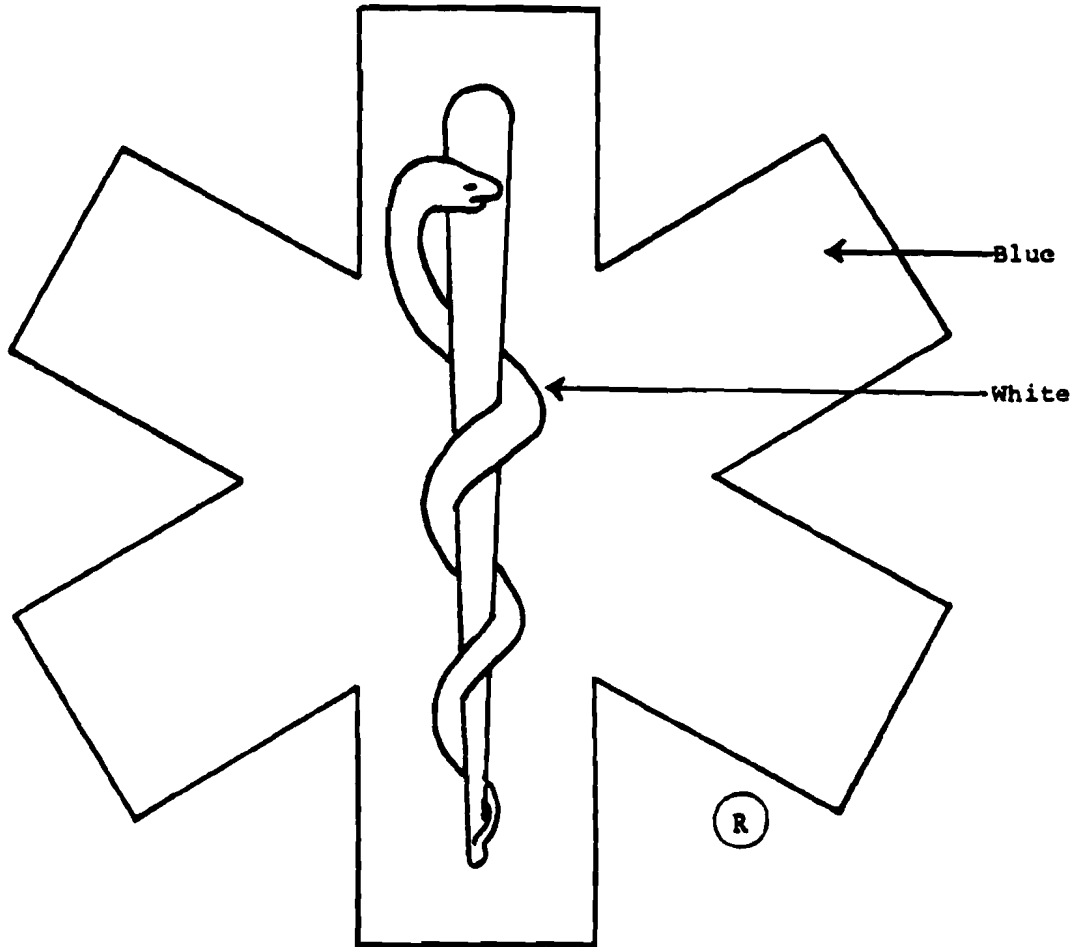
**INTERNATIONAL SYMBOL of ACCESS
for the HANDICAPPED**



APPENDIX B

"STAR OF LIFE SYMBOL"

The "Star of Life" is a six-barred cross upon which is superimposed the Staff of Aesculapius (es"cu-la'pi-us) who, in both Greek and Roman Mythology, was the god of medicine and healing.



Dimensions:	Size A	Size B	Size C	Size D
Length of bar	3"	12"	16"	32"
Width of bar	3/4"	3"	4"	8"
Length of Staff	2 1/2"	9 1/2"	12 1/2"	25"
White background (if required)	4" square	14" square	18" square	--
All angles 60°				
Deviations must be proportionate.				

APPENDIX C

Local EMS Radio Frequency Table

County (Where licensee provides service)	Required Radio Frequency	Required CTCSS (continuous tone coded squelch system)	Specific Area
Atlantic County	155.175 MHz.	118.8	County, except Atlantic City
	155.220 MHz.	118.8	Atlantic City
Bergen County	155.205 MHz.	*	Eastern portion
	155.175 MHz.	*	Western portion
Burlington County	155.295 MHz.	127.3	Countywide
Camden County	155.235 MHz.	192.8	Countywide
Cape May County	155.295 MHz.	118.8	Countywide
Cumberland County	155.220 MHz.	179.9	Countywide
Essex County	155.295 MHz.	*	County, except Newark City
	155.400 MHz.	*	Newark City
Gloucester County	155.265 MHz.	167.9	Countywide
Hudson County	155.235 MHz.	*	Countywide
Hunterdon County	155.205 MHz.	192.8	Countywide
Mercer County	155.265 MHz.	103.5	Countywide
Middlesex County	155.220 MHz.	103.5	Countywide
Monmouth County	155.175 MHz.	151.4	Countywide
Morris County	155.265 MHz.	241.8	Countywide
Ocean County	155.205 MHz.	186.2	Countywide
Passaic County	155.220 MHz.	*	Countywide
Salem County	155.295 MHz.	186.2	Countywide
Somerset County	155.235 MHz.	*	Countywide
Sussex County	155.295 MHz.	*	Countywide
Union County	155.175 MHz.	*	County, except Elizabeth City
	* MHz.	*	Elizabeth City
Warren County	155.265 MHz.	*	Countywide

* As assigned by N.J. State Department of Health

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Manual of Standards for Hospital Facilities Medical Staff

Proposed Readoption: N.J.A.C. 8:43B-6

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

Proposal Number: PRN 1984-652.

Address comments and inquiries to:
Wanda J. Marra, Coordinator
Standards Program
Division of Health Facilities Evaluation
Department of Health
CN 367
Trenton, NJ 08625

The agency proposal follows:

Summary

The current text of N.J.A.C. 8:43B-6, Medical Staff, Manual of Standards for Hospital Facilities, expired on October 17, 1984, in 8:43B-6 for three years, as proposed herein, will allow the current rules for Medical Staff, Manual of Standards for Hospital Facilities, to remain in effect until October 17, 1987. The readoption is proposed without changes to the current text.

The current text of the rules proposed for readoption regulates the organization of the medical staff, prescribes medical

bylaws staff meetings and a medical library, dispensation of medication and treatment and requires referral and follow-up for discharged patients.

N.J.A.C. 8:43B-6 was previously scheduled to expire on September 18, 1983, pursuant to the "sunset" provisions of Executive Order No. 66(1978) which mandates the five-year automatic expiration of a rule. Since the existing N.J.A.C. 8:43B-6 was outdated and written in nonspecific language subject to multiple interpretations, new rules were written to clarify and make more specific the intent of the Department. The proposed new rules were published on July 5, 1983, as a proposed readoption as a new rule (see 15 N.J.R. 1065(a)). During the public comment period, which ended on August 4, 1983, 47 letters of comment were received. Based on these comments and further discussion in a joint meeting on August 19, 1983, of the Medical Society of New Jersey, New Jersey Hospital Association, and the Department, the proposed new rules were revised and subsequently presented to the Health Care Administration Board on September 15, 1983. Due to the number and type of comments received and the apparent misinterpretation of the revised rules, the Health Care Administration Board recommended a postponement of the adoption of the new rules for one year to allow time for more thorough evaluation and exploration before the proposed rules were finalized and adopted. In addition, the Health Care Administration Board recommended that the existing N.J.A.C. 8:43B-6 be readopted for one year (see 15 N.J.R. 1762(c)) since the existing text was to expire pursuant to Executive Order No. 66(1978).

Due to time constraints, priorities within the unit, and the complexity of the rules themselves, it has not been possible to revise the existing rules before the expiration date. In proposing the readoption of N.J.A.C. 8:43B-6 for three years, the Department has also taken into consideration the considerable amount of time which the procedure for the promulgation of new rules entails. Another factor which contributes to the complexity of the task of revising the rules is the need for the rules to accommodate recent changes in the standards of the Joint Commission on Accreditation of Hospitals. In December of 1983, the Joint Commission on Accreditation of Hospitals revised their standards to allow hospitals to modify the existing composition of their medical staffs to "include other licensed individuals permitted by law and the hospital to provide patient care services independently."

The Department proposes that N.J.A.C. 8:43B-6 be allowed to remain in effect for an additional three-year period during which the Department intends to revise the rules extensively. The resultant revision will represent an attempt to develop and reorganize the rules in accordance with rational precepts and to render the rules in more specific, objective, and measurable terms. The diverse comments made to the Department during the public comment period indicated the need for the Department to have additional time in which to consider the opinions rendered and redraft the rules before proposing to the Health Care Administration Board that proposed new rules be adopted.

Readoption of N.J.A.C. 8:43B-6 for three years will provide the time which the Department will need to compare and evaluate the diverse opinions and will ensure the existence of rules for licensure during this time of evaluation and revision.

Social Impact

The Department is mandated by Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto, to protect and promote the health of the inhabitants of the State.

Because of the central role which the medical staff plays in any hospital's operation, N.J.A.C. 8:43B-6 has a direct impact on the care of hospitalized patients. Although limited in nature, N.J.A.C. 8:43B-6, establishes the organizational framework and structure of the medical staff to facilitate coordinated, responsive, and timely medical care. The by-laws, rules and regulations delineated in the subchapter create a set of operating principles by which the medical staff can carry out its medical and administrative responsibilities. Therefore, the extension of the readoption of the rules for medical staff will continue to ensure that hospitals have the organizational framework and structure of the medical staff to facilitate coordinated, comprehensive, and responsive care which is vital for the safety and well-being of patients.

Economic Impact

The extension of the readoption of N.J.A.C. 8:43B-6 will not have any discernible economic impact either on hospitals or on the Department, since these rules are already in effect. The hospitals would not incur any additional expense because they are already following these rules. Similarly, the Department will not have to incur additional expenditures in the survey process, since the surveys are being conducted using the current regulations.

However, the expiration of the rules would have adverse effects on providers, patients, and the Department. The physicians' responsibilities do not end with the provision of medical care, but extend through effective utilization of related services needed to provide patient care. Rules regarding the medical staff organization, bylaws, staff meetings, and medication, treatment, referral, and follow-up of patients are necessary to regulate the activities of hospital medical staffs in their participation in the management and organization of the provision of patient care. The readoption of N.J.A.C. 8:43B-6 would not increase the cost of care, but would continue to allow facilities to render care to patients, and to continue the general functioning of medical staff activities, at no increased cost. If rules and regulations were not in effect, conceivably care would be provided under disarrayed and captious circumstances leading to an increase in the number of litigations between providers and consumers.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:43B-6.

HUMAN SERVICES

The following proposals are authorized by George J. Albanese, Commissioner, Department of Human Services.

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

For proposals numbered PRN 1984-602, 603, 640, 656, and 664, address comments and inquiries to:

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

(a)

Hospital and Special Hospital Services Manual; Independent Clinic Services Manual Ambulatory Surgical Centers

Proposed Amendment: N.J.A.C. 10:52-1.1, 1.20; 10:53-1.1, 1.16; 10:66-1., 1.2, 1.3, 1.6, 1.7, 1.9

Authority: N.J.S.A. 30:4D-6a(5), b(12)(16); 42 CFR 416.

Proposal Number: PRN 1984-602.

The agency proposal follows:

Summary

This proposal concerns a new type of provider in the New Jersey Medicaid Program. The provider is classified as an ambulatory surgical center, or ASC. The basic purpose of an ASC is to provide surgical services to Medicaid patients not requiring hospitalization.

In general, the type of surgical procedures covered are those that cannot be performed in a physician's office, but could safely be performed in an ASC. These procedures require an operating room or suite, and generally require a post-operative recovery room. The actual list of covered procedures appear as an appendix to 42 CFR 416.65.

In order for an ASC to participate as a provider in the New Jersey Medicaid Program, the ASC must be approved by Medicare (Title XVIII), licensed by the New Jersey Department of Health, and signed an agreement to participate. With respect to independent clinics, each clinic must be individually approved as a provider.

The surgical procedures that may be performed by an ASC are assigned to one of the existing four Medicare payment groups. The ASC will be reimbursed at a single payment which encompasses all facility services performed on a patient in a single operative session. If more than one surgical procedure is performed during a single operative session, payment will be made for the procedure with the highest reimbursement rate.

The physician performing the surgery shall submit the standard Health Care Finance Administration (HCFA)-1500 claim form and be reimbursed in accordance with Medicaid policies, procedures, and fee schedules. This proposal does not change the procedure for physician claim submittal and reimbursement. Physicians who receive a salary from the ASC for administrative duties will be permitted to bill fee-for-service for those surgical procedures actually performed.

Social Impact

The use of an ASC may provide an alternative to inpatient hospitalization for the Medicaid patient.

The Division will be responsible for enrolling providers. The Prudential Insurance Company, acting as the Division's fiscal agent, will be responsible for submitting claims submitted by approved ASC providers. Those ASCs who wish to participate in the Medicaid program must make an application to the Division and meet all applicable Federal and State standards.

Economic Impact

The economic impact on the Division cannot be determined at this time because there are no cost figures currently available, since this is a new type of provider.

The ASC will be reimbursed according to one of four payment groups. The dollar values associated with each payment group appear in the text below. The rates for each group were established by taking 80 percent of the Medicare base rate in effect as of September 7, 1982. The ASC will be reimbursed at one of these rates (Group 1, 2, 3, 4) depending on the surgical procedure performed. If more than one procedure is performed, the Division will reimburse the ASC for the procedure with the highest rate.

There is no cost to the Medicaid patient for these services.

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

10:52-1.1 Definitions

"Ambulatory surgical center or "ASC" operated by a hospital" means a hospital-affiliated ambulatory surgical center that is a separately identifiable entity, physically, administratively and financially independent and distinct from other operations of the hospital (See N.J.A.C. 120:52-1.20).

10:52-1.20 Ambulatory Surgical Center (ASC)

(a) An ASC may be either independent (that is, not part of a provider of services or any other facility) or may be operated by a hospital (that is, under the common ownership, licensure or control of a hospital).

1. An ASC operated by a hospital must be a separately identifiable entity physically, administratively, and financially independent and distinct from other operations of the hospital.

(b) In order to be approved as a Medicaid Provider, an ASC must:

1. Have an agreement with the Health Care Financing Administration (HCFA) under Medicare to participate as an ASC;

2. Possess a Certificate of Need from the New Jersey Department of Health;

3. Possess a license from the New Jersey State Department of Health;

4. Be individually approved as a provider by the Division of Medical Assistance and Health Services before it will be reimbursed for services rendered to Medicaid patients.

i. The Medicaid Provider Application, the appropriate Provider Agreement, and the Ownership and Control Interest Disclosure Statement (HCFA-1513) must be submitted to:

Chief, Provider Enrollment
 Division of Medical Assistance
 and Health Services
 CN 712
 Trenton, New Jersey 08625

ii. Upon signing and returning the Medicaid Provider Application, the Ownership and Control Interest Disclosure

Statement (HCFA-1513), the Provider Agreement, and other special enrollment documents as required to the New Jersey Medicaid Program, the ASC will receive written notification of approval or disapproval.

iii. If approved as a provider, the ASC will be assigned a Provider Number and added to the Medicaid Directory of Independent Clinics.

iv. The Prudential Insurance Company (New Jersey Medicaid Contractor for independent clinics) will furnish an Independent Clinic Services provider manual and an initial supply of pre-printed claim forms (MC-14 form).

5. Make a charge to all patients for services provided, except as provided by legislation;

i. The charge made for Medicaid patients must not be more than that made to any other patient;

6. It shall be the responsibility of each approved ASC clinic to notify the New Jersey Medicaid Program a minimum of 72 hours prior to the relocation or closing of its facility.

(c) Covered Medicaid surgical procedures in an ambulatory surgical center are only those surgical and medical procedures which appear as an appendix to 42 CFR 416.65, the Federal regulations governing ASC services. No other procedure is covered unless approved by the Division of Medical Assistance and Health Services (New Jersey Medicaid Program).

1. A request by an ambulatory surgical center facility for approval to add an additional surgical procedure not specifically included in the Medicare listing must be reviewed and evaluated by the Division of Medical Assistance and Health Services.

(d) New Jersey Medicaid reimbursement for covered surgical services performed in an approved ambulatory surgical center shall be made for services rendered by both the physician and the ambulatory surgical center facility.

1. Physician reimbursement for covered surgical services performed in an approved ambulatory surgical center shall be in keeping with the New Jersey Medicaid Program's physician procedure fee schedule and limited to New Jersey Medicaid's allowable fees.

i. The physician performing the surgical procedure shall bill the New Jersey Medicaid Program, on the 1500-N.J. claim form, directly either as an individual provider or as part of a physician's group.

ii. A physician receiving a salary from the ASC for performing administrative duties not related to surgical-medical procedures will be permitted to submit claims for the surgical medical procedures which the physician actually performs.

2. A covered procedure performed in an ASC is separated for reimbursement purposes into one of four payment groups as designated in the appendix to 42 CFR 416.65, the Federal regulations governing ASC services.

i. A facility is reimbursed for any procedure within the same group at a single rate.

ii. A single payment is made to an ambulatory surgical center which encompasses all facility services furnished by the ASC in connection with a covered procedure performed on a patient in a single operative session.

(1) If more than one covered surgical procedure is furnished to a patient in a single operative session, payment will be made for the procedure with the highest reimbursement rate. Other covered surgical procedures furnished in the same session will not be reimbursed.

(2) Facility services, generally, are items and services furnished in connection with listed covered procedures which would be covered if furnished in a hospital operating suite or hospital outpatient department in connection with such proce-

dures. These facility services would not include physicians' services, or medical and other health services for which payment could be made under other provisions of the Medicaid Program such as laboratory, x-ray, or diagnostic procedures (other than those directly related to performance of the surgical procedure).

(For further information about covered services and method of reimbursement, see the Independent Clinic Services Manual (N.J.A.C. 10:66-1.1 through 1.9 and 10:66-3.3).

10:53-1.1

...
 "Ambulatory surgical center or "ASC" operated by a hospital" means a hospital-affiliated ambulatory surgical center that is a separately identifiable entity, physically, administratively and financially independent and distinct from other operations of the hospital (See N.J.A.C. 10:53-1.16).
 ...

10:53-1.16 Ambulatory Surgical Center (ASC)

(a) An ASC may be either independent (that is, not part of a provider of services or any other facility) or may be operated by a hospital (that is, under the common ownership, licensure or control of a hospital).

1. An ASC operated by a hospital must be a separately identifiable entity physically, administratively, and financially independent and distinct from other operations of the hospital.

(b) In order to be approved as a Medicaid Provider, an ASC must:

1. Have an agreement with the Health Care Financing Administration (HCFA) under Medicare to participate as an ASC;

2. Possess a Certificate of Need from the New Jersey Department of Health;

3. Possess a license from the New Jersey State Department of Health;

4. Be individually approved as a provider by the Division of Medical Assistance and Health Services before it will be reimbursed for services rendered to Medicaid patients.

i. The Medicaid Provider Application, the appropriate Provider Agreement, and the Ownership and Control Interest Disclosure Statement (HCFA-1513) must be submitted to:

Chief, Provider Enrollment
 Division of Medical Assistance and Health
 Services
 CN 712
 Trenton, New Jersey 08625

ii. Upon signing and returning the Medicaid Provider Application, the Ownership and Control Interest Disclosure Statement (HCFA-1513), the Provider Agreement, and other special enrollment documents as required to the New Jersey Medicaid Program, the ASC will receive written notification of approval or disapproval.

iii. If approved as a provider, the ASC will be assigned a Provider Number and added to the Medicaid Directory of Independent Clinics.

iv. The Prudential Insurance Company (New Jersey Medicaid Fiscal Agent for Independent Clinics) will furnish an Independent Clinic Services provider manual and an initial supply of pre-printed claim forms (MC-14 form).

5. Make a charge to all patients for services provided, except as provided by legislation;

i. The charge made for Medicaid patients must not be more than that made to any other patient;

6. It shall be the responsibility of each approved ASC clinic to notify the New Jersey Medicaid Program a minimum of 72 hours prior to the relocation or closing of its facility.

(c) Covered Medicaid surgical procedures in an ambulatory surgical center mean those surgical and medical procedures which appear as an appendix to 42 CFR 416.65, the Federal regulations governing ASC services. No other procedure is covered unless approved by the Division of Medical Assistance and Health Services (New Jersey Medicaid Program).

1. A request by an ambulatory surgical center facility for approval to add an additional surgical procedure not specifically included in the Medicare listing must be reviewed and evaluated by the Division of Medical Assistance and Health Services.

(d) New Jersey Medicaid reimbursement for covered surgical services performed in an approved ambulatory surgical center shall be made for services rendered by both the physician and the ambulatory surgical center facility.

1. Physician reimbursement for covered surgical services performed in an approved ambulatory surgical center shall be in keeping with the New Jersey Medicaid Program's physician procedure fee schedule and limited to New Jersey Medicaid's allowable fees.

i. The physician performing the surgical procedure shall bill the New Jersey Medicaid Program, on the 1500-N.J. claim form, directly either as an individual provider or as part of a physician's group.

ii. A physician receiving a salary from the ASC for performing administrative duties not related to surgical-medical procedures will be permitted to submit claims for the surgical-medical procedures which the physician actually performs.

2. A covered procedure performed in an ASC is separated for reimbursement purposes into one of four payment groups as designated in the appendix to 42 CFR 416.65, the Federal regulations governing ASC services.

i. A facility is reimbursed for any procedure within the same group at a single rate.

ii. A single payment is made to an ambulatory surgical center which encompasses all facility services furnished by the ASC in connection with a covered procedure performed on a patient in a single operative session.

(1) If more than one covered surgical procedure is furnished to a patient in a single operative session, payment will be made for the procedure with the highest reimbursement rate. Other covered surgical procedures furnished in the same session will not be reimbursed.

(2) Facility services, generally, are items and services furnished in connection with listed covered procedures which would be covered if furnished in a hospital operating suite or hospital outpatient department in connection with such procedures. These facility services would not include physicians' services, or medical and other health services for which payment could be made under other provisions of the Medicaid Program such as laboratory, x-ray, or diagnostic procedures (other than those directly related to performance of the surgical procedure).

(For further information about covered services and method of reimbursement, see the Independent Clinic Services Manual (N.J.A.C. 10:66-1.1 through 1.9 and 10:66-3.3).)

10:66 Agency Note: Eliminate the address—P.O. Box 2486 wherever it appears in this subchapter and substitute CN 712 in its place. Eliminate the title "Local Medicaid Office" wher-

ever it appears in this subchapter and substitute the title "Medicaid District Office" in its place.

10:66-1.1 Scope

This chapter is concerned with the provision of quality health care services to eligible recipients of the New Jersey Medicaid Program in an independent clinic setting.

10:55-1.2 Definitions

"Ambulatory surgical center" or "ASC" means any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization; is licensed by the New Jersey State Department of Health; has an agreement with the Health Care Financing Administration (HCFA) under Medicare to participate as an ASC; and is enrolled as a provider in the New Jersey Medicaid Program (See N.J.A.C. 10:66-1.3).

"Ambulatory surgical center facility services" mean those items and services furnished by an ambulatory surgical center in connection with a covered surgical procedure. The items and services are those which would otherwise be covered if furnished on an inpatient or outpatient basis in a hospital in connection with the covered surgical procedure.

"Covered ambulatory surgical center procedures" means those surgical and other medical procedures only which appear as an appendix to 42 CFR 416.65, the Federal regulations governing ASC services. No other procedure is covered unless approved by the Division of Medical Assistance and Health Services (New Jersey Medicaid Program).

10:66-1.3 Provisions for participation (New Jersey based)

[a] Each independent clinic, including every satellite, must be individually approved as a provider, by the New Jersey Division of Medical Assistance and Health Services (New Jersey Medicaid Program), before it will be reimbursed for services rendered to Medicaid patients.]

[1. The Medicaid Provider Application (FD-20) the appropriate Provider Agreement, (FD-62), and the Ownership and Control Interest Disclosure Statement (HCFA-1513) are to be submitted to:

Chief, Provider Enrollment
Division of Medical Assistance
and Health Services
P.O. Box 2486]

(a) To be reimbursed for services rendered to Medicaid patients, each independent clinic and each of its satellites must obtain from the Division of Medical Assistance and Health Services (New Jersey Medicaid Program) individual approval as a provider.

1. Each approved satellite will be assigned a separate provider number which will appear on the claim form to be used for services performed at that facility. Billing may be performed from one central location; however, the claim form that corresponds to the actual place of service must be used.

i. If it is determined that services have been provided by a non-approved satellite, the New Jersey Medicaid Program may seek recovery of any payments incorrectly or illegally expended, together with appropriate penalties, if warranted.

(b) In addition to (a) above, [In order] to be approved as a Medicaid Provider [all] an independent clinic[s] must:

1. Possess a Certificate of Need from the New Jersey Department of Health, if required; and

2. Possess a license from the New Jersey State Department of Health, if required; and

[2. Make a charge to all patients for services provided, except as provided by legislation. The charge made to Medicaid patients must not be more than that made to any other patient; and]

3. In addition to the requirements of (a) and (b)1. and 2. above, the following types of clinics must obtain approval from the relevant State and Federal agencies, as noted in this paragraph, in order to be reimbursed:

i. Ambulatory Care Facility—New Jersey State Dept. of Health

ii. Ambulatory Surgical Center—New Jersey State Dept. of Health, and HCFA under Medicare (Written agreement)

iii. Cerebral Palsy Clinic—New Jersey State Dept. of Health

iv. Dental Clinic—New Jersey Board of Dentistry

v. Family Planning Clinic—New Jersey State Dept. of Health

vi. Medical Day Care Center (Non Residential)—New Jersey State Dept. of Health

vii. Mental Health Clinic—New Jersey Dept. of Human Services, Division of Mental Health and Hospitals.

4. A clinic other than those in (b)3. above which desires to become a provider must apply (see (d) below) by written request, which must contain the following information:

i. Type of services to be provided;

ii. Organizational structure (for example, governing body, staffing patterns);

iii. Relationships with other governmental or health agencies (for example, Medicare, HHS or private sponsorship);

iv. Finances (budgets, fee schedule, sources of income, cost, grants, endowments, etc.);

v. Name, degree(s), license number(s) and social security number(s) of professional staff (e.g., physician, podiatrist, pharmacist, etc.).

5. Make a charge for services to all patients, except as provided by legislation, with the proviso that no charge will be made directly to the Medicaid patient, and the charge to the New Jersey Medicaid Program may not exceed the charge to any other patient for equal service.

[3. Sign the agreement to participate in the New Jersey Medicaid Program (Form FD-62) and/or other special enrollment documents, as required.]

[(c) In addition to (b) above, the following types of clinics must also be approved by the State agency indicated below, before they can obtain Medicaid approval.

1. Mental health clinics: Approved to provide psychiatric services by the New Jersey Department of Human Services, Division of Mental Health and Hospitals.

2. Dental clinics: Approved to provide dental services by the New Jersey Board of Dentistry.

3. Family planning clinics, ambulatory care facilities, cerebral palsy clinics, Easter seal clinics, etc.: Meet the New Jersey Health Department's minimum standards for licensure and approval in the designated modalities.]

[4. Other types of clinics: Clinics other than those described in (c) 1, 2, and 3 above, who wish to become providers under the Medicaid Program must submit a written request including the following information (see (a) above):

i. Type of services to be provided;

ii. Organization structure (e.g. governing body, staffing patterns);

iii. Relationships with other governmental or health agencies (e.g. Medicare, HHS or private sponsorship);

iv. Finances (budgets, fee schedule, sources of income, cost, grants, endowments, etc.);

v. Name, degree(s), license number(s) of professional staff (e.g. physician, podiatrist, pharmacist, etc..)]

[5. Medical day care centers: Licensed by the New Jersey State Department of Health as a non-residential medical day care center.]

[6. Satellite clinics: Each branch location or satellite of an approved clinic must meet the same standards that apply to other clinics in the specified category and must be individually approved by the New Jersey Medicaid Program before they can be reimbursed.

i. Approved satellite will be assigned a separate provider number, which will appear on the claim form to be used for services performed at that facility. Billing may be performed from one central location, however, the claim forms that correspond to the actual place of service must be used.

ii. If it is determined that services have been provided by a non-approved satellite, the New Jersey Medicaid Program may seek recovery of any payments incorrectly or illegally expended, together with appropriate penalties, if warranted.]

(d) The Medicaid Provider Application, the appropriate Provider Agreement, the Ownership and Control Interest Disclosure Statement (HCFA-1513) and other enrollment documents as required are to be submitted to the:

**Chief, Provider Enrollment
Division of Medical Assistance
and Health Services
CN 712
Trenton, New Jersey 08625**

[(d)] (e) Upon signing and returning the Medicaid Provider Application, the Provider Agreement, **the Ownership and Control Interest and Disclosure Statement, and other enrollment documents as required**, to the New Jersey Medicaid Program, the clinic will receive written notification of approval or disapproval.

1. If approved as a provider, the clinic will be assigned a provider number and added to the Medicaid Directory of Independent Clinics.

2. The Prudential Insurance Company (New Jersey Medicaid Fiscal Agent) will furnish a provider manual and an initial supply of pre-printed claim forms.

[.] (f) It shall be the responsibility of each approved clinic to notify the New Jersey Medicaid Program a minimum of 72 hours prior to the relocation or closing of its facility.

10:66-1.6 Scope of service

(a) Licensed and approved independent clinics may, to the extent of their specialty, license and/or approved New Jersey Medicare Provider Agreement, provide the following services (see 1.6(b) thru (n)) when medically necessary. Procedure codes, descriptions, and maximum dollar allowances, which correspond to allowable services, are listed in subchapter 3 (N.J.A.C. 10:66-3).

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

(h) [minor] Surgical services rules for both minor surgery in an ambulatory care facility and for surgery in an ambulatory surgical center follow:

1. Specific minor surgical procedures in an ambulatory care facility may be reimbursed when performed by a qualified physician[,] in a licensed ambulatory care facility which is specifically approved to perform such services by the New Jersey Medicaid Program.

[2. See N.J.A.C. 10:66-3.3(f) for procedure codes. For dental surgery, see Dental Services Manual, N.J.A.C. 10:56-3.]

2. Covered surgical procedures in an ambulatory surgical center are those surgical and medical procedures only which

appear as an appendix to 42 CFR 416.65, the Federal regulations governing ASC services. No other procedure is covered unless approved by the Division of Medical Assistance and Health Services (New Jersey Medicaid Program). General and specific standards which apply to covered surgical procedures in an ASC include but are not limited to the following (42 CFR 416.65):

i. General standards for covered surgical procedures are those surgical and other medical procedures that:

(1) Are commonly performed on an inpatient basis in hospitals, but may be safely performed in an ASC;

(2) Are not of a type that are commonly performed or that may be safely performed in a physician's office;

(3) Are limited to those requiring a dedicated operating room (or suite), and generally requiring a post-operative recovery room or short-term (not overnight) convalescent room;

ii. Specific standards for covered surgical procedures are limited to those that do not generally exceed:

(1) A total of 90 minutes operating time; and

(2) A total of 4 hours recovery or convalescent time.

iii. If the covered surgical procedures require anesthesia, the anesthesia must be:

(1) Local or regional anesthesia; or

(2) General anesthesia of 90 minutes or less duration.

iv. Covered surgical procedures may not be of a type that:

(1) Generally result in extensive blood loss;

(2) Require major or prolonged invasion of body cavities;

(3) Directly involve major blood vessels; or

(4) Are generally emergency or life-threatening in nature.

3. Surgical procedures performed in an ASC are separated into four payment groups as designated under Medicare by the Health Care Financing Administration (HCFA).

i. A request by an ambulatory surgical center facility to add additional surgical procedures not specifically included in one of the four Medicare payment groups must be reviewed and evaluated by the Division of Medical Assistance and Health Services (New Jersey Medicaid Program).

ii. If additional surgical procedures are approved, each procedure will be assigned to one of the existing four Medicare payment groups.

4. Medical justification: An asterisked (*) procedure should be viewed as potentially an office procedure as well as a procedure possibly suited for the purpose of an Ambulatory Surgical Center.

i. The decision would depend upon the extent and/or location of the involved pathology as well as the age and/or the condition of the patient. It also includes the need for anesthesia and if so the type to be used.

ii. If the asterisked procedure is performed in an Ambulatory Surgical Center, then the record must clearly demonstrate an adequate reason to support that decision. Reasons such as "for the convenience of the physician", "for medical-legal reasons", or "an inadequate fee", are not considered acceptable indications not to utilize the physicians' office if it can be an appropriate setting for the performance of the procedure.

5. Facility services in an ambulatory surgical center, generally, are items and services furnished in connection with a covered surgical procedure as specified under Federal regulations 42 CFR 416.65. These items and services are those which would otherwise be covered if furnished in a hospital operating suite or hospital outpatient department in connection with the covered surgical procedure.

i. ASC facility services include but are not limited to:

(1) Nursing services, services of technical personnel, and other related services;

(2) The use by the patient of the ASC's facilities;

(3) Drugs, biologicals, surgical dressings, supplies, splints, casts, appliances and equipment commonly furnished in connection with surgical procedures. Drugs and biological are limited to those which cannot be self-administered;

(4) Diagnostic or therapeutic items and services furnished by ASC staff in connection with covered surgical procedures, for example, simple tests just before surgery, primarily urinalysis and blood hemoglobin or hematocrit;

(5) Administrative, recordkeeping and housekeeping items and services;

(6) Blood, blood plasma, platelets, etc.;

(7) Material for anesthesia;

ii. ASC facility services do not include medical or other health services for which payment could be made under other provisions of the Medicaid Program such as laboratory, x-ray, or diagnostic procedures (other than those directly related to performance of the surgical procedure). Examples of items or services which are not ASC facility services include:

(1) Physician's services;

(2) The sale, lease, or rental of durable medical equipment to ASC patients for use in their homes;

(3) Prosthetic devices;

(4) Ambulance services and/or invalid coach services;

(5) Leg, arm, back and neck braces;

(6) Artificial legs, arms and eyes;

(7) Services furnished by an independent laboratory.

6. See N.J.A.C. 10:66-3.3(f) for procedure codes. For dental surgery, see Dental Services Manual, N.J.A.C. 10:56-3.

(i)-(n) (No change.)

10:66-1.7 Basis for reimbursement

(a) Reimbursement for covered services in an approved independent clinic shall be determined by the Commissioner of the Department of Human Services.

1. Except where a set fee schedule exists[,] or is otherwise stated, (such as for ambulatory surgical centers), reimbursement to independent clinics shall be based on the same fees, conditions and definitions, for corresponding services, utilized for the reimbursement of individual Medicaid participating practitioners and providers in "private" practice.

2. In no event shall the charge to the New Jersey Medicaid Program exceed the charge by the provider for identical services to other groups or individuals in the community.

(b) **Specialist—Non Specialist:** If a procedure code, approved for use by a specific clinic, is assigned both a specialist and non-specialist "Medicaid Dollar Value", the amount of the reimbursement will be based upon the status (specialist or non-specialist) of the individual practitioner who actually provided the billed service.

1. To identify this practitioner enter the Individual Medicaid Practitioner (IMP) Number in the Attending or Operating [Practitioner] Practitioner section, Item [14 or Item] 15 or Item 16 on the Independent Outpatient Health Facility claim form (MC-14).

2. In a clinic with both specialist and non-specialist members, specialist services must be billed separately from non-specialist services. Therefore, for services provided to the same patient, a specialist and a non-specialist may not bill on the same claim form.

(c) **New Jersey Medicaid reimbursement for covered surgical services performed in an approved ambulatory surgical center shall be made for services rendered by both the physician and the ambulatory surgical center facility.**

1. Physician reimbursement for covered surgical services performed in an approved ambulatory surgical center shall be in keeping with the New Jersey Medicaid Program's Physician Procedure Fee Schedule and limited to New Jersey Medicaid's allowable fees.

i. The physician performing the surgical procedure shall bill the New Jersey Medicaid Program, using the 1500-N.J. claim form, directly either as an individual provider or as part of a physician's group.

(1) A physician receiving a salary from the ASC for performing administrative duties not related to surgical and medical procedures will be permitted to submit claims for surgical-medical procedures which the physician actually performs.

2. A covered procedure performed in an ASC is separated for facility reimbursement purposes into one of four payment groups as designated in the appendix to 42 CFR 416.65, the Federal regulations governing ASC services.

i. A facility is reimbursed for any procedure within the same group at a single rate.

ii. A single payment is made to an ambulatory surgical center which encompasses all facility services furnished by the ASC in connection with a covered procedure performed on a patient in a single operative session.

(1) If more than one covered surgical procedure is furnished to a patient in a single operative session, payment will be made for the procedure with the highest reimbursement rate. Other covered surgical procedures furnished in the same session will not be reimbursed.

iii. The New Jersey Medicaid Program facility fee for each of the four groups is given under 10:66-3.3 "Ambulatory Surgical Center Codes."

10:66-1.9 Record keeping

(a) Clinics are to keep legible individual records as are necessary to fully disclose the kind and extent of services provided, as well as the medical necessity for those services.

(b) The minimum requirements, except for ambulatory surgical centers, for services performed by the clinic shall include a progress note in the clinical record for every visit, except where specified otherwise, which supports the procedure code or codes claimed. This information must be available upon the request of the New Jersey Medicaid Program or its agents.

(c) In addition to (a) above, medical records in an ASC must include, but are not limited to (42 CFR 416.47):

1. Patient identification;

2. Significant medical history and results of physical examination;

3. Pre-operative diagnostic studies (entered before surgery), if performed;

4. Findings and techniques of the operation, including a pathologist's report on all tissues removed during surgery, except those exempted by the governing body;

5. Any allergies and abnormal drug reactions;

6. Entries related to anesthesia administration;

7. Documentation of properly executed informed patient consent;

8. Discharge diagnosis.

10:66-3.3 Procedure code listing

(a)-(e) (No change.)

(f) [Minor Surgery:] Surgery codes are separated into two parts, 1. minor surgery and 2. ambulatory surgical center procedure Codes.

1. Only those clinics which have been specifically approved by the New Jersey Medicaid Program to provide minor surgical services will be reimbursed for the following codes.

i. The [L]listed values for all the minor surgical procedures include the surgery and the follow-up care for the period indicated in days, in the column headed "Follow-Up Days". Procedure codes and Medicaid Dollar Values marked by an asterisk supplement those listed in [(a) 10] (i) below under Podiatry services.

SKIN, MUCOUS [MEMBRANCE] MEMBRANE, SUB-CUTANEOUS AND AREOLAR TISSUES INCISION 0101 through 0408 (No change.)

2. A covered procedure performed in an ASC is separated for reimbursement purposes into one of four payment groups as designated in the appendix to 42 CFR 416.65, the Federal regulations governing ASC services.

i. A facility is reimbursed for any procedure within the same group at a single rate.

ii. The Medicaid rates applicable to the four payment groups are as listed:

Group 1—\$185.00

Group 2—\$220.00

Group 3—\$237.00

Group 4—\$269.00

(g)-(n) (No change.)

(a)

Manual for Hospital Services Admission and Billing Procedures

Proposed Readoption: N.J.A.C. 10:52-2.1, 2.2, 2.5, 2.6, 2.8, 2.9, 2.10, 2.12, 2.13 Proposed Readoption with Concurrent Amendments: N.J.A.C. 10:52-2.3, 2.4, 2.7, 2.8A, 2.11

Authority: N.J.S.A. 30:4D-6a(1)(2), 7 and 7b. Proposal Number: PRN 1984-656.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:52-2 expires on February 2, 1985. The readoption of the existing rule becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of readoption. The concurrent amendments to the existing rule become effective upon publication in the Register of a notice of adoption.

The agency proposal follows:

Summary

N.J.A.C. 10:52-2 describes the procedures that acute care general hospitals are required to follow when they submit a claim to the New Jersey Medicaid Program for reimbursement. The topics covered in this subchapter include identification of a financially eligible Medicaid patient, billing procedures for both inpatient and outpatient services, and timely submission of hospital claims. The rule was promulgated to establish a standardized method of claim submittal by hospitals, in order that the Division's fiscal agents, either the Prudential Insurance Company, or New Jersey Blue Cross, can expeditiously process and pay these claims.

An administrative review has been conducted, and a determination made that the rule should be continued because it is adequate, reasonable, efficient, understandable and responsive for the purpose for which it was created. The rule enables hospital providers to bill and be reimbursed by the Medicaid program.

The rule has been amended several times. The three most important amendments were the use of the Uniform Bill-Patient Summary Form (UB-PS) (14 N.J.R. 158 (b)); the reimbursement for dental services in a hospital outpatient department on a fee-for-service basis (13 N.J.R. 946(a)); and allowing providers the option of using an approved Automated Data Exchange for billing purposes (13 N.J.R. 418(a)).

The rule is being amended on readoption. In Section 2.3, the reference to the facility's per diem rate is being deleted, and the reference to the approved DRG (Diagnosis Related Group) rate is being inserted, because hospitals are currently reimbursed under the DRG system. The reference to AID (Approval by Individual Diagnosis) days is being deleted from Section 2.7 because this method of recertification is no longer in use. Instead, new language has been added to indicate that the PSRO (Professional Standard Review Organization) is responsible for certifying or recertifying the medical necessity for a hospital admission. The text of Section 2.11 is being amended to reflect the Division's current policy regarding timely submission of claims filed by hospitals. The reader is referred to N.J.A.C. 10:49-1.12(b) and (c), which indicates that claims must be submitted within one year as specified in the Federal regulations (42 CFR 447.45(d)). Follow-up inquiries must be made within 180 days. Providers who do not comply with these time requirements will have their claims denied. If the provider disagrees with the denial, a hearing may be requested. See N.J.A.C. 10:49-1.16 and 10:49-5.

Social Impact

The rule's impact is more economic than social, because it concerns hospital billing for services that have already been rendered. However, an orderly system of billing will help insure continued availability of both inpatient and outpatient hospital services to Medicaid patients. The proposal will not change the current system that hospitals use for submitting claims to the Medicaid Program.

The public that is affected is any Medicaid patient that requires treatment in a hospital, whether on an inpatient or outpatient basis. The rule also impacts on all acute care general hospitals, who are required to follow the procedures contained in the rule.

The rule should be continued to enable hospitals to continue to be reimbursed for treating Medicaid patients. The Division's fiscal agents, the Prudential Insurance Company, and New Jersey Blue Cross, will continue to process hospital claims.

Economic Impact

Last year the Division spent approximately 310 million dollars (Federal-State share combined) on hospital reimbursement.

There is no cost to the Medicaid patient who receives hospital treatment.

Hospitals who submit claims correctly and timely will be reimbursed for services rendered to financially eligible Medicaid patients. The rule should be continued for this reason. The amendments direct that hospital providers must furnish proof of medical necessity by attaching the appropriate certification and by obtaining prior authorization, when appropriate. (See N.J.A.C. 10:52-2.7 below). Hospitals must also sub-

mit claims and follow up inquiries timely. (See N.J.A.C. 10:52-2.11 below). The rule should be continued to enable hospitals to be reimbursed for properly submitted claims.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:52-2.

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

10:52-2.3 General billing procedures for inpatient services

(a) Uniform Bill-Patient Summary Form (UB-PS) is used to bill for inpatient services in a participating hospital and for emergency inpatient services in a non-participating hospital.

(b) The hospital should not include charges for services of physicians, other practitioners, therapists or technicians who customarily bill patients directly and who are not directly or indirectly employed or contracted for by the hospital:

1. Reimbursement for covered services furnished by unlicensed physicians employed directly or indirectly by a hospital shall not be made unless said unlicensed physician is lawfully practicing medicine and/or surgery pursuant to a specific statutory exemption under the laws of the State of New Jersey, and reimbursement in such instances is limited to reasonable costs which are made part of the facility's [per diem] **approved DRG (Diagnosis Related Group)** rate. All other reimbursement for services rendered by unlicensed physicians is specifically prohibited.

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

10:52-2.4 Disposition of Uniform Bill Summary form (UB-PS)

(a) The Uniform Bill-Patient Summary Form should be handled in the following manner:

1. One copy (payor copy) must be forwarded to the hospital's contractor for processing.

2. One copy (hospital copy) is to be retained by the hospital.

3. The last copy (patient's copy) should be issued only if requested by the patient or on the patient's behalf. Whenever a request for a copy of the hospital statement is made on behalf of a Medicaid patient, the provider is requested to:

i. Complete the Medicaid Form (LD-13) and forward to:
Bureau of Administrative Control
[P.O. Box 2486] CN-712
Trenton, N.J. 08625

ii. Release the requested hospital statement with a notation that the bill has been paid by the New Jersey Medicaid Program.

10:52-2.7 Inpatient certification and recertification

[(a) Whenever the span of inpatient days allowed under AID (Approval by Individual Diagnosis) will be exceeded, the attending physician is required to certify concerning the necessity of continued hospitalization beyond the AID days.

(b) The regulations of the New Jersey Health Services Program require the recertification of the need for continued hospital stay of the patient. The attending physician is required to complete the recertification on or before the expiration of the AID days. Program payment will not be made unless this requirement is met.

(c) The Inpatient Recertification form is to be used by the attending physician whenever AID days are exceeded as noted above. The form is to be completed in quadruplicate and signed by the attending physician.

(d) The Inpatient Recertification form is to be disposed of in the following manner.

1. The original (contractor's copy) must be forwarded to the hospital's contractor with inpatient hospital claim form for processing;

2. The second copy (county copy) must be mailed to the local county medical assistance unit;

3. The third copy (provider copy) will be retained by the hospital;

4. The fourth copy (utilization committee copy) will be forwarded to the provider's utilization review committee for review.]

(a) Providers are required to follow the procedures set forth in N.J.A.C. 10:52-1.4, entitled special provisions, to establish the medical necessity for admission or continued hospitalization. These procedures include, but are not limited to, certification by the PSRO (Professional Standards Review Organization) and prior authorization, when appropriate.

[(e) (b) (No change in text.)

10:52-2.8A Billing procedures for outpatient services: Dental

(a)-(d) (No change.)

(e) All claims involving dental emergencies billed on a charge basis (example Hospital Emergency Room) must be forwarded by the hospital to the Chief, Bureau of Dental Services, [324 East State Street] **Quakerbridge Plaza, Quakerbridge Road, CN-713, Trenton, New Jersey 08625** prior to submission to their current contractor for reimbursement. Such claims will not be reimbursable when the Dental Clinic of that hospital is open.

(f) (No change.)

10:52-2.11 Timely submission of hospital claims

[(a) Effective January 1, 1976, the following time limitations will apply:

1. All claims for inpatient and outpatient hospital services and home health agency services rendered to eligible Medicaid recipients must be received by the contractor (Blue Cross of New Jersey; Prudential Life Insurance Company) within 12 months from the date of the day of discharge (inpatient) or the last date of service billed (outpatient and home health). Thus, a claim with a date of discharge (inpatient) or the last date of service billed (outpatient and home health) of June 13, 1975, must be received by the contractor by June 13, 1976;]

(a) All claims for hospital services, whether inpatient or outpatient, must be submitted to the appropriate fiscal agent, either the Prudential Insurance Company or New Jersey Blue Cross, within the time periods specified in N.J.A.C. 10:49-1.12, entitled "Timely submission of claims and claim inquiries."

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

[3. In Order to receive reimbursement for claims for services rendered prior to January 1, 1975, such claims must be received by the contractor by January 1, 1976;]

(b) All follow-up inquiries to claims that have been submitted to the appropriate fiscal agent must be made within the time period specified in N.J.A.C. 10:49-1.12.

[4. Claims not submitted timely will not be approved for payment in those instances where it is demonstrated that the claim could have been submitted or resubmitted within the time limitation as defined in this section.]

(c) Claims and follow-up inquiries that are not submitted within the prescribed time frames will not be approved for payment.

(a)**Home Health Services Manual
Community Care Waiver Program for the
Elderly and Disabled****Proposed New Rule: N.J.A.C. 10:60-3**

Authority: N.J.S.A. 30:4D-6b(2)(6)(15)(16); N.J.S.A. 30:4D-7(a), (b) 1915(c) of the Social Security Act.
Proposal Number: PRN 1984-640.

The agency proposal follows:

Summary

This proposed new rule describes the basic criteria governing the Community Care Waiver Program for the Elderly and Disabled. The program is designed to provide an alternative to institutional care by allowing health care and/or other support services to be provided to elderly and disabled persons who wish to remain in the community. The legal basis for this policy is Federal legislation enacted as part of the Omnibus Budget Reconciliation Act of 1981 (Section 2176, P.L. 97-35). Under the provisions of this Federal law, the New Jersey Department of Human Services submitted a request for waiver which was approved by the United States Department of Health and Human Services for a three year period beginning October 1, 1983. The waiver granted certain exception to the regular New Jersey Title 19 (Medicaid) program that are explained as follows in the Summary. These include eligibility standards, cost-sharing, by persons who qualify for community care services and phased-in by county over a three year period, also known as statewideness.

In some respects, the process for obtaining services under the community care waiver is similar to the process for obtaining services in a long term care facility. Both community care and long term care require that the individual be declared financially eligible by the appropriate county welfare agency. The individual's income must exceed the SSI Community Standard for the appropriate living arrangement, but be less than the Medicaid institutional cap, which is currently \$882.00 per month. The patient's resources must fall within Medical Assistance Only standards. This feature of the Federal government allowing an institutional income and resource standard to a community setting is unique.

In addition to establishing financial eligibility, the individual must be assessed as needing skilled or intermediate nursing level care. The assessment is performed by the Medical Evaluation Team (MET), consisting of a physician, nurse and social worker within the Division of Medical Assistance and Health Services.

Once the overall basic criteria has been met, then the standards specific to the waiver must be applied. A brief discussion of these standards, which appear in the text below, follows. The Community Care Waiver Program will be phased-in over a period of three years. There are a total of 1800 slots available, which breaks down into approximately 600 slots a year for three years. Participation will be phased in over a three year period until 21 counties are included. There are other factors limiting eligibility, such as the requirement that the individual be over 65, or determined disabled by the Social Security Administration, and receiving disability pay-

ments, and eligible for Medicare. The services available under the community care waiver are not the full range of services provided under the New Jersey Title XIX (Medicaid) Program. Instead, there are seven services available, including home health care, medical day care, non-emergency medical transportation, case management, social adult day care, homemaker care and respite care.

In addition, there are two limitations placed on the cost of community care. Cost sharing will be required for all persons who qualify for community care services if their income minus the cost of paid medical expenses not subject to third party payment exceeds the maintenance standard. There are also financial controls which include the provision that individuals may be excluded from the Community Care Waiver Program if Medicaid's cost of community care services exceeds 70 per cent of long term facility care.

Social Impact

The proposed new rule impacts on elderly and disabled New Jersey residents who require nursing home level of care. These persons will now have the option of receiving health related services in either the community or in a long term care facility. The persons who choose to remain in the community will be entitled to receive three services covered under the existing Medicaid program (home health care, medical day care, and non-emergency medical transportation) and four new services (case management, social adult day care, home maker care, and respite care). The Division's Office Home Care Programs is responsible for administering the Program.

Economic Impact

The Community Care Waiver Program is funded by both the State and Federal governments.

Providers of community care waiver services will be reimbursed in accordance with Medicaid policies, procedures, and fee schedules.

Federal regulations (42 CFR 435.726) require that persons who qualify for the community care waiver services contribute towards the cost of their care in accordance with the established formula (see N.J.A.C. 10:60-3.3(d) below).

Full text of the proposed new rule follows.

**SUBCHAPTER 3. COMMUNITY CARE PROGRAM
FOR THE ELDERLY AND DIS-
ABLED****10:60-3.1 Purpose**

The Community Care Program for the Elderly and Disabled was initiated because persons are institutionalized, not for medical reasons necessarily, but because of the limited health and social services available to them in their homes or communities, and their inability to pay for these services or have them covered by Medicaid.

10:60-3.2 Scope and authority

(a) The provision for states for obtaining waivers for home or community based services was part of the Federal Omnibus Budget Reconciliation Act of 1981 (Section 2176, P.L. 97-35). This law was codified as Section 1915 (c) of the Social Security Act and may be cited as 42 U.S.C. 1396 n.

1. Under the provisions of this Federal legislation, the New Jersey Department of Human Services submitted a request for a waiver for home and community-based services to the United States Department of Health and Human Services, who granted approval effective October 1, 1983 for a period

of three years. The regulations that follow describe the basic provisions of this waiver.

10:60-3.3 Features of the Community Care Program for the Elderly and Disabled (the Waiver Program)

(a) By waiving "Statewideness," the program will allow the development of approximately 600 community care slots per year for a total of 1,800 in three years. Participation will be phased-in over a three year period beginning October 1, 1983, 1984 and 1985 until all 21 counties are served. Each selected county will have a designated case management site such as a County Welfare Agency, a Medicaid District Office, or a Home Health Agency. The first-year counties are: Bergen, Gloucester, Ocean, Burlington, Somerset, Morris and Atlantic. The second year counties are Cape May, Hudson, Hunterdon, Mercer, Middlesex, Passaic, Salem, Sussex and Warren. The third year counties are Cumberland, Camden, Union, Monmouth and Essex.

(b) In order to be eligible for the Community Care Program for the Elderly and Disabled an individual must meet the following criteria:

1. 65 years or older; or determined disabled under the Social Security Act and receiving Social Security disability payments; and

2. Eligible for Medicare; and

3. Assessed as in need of skilled or intermediate facility care; and

4. Has income which exceeds the SSI community standard for the appropriate living arrangement, but is less than the Medicaid institutional cap.

i. Financial eligibility is determined by the 21 County Welfare Agencies each of which use income eligibility standards that appear in the N.J.A.C. 10:94-5.6(c)5, Table B, entitled Variations in Living Arrangements. Both the SSI community standard, and the Medicaid institutional cap, appear in this table. The actual amounts are recomputed periodically and published by the Division of Public Welfare, at N.J.A.C. 10:94-5.6(c)5 Table B.

(c) Services provided under this program will complement services provided under the Medicare program. A modified Medicaid services package will be made available.

1. Services provided under the Community Care Waiver Program for the Elderly and Disabled will include these present Medicaid covered services plus four new services.

i. The three present Medicaid covered services are:

(1) Home Health Care;

(2) Medical Day Care;

(3) Non-emergency medical transportation.

ii. The four new services are:

(1) Case management;

(2) Social adult day care;

(3) Homemaker care;

(4) Respite care.

iii. Other Medicaid services will not be available to the waived population.

(d) All beneficiaries will be required to share in the cost of the services package as defined by Federal regulations (42 CFR 435.726) if their income minus the cost of paid medical expenses not subject to third party payment exceeds maintenance needs as defined by SSI standards.

(e) Financial controls are built into the Community Care Program for the Elderly and Disabled.

1. Total program costs are restricted by limits placed on the number of community care slots assigned each county and on per person costs.

2. A case manager will be responsible for the development of the service plan with each client/family with input from the provider agencies and Medicaid professional staff, and for monitoring the cost of the services package.

3. Prior authorization of the service plan will be performed by the Medicaid District Office Medical Evaluation Team, comprised of a physician, registered nurse and social worker.

4. The State may elect to exclude individuals for whom there is an expectation that the cost to Medicaid of Community Care Services would be more than 70 percent of long-term facility care.

(a)

**Independent Laboratory Services
State, County and Municipal Laboratories**

Proposed Amendment: N.J.A.C. 10:61-1.2

Authority: N.J.S.A. 30:4D-6a(3), 7 & 7b and 42 CFR 440.30; 42 CFR 447.325.

Proposal Number: PRN 1984-664.

The agency proposal follows:

Summary

This proposal will remove the current restriction that prohibits state, county, and municipal laboratories from participating in the New Jersey Medicaid Program. Governmental laboratories located in New Jersey will be able to become Medicaid providers so long as they meet the appropriate qualifications, including Medicare (Title XVIII) certification, licensure by the New Jersey State Department of Health, and signing a Medicaid provider agreement. It should be noted that participation in Medicare (Title XVIII) is required by Federal regulation 42 CFR 440.30(c).

In addition, an approved governmental laboratory will be reimbursed (by Medicaid) only for those services approved by the program and rendered to financially eligible Medicaid patients.

The proposal also contains a requirement which is applicable to both private and governmental laboratories. Federal regulations prohibit the Medicaid program from paying more than the prevailing charges in the locality for comparable services under comparable circumstances (42 CFR 447.325). This means that if a provider normally charges the public \$2.00 for a laboratory test, and Medicaid's fee schedule would normally allow a \$5.00 payment, then Medicaid reimbursement would be limited to \$2.00. If the service is provided free to the general public, then Medicaid would not make any reimbursement to the provider.

Social Impact

Medicaid patients may require diagnostic testing to confirm a diagnosis and/or establish a treatment plan. Medicaid patients will be able to utilize both governmental and/or private laboratories when such testing is ordered by a physician.

In those instances where the laboratory provider charges a fee for service, the Medicaid patient is expected to present proper identification of current eligibility so that the provider

may submit a claim to the Medicaid program. This is the correct procedure whenever there is a charge to the Medicaid patient for medical service and/or treatment.

Economic Impact

In 1983 the Division expended approximately two and one-half million dollars (Federal-State share combined) for laboratory services. These payments were made to private laboratories. No figure is available for governmental laboratories because they were not previously enrolled as Medicaid providers.

Governmental laboratories that become Medicaid providers will be reimbursed in accordance with existing Medicaid policies, procedures and fee schedules. Pursuant to Federal regulations, Medicaid cannot reimburse more than the amount normally charged to the general public. Providers of laboratory services should submit a claim to the Medicaid program for patients who have this coverage.

There is no cost to the Medicaid patient.

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

10:61-1.2 Definitions and qualifications

(a) Independent laboratory services means professional and technical laboratory services ordered by a physician or other licensed practitioner within the scope of his practice as defined by the laws of the state in which he practices.

(b) To qualify for participation as an independent laboratory under the New Jersey Health Services Program, the following requirements must be met:

1. Licensure and/or approval by the New Jersey State Department of Health and the State Board of Medical Examiners. This includes meeting certificate of need and licensure requirements, when required, and all applicable laboratory provisions of the New Jersey State Sanitary Code;

2. Certification as an independent laboratory under the Title XVIII Medicare program;

3. **Make a charge to all patients for services provided, except as provided by legislation. The charge made to Medicaid patients must not be more than that made to any other patient; and**

[3.] 4. Approval for participation as an independent laboratory provider by the New Jersey Health Services Program.

(c) Medicare-Medicaid relationship rules are:

1. Upon approval as an independent laboratory provider for Title XIX Medicaid participation and reimbursement, the requirements for independent laboratory services under the Title XVIII Medicare program are to be followed.

2. A laboratory approved for Medicaid participation shall only provide services and be reimbursed for the specialties and subspecialties specifically approved for Medicare participation.

(d) [State, county and municipal laboratories do not qualify for Medicaid reimbursement.] **State, county and municipal laboratories located in New Jersey may qualify for Medicaid reimbursement provided they meet the criteria specified in (a), (b) and (c) above.**

(e)-(g) (No change.)

(a)

Manual for Psychological Services

Proposed Amendment: N.J.A.C. 10:67-2.6

Proposed Readoption: N.J.A.C. 10:67-1.1 through 1.6, 1.10 and 1.11

Proposed Readoption with Concurrent Amendments: N.J.A.C. 10:67-1.7, 1.8, 1.9

Authority: N.J.S.A. 30:4D-6b(10), 7 and 7b.
Proposal Number: PRN 1984-603.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:67-1 expires on April 2, 1985. The readoption of the existing rule becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of readoption. The concurrent amendments to the existing rule become effective upon publication in the Register of a notice of adoption.

The agency proposal follows:

Summary

This proposal is designed to readopt Subchapter One of the Manual for Psychological Services (N.J.A.C. 10:76-1). Topics included in this subchapter are definitions, consultative services, reimbursable services, record keeping, prior authorization, basis of payment, and the distinction between generalists and specialists. These topics are designed to set forth the basic policies and procedures regarding participation by psychologists in the New Jersey Medicaid Program, the type of services that can be provided, and Medicaid policies regarding prior authorization and reimbursement.

An administrative review has been conducted, and a determination made that the rules should be continued. The rules are necessary, adequate, reasonable, understandable and responsive because psychological services are an essential component of mental health services that can be provided to Medicaid patients with mental illness.

There were two amendments previously adopted that concerned prior authorization. One amendment required prior authorization for psychological services that exceed \$300.00 in payments to the psychologist in any 12 month period (see 12 N.J.R. 277(b)). The other amendment indicated that after an initial evaluation visit, prior authorization is required for psychological services rendered to Medicaid patients in boarding homes and long term care facilities (LTCFs) (see 13 N.J.R. 706(d)).

The rules are being amended on readoption. N.J.A.C. 10:67-1.7 deletes the reference to AID (Approval by Individual Diagnosis) days because this system is no longer utilized. N.J.A.C. 10:67-1.8 is being amended to indicate the separate procedures for obtaining prior authorization for patients in LTCFs. Prior authorization requests go directly to the Medicaid District Office (M.D.O.). The determination is made by the Division's medical consultant in the M.D.O. Notifications of approval or denial are sent from the M.D.O.

Whenever authorization for treatment is granted, the contractor's copy of the form is returned to the provider who must attach it to the claim form or it will be returned by the Prudential Insurance Company, who is responsible for processing claims submitted by psychologists (see the proposed amendment of N.J.A.C. 10:67-1.8(e) below).

N.J.A.C. 10:67-1.9 is being revised to indicate that reimbursement for psychological services is on a fee-for-service basis. The procedure codes, narrative description and corresponding fee schedule are referenced in N.J.A.C. 10:54-3, entitled the Procedure Code Manual, a copy of which is issued to psychologists who participate in the Medicaid program. The note is being recodified as a subsection with no change in text. The note in 10:67-2.6 listing the M.D.O.s is being deleted, because the prior authorization procedures are contained in N.J.A.C. 10:67-1.8.

Social Impact

The rules have enabled persons to receive mental health services whether in an institutional or non-institutional setting. Since there will be Medicaid patients who need mental health services, including those currently in treatment, the rules should be continued.

The rules impact on Medicaid patients with mental illness, and on psychologists who participate in the Medicaid program.

Economic Impact

The Division of Medical Assistance and Health Services spent approximately \$2,000,000 (Federal-State share combined) for psychological services in FY 1983.

Psychologists are reimbursed on a fee-for-service basis.

There is no cost to the Medicaid patients.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:67-1.

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

10:67-1.7 Policies related to inpatient care

(a) (No change.)

(b) Patients will be admitted to a hospital only on the direction of a physician. Under the Health Services Program, the hospital record of admission will serve as the physician's certification of need. The physician's certification and recertification and utilization committee's approval and reapproval must be on file at the hospital and must be kept available for audit. Certification is not required for outpatient services. [The AID program (Approval by Individual Diagnosis) is a system whereby the initial number of days of hospitalization approved depends on the diagnosed condition for which the patient is treated. The regulations of the New Jersey Health Service Program require that the attending physician sign a statement on or before the expiration of AID days (recertification form) certifying the medical necessity of continued hospitalization beyond the AID days.]

(c) (No change.)

10:67-1.8 Prior authorization

(a) Prior authorization means approval by the Chief, Bureau of Mental Health Services, Division of Medical Assistance and Health Services, of a **mental health service** [psychological service] before the service is rendered.

1. Exception: For patients in long term care facilities, prior authorization of a mental health service is obtained from the Division's medical consultant at the Medicaid District Office (M.D.O.).

(b) (No change.)

(c) [When prior authorization is required, the request is to be submitted on a "Request for Authorization of Psychiatric

Services" form (FD-07) to the Chief, Bureau of Mental Health Services, P.O. Box 2486, Trenton, New Jersey 08625. Items 1 through 17 must be completed.]

When prior authorization is required, the following procedures are to be observed:

1. **For patients residing in a long term care facility (LTCF) the request is to be submitted on a "Request for Authorization of Psychiatric Services" form (FD-07) to the Medicaid District Office that services the LTCF. Items 1 through 17 on the FD-07 must be completed, except items 10, 11, 12 need not be filled in if a copy of the consultation report is attached.**

2. **For patients who do not reside in an LTCF, but live in a community setting, including a sheltered boarding home, the request for prior authorization is to be submitted (form FD-07) directly to the Chief, Bureau of Mental Health Services, CN-712, Trenton, New Jersey 08625. Items 1 through 17 must be completed.**

(d) (No change.)

(e) [If request for authorization is approved, the provider copy will be returned to the provider, and the contractor copy will be forwarded directly to the Prudential Insurance Company.]

If the request for prior authorization is approved, both the provider copy and the contractor copy will be returned to the provider. The provider must attach the contractor copy of the FD-07 to the claim form that is submitted to the Prudential Insurance Company; otherwise, the claim will not be processed for payment and will be returned to the provider.

(f) If the request for authorization is denied, the provider shall be notified of the reason, in writing, by the **unit of the Division responsible for the decision** [Chief of Mental Health Services].

10:67-1.9 Basis of payment

(a) [Reimbursement for covered services furnished under the Health Services Program shall be on the basis of the customary charge prevailing in the community for the same service, not to exceed an allowance determined reasonable by the Commissioner (Institutions and Agencies), and further limited by Federal policy relative to payment of practitioners and other individual providers.] **Psychological services are reimbursed on a fee-for-service basis in accordance with the Procedure Code Manual, which is referenced at N.J.A.C. 10:54-3.** In no event shall the payment exceed the charge by the provider for identical services to other governmental agencies; or other groups or individuals in the community. If a patient receives care from more than one member of a partnership or corporation in the same discipline, the maximum payment allowance would be the same as that of a single attending physician.

[Note:] (b) Payment for a psychological consultation shall be considered as inclusive for all psychologic services provided, performed or rendered on that day. No additional reimbursement will be allowed for therapy on the day that a consultation is provided.

10:67-2.6 Directory of Medicaid District Offices (MDO)

(a) (No change.)

[Note: Prior authorization for psychological services is obtained from the Chief, Bureau of Mental Health Services, P.O. Box 2486, Trenton, New Jersey, 08625, not from the MDO.]

(No change in list.)

DIVISION OF PUBLIC WELFARE

For proposals numbered PRN 1984-665 and 666, address comments and inquiries to:

Audrey Harris, Director
 Division of Public Welfare
 CN 716
 Trenton, New Jersey 08625

(a)

**General Assistance Manual
 Medical Care; Income Levels**

**Proposed Amendment: N.J.A.C. 10:85-3.3
 Proposed Repeal: N.J.A.C. 10:85-12**

Authority: N.J.S.A. 44:8-111(d).
 Proposal Number: PRN 1984-666.

The agency proposal follows:

Summary

In recognition of the sunset provisions of Executive Order No. 66(1978), which mandate that administrative rules be evaluated on a periodic basis, it is deemed necessary to propose the repeal of N.J.A.C. 10:85-12 and amend regulations appropriately for alignment at N.J.A.C. 10:85-3.3(g).

Inasmuch as the entire text of N.J.A.C. 10:85-12 consists of the income eligibility standards for the AFDC and SSI programs, it is proposed for repeal and replacement by public notice in the New Jersey Register, thereby eliminating the need for an administrative rule proposal each time the standards for these programs, which are independently promulgated, are adjusted. When changes in the SSI or AFDC income eligibility standards occur, the municipal welfare agencies will be notified by separate correspondence. This proposal will also result in a streamlining of N.J.A.C. 10:85 and a more efficient use of the General Assistance (GA) Manual by eliminating the need to cross-reference to N.J.A.C. 10:85-12 when determining if a medically need applicant will be financially eligible for medical assistance under the GA program's "spend down" concept.

In the special case of medical assistance, applicants, in order to receive payment for covered expenses must demonstrate to the MWD on a monthly basis that income in excess of the pertinent standard has been exhausted through payment of covered medical expenses.

Under the spend down concept, applicants for medical assistance must exhaust their "surplus" monthly income on medical expenses to the level of the income standard for either the GA program, the Supplemental Security Income (SSI) program or the Aid to Families with Dependent Children (AFDC) program.

The program standard used in the determination of "spend down" eligibility or the "surplus" funds which must be expended on medical expenses to attain eligibility for payment of additional medical expenses in any given month is ascertained through comparison of the applicant's income with the program standard under which the individual could have attained eligibility if his or her income was sufficiently low.

In a case where a family with minor children applies for medical assistance, the AFDC standard would be used to determine the "spend down" amount required to produce eligibility. Similarly, an elderly, blind or disabled individual would establish medical assistance eligibility based upon SSI income standards, whereas other individuals, not identified above, would establish eligibility based on GA income standards. Cuban or Indochinese Refugee Assistance has been changed to Cuban/Haitian Entrant Program or Refugee Resettlement program in order to update the proper designation.

Social Impact

Since this proposal is technical in nature and solely intended to streamline the administration of the GA program, there will be no direct social impact upon the public or GA recipients, however, the personnel who administer the GA program will be able to work more effectively as a result of this proposal and thereby better serve the needs of recipients, in that the amendments promote greater clarity in the manual.

Economic Impact

Inasmuch as this proposal does not change the income eligibility standards upon which the medical assistance "spend down" concept is based, there is no increase in cost to the public treasury. An undefinable monetary savings may occur as a result of administrative streamlining.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 10:85-12.

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

10:85-3.3 Financial eligibility

(a)-(f) (No change.)

(g) Medical care: Persons found eligible for General Assistance maintenance payments in accordance with the procedures and standards established in this subchapter (N.J.A.C. 10:85-3) are likewise eligible for medical care (see N.J.A.C. 10:85-5 regarding provision of medical care). In addition, certain other individuals and families are eligible for medical assistance from the MWD or for referral to the county welfare agency.

1. Medically needy: Individuals and families who are ineligible for public assistance (General Assistance, AFDC, [Cuban or Indochinese Refugee Assistance] **Cuban/Haitian Entrant Program or Refugee Resettlement Program**) or for SSI payments because their income exceeds the standards established for the applicable program may apply to MWD on a monthly basis for assistance in paying excessive medical costs. The provisions of this subsection are not applicable to the payment of bills for in-patient hospitalization or for medical services rendered to an in-patient.

i. (No change.)

ii. Income levels: For the purpose of determining excessive medical costs, the total available monthly income (see (G)l(iii) below) of individuals, couples, or families with children is measured against the appropriate allowance standard. (See N.J.A.C. 10:85-3.1(b) regarding eligible unit concept [and subchapter 12 for schedules in AFDC and SSI].) **For elderly, blind, or disabled persons, the SSI standard applies. For families with children, the AFDC (C and F) standard applies. (See N.J.A.C. 10:82-1.2 for current AFDC standard.) For all others, the General Assistance standard (Schedule I or II as appropriate) applies. When the AFDC or SSI standards are**

increased, a Public Notice to that effect will be published in the New Jersey Register. Information about the current standards may also be obtained by contacting the Division of Public Welfare.

iii.-v. (No change.)

2.-4. (No change.)

(a)

**General Assistance Manual
Other Programs**

**Proposed Readoption: N.J.A.C. 10:85-8
Proposed Readoption with Concurrent
Amendments: N.J.A.C. 10:85-8.2 and 8.4**

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Proposal Number: PRN 1984-665.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:85-8 expires on February 1, 1985. The readoption of the rule becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of readoption. The concurrent amendments to the existing rule become effective upon publication in the Register of a notice of adoption.

The agency proposal follows:

Summary

N.J.A.C. 10:85-8 is a compendium of governmental benefits to which recipients of General Assistance (GA) may be entitled. Referral procedures to the Aid to Families with Dependent children (AFDC), Medicaid Only, Food Stamp, Cuban/Haitian Entrant and Refugee Resettlement programs are outlined. Those programs are administered by county welfare agencies.

Also outlined are referral procedures to the Federally funded Veterans Administration Program and other Federal programs administered by the Social Security Administration which include the Retirement, Survivors, Disability and Health Insurance (RSDHI) and Supplemental Security Income (SSI) programs.

Referral procedures to State agency services embrace the following: The Department of Health; the Division of Unemployment and Disability Insurance; Division of Youth and Family Services; the Division of Medical Assistance and Health Services; the Division of Vocational Rehabilitation Services; the New Jersey Commission for the Blind and Visually Impaired; the Division on Aging; the Division of Mental Health and Hospitals and the Division of Mental Retardation.

Thus, N.J.A.C. 10:85-8 is designed to provide guidance to municipal welfare directors in order to assist clients to maximize access to other community and/or statutory benefit sources. Therefore, the readoption of subchapter 8 is essential since it is an integral part of the General Assistance Manual (GAM) and the information it contains must continue to be readily available.

The Division of Public Welfare conducted an internal review and evaluation of N.J.A.C. 10:85-8 prior to noticing for

readoption. After such review of the rules, that agency determined the rules to be adequate, reasonable and responsive to the purpose for which they were promulgated.

Since originally adopted there have been few significant changes to N.J.A.C. 10:85-8 due to the informational nature of the subchapter. Such revisions primarily have updated program names and eligibility requirements as follows:

N.J.A.C. 10:85-8.2(c)5 and 6 were revised to update the titles of the Federal immigration programs which are administered by the county welfare agencies.

N.J.A.C. 10:85-8.3(c)3ii and iii were revised to update information regarding referral and appeal procedures for the SSI program.

N.J.A.C. 10:85-8.4(d) was amended to update titles and description of services offered by the New Jersey Department of Health.

N.J.A.C. 10:85-8.4(g)1 was revised to update the title of the State funded Pharmaceutical Assistance to the Aged and Disabled (PAAD) program to reflect the fact that these benefits were made available to the disabled.

Amendments being made as part of this proposed readoption provide technical revisions involving the updating of addresses for the Division of Youth and Family Services District Offices. Added to N.J.A.C. 10:85-8.2 are referral procedures for the State administered Home Energy Assistance program. Eligibility information for unemployment and disability insurance benefits have also been updated at N.J.A.C. 10:85-8.4 to include current requirements, in conformance with Temporary Disability and State Unemployment Insurance Programs of the Department of Labor.

Social Impact

The General Assistance program has served approximately 30,000 recipients per month in Fiscal Year 1984. N.J.A.C. 10:85-8 provides approximately 500 municipal welfare directors with important information regarding what services, programs and benefits are available to GA recipients.

Without readoption of N.J.A.C. 10:85-8, an otherwise eligible GA recipient might not be referred to the Food Stamp program or the SSI program. This would result in hardship for the recipient and unnecessary issuance of General Assistance payments. Further, referral to agencies such as the New Jersey Division of Vocational Rehabilitation Services could result in the return of a recipient to the workforce and independence from public assistance. The amendments will make the Manual more responsive to the administrative needs of local agencies and serve the public through the provision of accurate information.

Economic Impact

Subchapter 8 must be readopted since it provides essential referral information which allows maximized use of other programs which, in many cases, eliminates the necessity of granting further GA payments. This usually occurs when a General Assistance applicant or recipient is referred to the SSI program and qualifies for benefits. In Fiscal Year 1983, 6,086 GA recipients were referred to SSI. Although there are no statistics available to show how many of the SSI referrals were found to be SSI eligible, all who were determined to be SSI eligible lost GA eligibility since SSI payments exceed GA payment levels.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:85-8.

PROPOSALS

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

10:85-8.2 Referral to county welfare agency

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

(c) County welfare agency programs: Programs administered by the county welfare agency include the following:

1.-6. (No change.)

7. Home Energy Assistance: This Federal/State program offers payment to assist eligible households to meet the cost of home energy used to heat or cool residential dwellings.

i. Eligibility requirements: Eligibility requirements for the Home Energy Assistance program are available from the county welfare agency.

10:85-8.4 Referral to State agencies

(a)-(d) (No change.)

(e) **Division of Unemployment and Disability Insurance:** This [Stage] State agency, which is a division of the New Jersey Department of Labor and Industry, administers the following programs:

1. New Jersey temporary disability insurance program: This program pays cash benefits to a person who cannot work because of sickness or injury not caused by [his/her] **his or her** job.

i. Eligibility requirements: A person must have at least [17] **20** base weeks of employment in the 52 weeks immediately preceding the week in which [he/she] **he or she** became disabled, in order to have a valid claim. (A base week is one in which a person earned at least [\$15] **\$41.00** working for a New Jersey covered employer.) In addition, a physician, dentist, osteopath, chiropractor, or chiropodist must certify that the claimant is too disabled, to continuously do the regular work which [he/she] **he or she** was doing immediately before becoming disabled.

ii.-iii. (No change.)

2. State unemployment insurance: This program pays cash benefits to covered workers who have lost their jobs through circumstances beyond their control, or who are working less than full-time because of a lack of full-time work.

i. Eligibility requirements: A person must have wages of at least [\$30.00] **\$51.00** in each of 20 weeks, or have earned [\$2,200] **\$4,100** or more during the base year in employment covered by the unemployment compensation law of New Jersey. (A base year is the first 52 of the 53 weeks preceding the date of the filing of the claim). In addition, the claimant must register for work with the New Jersey State Training and Employment Service, be able and available for work at all times, make an active search for work, and report to the unemployment office as directed.

ii.-iii. (No change.)

(f) **Division of Youth and Family Services (DYFS):** This State agency, which is a division of the New Jersey Department of [Institutions and Agencies] **Human Services**, administers foster care, homemaker services, adoption, counseling, residential placement, parole [supervisors] **supervision**, and child abuse services.

1. (No change.)

2. How to apply for services: Information and application for adoption services may be made at one of the division's

HUMAN SERVICES

four regional offices. **The DYFS regional offices are listed below:**

Northern Regional Office
100 Hamilton Plaza
Paterson, N.J. 07505
201-977-4000

Central Regional Office
719 Alexander Rd.
Princeton, N.J. 08540
609-452-7728

Metropolitan Regional Office
1180 Raymond Blvd.
18th Floor
Newark, N.J. 07102
201-648-4100

Southern Regional Office
302 North White Horse Pike
P.O. Box 594
Hammonton, N.J. 08037
609-567-0010

Information and application for all other services may be made at the division's district office serving the area in which the MWD is located. The DYFS district offices are listed below:

[ATLANTIC
26 S. Pennsylvania Avenue
Atlantic City, New Jersey 08401
(609) 344-4141

GLOUCESTER
Southwood Shopping Center
Route 45
Woodbury, New Jersey 08096
(609) 848-6604

BERGEN
190 Main Street
Hackensack, New Jersey 07601
(201) 487-5380

HUDSON
550 Summit Avenue
Jersey City, New Jersey 07306
(201) 653-5750

BURLINGTON
50 Rancocas Road
Mt. Holly, New Jersey 08060
(609) 267-7750

HUNTERDON
52 Main Street
Flemington, New Jersey 08822
(201) 782-8784

CAMDEN
808 Market Street
Camden, New Jersey 08102
(609) 747-2710

MERCER
1901 N. Olden Avenue
Trenton, New Jersey 08618
(609) 883-7970

CAPE MAY
County Social Services Center
P.O. Box 222 Rts. 47 and 9
Rio Grande, New Jersey 08242
(609) 886-1105

MIDDLESEX
78 Carroll Place
New Brunswick, New Jersey 08901
(201) 249-4880

CUMBERLAND-SALEM
40 E. Broad Street
Bridgeton, New Jersey 08302
(609) 451-3100

MONMOUTH
Family Center
270 State Highway 35
Middletown, New Jersey 07748
(201) 741-5220

ESSEX NEWARK
Newark Center Building
1100 Raymond Boulevard
Newark, New Jersey 07102
(201) 648-2644

MORRIS
187 Columbia Turnpike
Lower Level
Florham Park, New Jersey 07923
(201) 822-1770

SURBURAN ESSEX
139 Main Street, 2nd Floor
Orange, New Jersey 07050
(201) 672-2900

OCEAN
954 Lakewood Road
Toms River, New Jersey 08753
(201) 244-4300

PASSAIC
370 Broadway
Paterson, New Jersey 07501
(201) 742-1428

SOMERSET
73 E. High Street
Somerville, New Jersey 08876
(201) 722-2224

SUSSEX
P.O. Box 903
200 Woodport Road
Sparta, New Jersey 07871
(201) 729-9163

UNION
80 Broad Street
Elizabeth, New Jersey 07201
(201) 289-3333

WARREN
Runyon Building
P.O. Box 126
325 Front Street
Belvidere, New Jersey 07823
(201) 475-3903]

**DIVISION OF YOUTH AND FAMILY SERVICES
DISTRICT OFFICES**

Northern Region

Bergen District Office
190 Main Street
Hackensack, NJ 07601
201-487-5380

Bayonne District Office
(Southern Jersey City & Bayonne)
5 West 22nd Street
Bayonne, NJ 07002
201-823-5000

Jersey City District Office
(Northern Jersey City)
550 Summit Avenue
Jersey City, NJ 07306
201-653-5750

North Hudson District Office
(Municipalities North of
Jersey City)
6033-6045 Kennedy Blvd.
North Bergen, NJ 07047
201-854-7100

Morris District Office
121 Center Grove Road
Randolph, NJ 07869
201-361-8400

Paterson District Office
2 Market Street
Paterson, NJ 07501
201-977-4525

Sussex District Office
200 Woodport Road
Sparta, NJ 07871
201-729-9163

Warren District Office
323 Front Street
P.O. Box 126
Belvidere, NJ 07823
201-475-3903

Metropolitan Region

Suburban Essex District Office
123 Cleveland Street
Orange, NJ 07050
201-648-3100

Newark District Office I
1100 Raymond Blvd., Room 305
Newark, NJ 07102
201-648-4200

Newark District Office II
1180 Raymond Blvd., 9th Floor
Newark, NJ 07102
201-648-6150

Newark District Office III
1100 Raymond Blvd.,
Room 101-C
Newark, NJ 07102
201-648-2669

Union District Office
208 Commerce Place,
2nd Floor
P.O. Box 602
Elizabeth, NJ 07201
201-648-4777

Plainfield District Office
700 Park Avenue, 3rd Floor
Plainfield, NJ 07060
201-499-5825

Southern Region

Atlantic District Office
26 S. Pennsylvania Avenue
Atlantic City, NJ 08401
609-441-3232

Burlington District Office
50 Rancocas Road
Mount Holly, NJ 08060
609-267-7550

Camden District Office
808 Market Street
P. O. Box 738
Camden, NJ 08101
609-757-2700

Cape May District Office
Routes 47 & 9
Social Services Building
P.O. Box 222
Rio Grande, NJ 08242
609-866-1105

Cumberland District Office
1368 S. Delsea Drive
Vineland, NJ 08360
609-696-6590

Gloucester District Office
251 N. Delsea Drive
Suite 100
Deptford, NJ 08096
609-848-6604

Salem District Office
New Market Street
Salem, NJ 08079
609-935-6350

Central Region

Hunterdon District Office
84 Park Avenue, 2nd Floor
Flemington, NJ 08822
201-782-8784

Mercer District Office
1901 N. Olden Avenue
Trenton, NJ 08618
609-984-6300

Middlesex District Office
(New Brunswick)
78 New Street, 2nd Floor
New Brunswick, NJ 08901
201-249-4880
201-431-6060

Middlesex District Office
(Perth Amboy)
275 Hobart Street
Perth Amboy, NJ 08861

**Long Branch (Monmouth
Family Ctr.)**
1 Main Street, 1st Floor
Eatontown, NJ 07724
201-389-2700

**Asbury Park (Monmouth
Family Ctr.)**
1200 Memorial Drive
Asbury Park, NJ 07712
201-988-4300

Monmouth Family Center
Kozloski Road
P.O. Box 3000
Freehold, NJ 07728
201-431-6222

**Middletown (Monmouth
Family Ctr.)**
1 Main Street, 5th Floor
Eatontown, NJ 07724
201-957-0020

**Freehold (Monmouth
Family Center)**
Kozloski Road
P.O. Box 3000
Freehold, NJ 07728

Ocean District Office
954 Lakewood Road
Toms River, NJ 08753
201-244-4300/201-342-1700

Somerset District Office
78 E. High Street
Somerville, NJ 08876
201-722-2224

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

INSURANCE

The following proposals are authorized by Kenneth D. Merin, Commissioner, Department of Insurance. Address comments and inquiries to:

Jasper J. Jackson, Director
 Legislative and Regulatory Affairs
 Department of Insurance
 CN 325
 Trenton, New Jersey 08625

(a)

DIVISION OF ADMINISTRATION

Requirements for Filing a Downward Deviation in Currently Approved Rates

Proposed New Rule: N.J.A.C. 11:1-16

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:29A-1 et seq., specifically 17:29A-10.
 Proposal Number: PRN 1984-675.

The agency proposal follows:

Summary

The proposed new rule establishes procedural and statistical requirements which are applicable to the filing of downward deviations in the rates which are currently approved for a member or subscriber of a rating organization. The proposed rules are designed to streamline the processing of such filings, while at the same time maintaining the Department's ability to monitor rates to ensure compliance with applicable statutory standards.

Proposed N.J.A.C. 11:1-16.1 contains purpose and scope provisions for the subchapter.

The proposal, at N.J.A.C. 11:1-16.2, requires submission of the filing of the downward deviation at least 30 days prior to the proposed date of implementation. The request for the rate decrease must be accompanied by a statement explaining the basis for the decrease, the insurer's agreement that the rate decrease will remain in effect for at least six months and a certification by the filer of compliance with statutory standards regarding rates. Unless the Commissioner finds the filing unacceptable within 15 days of submission, the filing shall be deemed approved.

In addition, the proposal caps requests for downward deviations using the procedure specified in the subchapter to 20 percent of the approved rate. Finally, the proposal, at N.J.A.C. 11:16-3, requires any filer utilizing the simplified procedure of this subchapter to make an annual filing of the data which would normally have accompanied the rate filing.

Social Impact

The proposed new rule will enhance the ability of insurers which are members of or subscribers to a rating organization to effect decreases in approved rates in an expeditious fashion and should, thereby, stimulate competition among insurers to the benefit of both the insurers and the public. The safeguards

included in the rule, such as the 20 percent cap and the requirement that a full filing be made on an annual basis, ensure that the public is adequately protected against insurance premium price-cutting which might adversely affect an insurer's financial condition.

Economic Impact

Through the promotion of competition among insurers, it is expected that the rule will have a positive impact on the public. The streamlined procedures contained in the rule may be utilized by insurers to establish or maintain a competitive advantage. The Department anticipates minimal economic impact as a result of the implementation of this rule. Since the Department will continue to review the full filings on an annual basis, there should be no increase in Department expense.

Full text of the proposed new rule follows.

SUBCHAPTER 16. REQUIREMENTS FOR FILING A DOWNWARD DEVIATION IN CURRENTLY APPROVED RATES

11:1-16.1 Purpose and scope

(a) The purpose of this subchapter is to promote competition among insurers for the benefit of the insurance consuming public by permitting insurers which are members of or subscribers to rating organizations subject to N.J.S.A. 17:29A-10 to effect expeditiously certain decreases in a rate filing which is currently approved by the commissioner when, in the filer's judgment, economic or competitive reasons or conditions warrant such a decrease.

(b) This subchapter shall apply to every member of or subscriber to a rating organization on whose behalf rate filings are made pursuant to the provisions of N.J.S.A. 17:29A-1 et seq.

11:1-16.2 Filing requirements

(a) Every member of or subscriber to a rating organization may make a written application to the Commissioner to effect a uniform percentage decrease in rates approved by the Commissioner for such member or subscriber in accordance with the following requirements:

1. The insurer by a rate filing shall notify the commissioner at least 30 days prior to the date it wants to put into effect a decrease in existing rates currently approved for it by the commissioner. In such rate filing, the insurer shall state the basis for the decrease in rates and shall agree that the decrease in rate filing shall remain in effect for at least six months. The filer shall also certify that the implementation of such decrease in rates is consistent with the applicable statutory standards set forth in N.J.S.A. 17:29A-1 et seq. and, in particular, will not result in rates which are unreasonable, inadequate or unfairly discriminatory. Within a 15-day period following the filing of such a proposed decrease in rates, the commissioner will notify the insurer of the unacceptability of the filing for a decrease in rates. The commissioner will find unacceptable a decrease in rate filing if, in his opinion, the decrease in rates may have a tendency or capacity to imperil the financial condition of the insurer, or is otherwise inconsistent with statutory standards.

2. The decrease in rate filing may be up to 20 percent from the currently approved rates and must apply to all policyholders either by coverage or line of insurance.

3. After a filing has been in effect for six months or more, an insurer may automatically withdraw its decrease or any

portion thereof by notifying the Commissioner at least 30 days prior to the date of withdrawal.

11:1-16.3 Annual reports

(a) In order to facilitate the monitoring of compliance with this subchapter, each insurer shall, commencing October 1, 1985 and annually thereafter, submit to the commissioner a full rate filing for each downward deviation in an approved rate filed during the previous reporting year.

(b) Each rate filing shall include all data normally provided in a rate filing and shall be prepared in accordance with the Department's filing procedures established by law.

(a)

Automobile Insurance Auto Physical Damage Claims

Proposed Amendments: N.J.A.C. 11:3-10

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e) and 17:29B-4.
Proposal Number: PRN 1984-669.

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 11:3-10 improve the position of insureds involved in auto physical damage claims. The amendments increase an insured's control over the settlement proceeds; provide full value for options; and update the depreciation schedules used when a new car is totally destroyed in an accident.

N.J.A.C. 11:3-10.3 currently requires authorization from insureds, in policy provisions or in writing, to permit an insurer to make settlement proceeds payable to a vehicle repairer. However, the Department has received complaints that insurers have been issuing settlement payments to vehicle repairers without authority from the insured.

The proposed amendment to N.J.A.C. 11:3-10.3 clarifies and strengthens an insured's control over settlement proceeds. A written election must be made by the insured before a repair shop can be named on a settlement check or draft.

In adjusting total losses, N.J.A.C. 11:3-10.4(a)1 allows insurers to take the average of the two valuation manuals approved by the Commissioner to reach a settlement amount. The manuals are not uniform, so that an option may be listed in one manual and not in the other. In such a situation, averaging of the two manuals results in the insured receiving only half the true value of the option.

The proposed amendment to N.J.A.C. 11:3-10.4(a)1 provides for an "option carryover." If one manual lists a value for an option found in the damaged vehicle, but the other manual does not, the value of the option is carried over to the other manual so that the insured receives full value for the option.

In the event of total loss of a vehicle of the current model year, the insurer may elect to provide the insured with a new identical replacement vehicle, or pay the insured an amount equal to the reasonable purchase price. N.J.A.C. 11:3-

10.4(c)2 allows the insurer to charge the insured for depreciation of the destroyed vehicle. A depreciation schedule is set forth to calculate the amount. The amount depreciated for each mile depends on the purchase price of the vehicle. The more expensive the vehicle, the greater the depreciation rate.

Inflationary purchase prices of vehicles have caused insureds to pay amounts not commensurate with actual depreciation. Today's inexpensive cars are depreciated at a rate meant for expensive cars.

The proposed amendment to N.J.A.C. 11:3-10.4(c)2 rescales the depreciation schedule so that the depreciation rate more accurately reflects current automobile prices, and sets a proportionate rate of depreciation.

The proposed amendment to N.J.A.C. 11:3-10.5(d) reflects a Department Division change.

Any other changes to N.J.A.C. 11:3-10 are grammatical in nature.

Social Impact

The proposed amendments will benefit insureds in settling automobile losses with their insurer. In the event of partial loss, insureds will have greater control over disbursement of insurance proceeds. If a new car is totally destroyed, insureds will not be charged amounts greater than actual depreciation. The option carryover provision will assure that insureds receive full value for options.

There will be no adverse social impact on insurance companies. The amendments represent only minor changes to the settlement process.

There will be no social impact on the Department.

Economic Impact

Insureds who have suffered a total loss of their vehicle will receive settlement amounts under the new depreciation schedule which better reflect the value of the vehicle. For example, insureds with vehicles in the medium price range of \$10,000 to \$12,000 will receive a higher settlement than under the previous regulation. Insureds with luxury vehicles over \$20,000 will receive a lesser settlement than under the previous regulation.

Insurance companies will be required to pay greater amounts in option carryover situations. However, since both valuation manuals usually contain the most common and most expensive options, the total economic impact on insurance companies will not be great.

There will be no economic impact on the Department.

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

SUBCHAPTER 10. AUTO PHYSICAL DAMAGE CLAIMS

11:3-10.1 [Application] Scope

This [regulation is applicable] **subchapter applies** to claims arising under motor vehicle collision and comprehensive coverages.

11:3-10.2 Definitions

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

"Actual cash value", unless otherwise specifically defined by law or policy, means the lesser of the amounts for which the insured or the designated representative can reasonably be expected to:

1. Repair the motor vehicle to its condition immediately prior to the loss; or
2. Replace the motor vehicle with a substantially similar vehicle. [Such] **The** amount shall include all moneys paid or payable as sales taxes on the motor vehicle repaired or replaced. This **paragraph** shall not be construed to prevent an insurer from issuing a policy where the amount of damages to be paid in the event of a total loss is a specified dollar amount.

“Designated representative” means a person designated by the insured to represent the insured in negotiations with the insurer in an attempt to settle the claim. [Such] **The** designated representative may be any person authorized by the insured who may act legally in his or her behalf.

11:3-10.3 Adjustment of partial losses

(a) If the insurer intends to exercise its right to inspect, or cause to be inspected by an independent appraiser, damages prior to repair, [it] **the insurer** shall have seven working days following receipt of notice of loss to inspect the insured’s damaged vehicle which is available for inspection, at a place and time reasonably convenient to the insured; commence negotiations; and make a good faith offer of settlement.

(b) (No change.)

(c) If the insured inspects the damaged vehicle or causes it to be inspected, [it] **the insurer** shall promptly upon completing the inspection furnish the insured or the designated representative of the insured with a detailed written estimate of the cost of repairing the damage resulting from the loss, specifying all appropriate deductions.

(d) The insured may use any repairer of his or her own choice. The insurer must make all reasonable efforts to obtain an agreed price with this shop. The insurer may recommend, and if the insured requests, must recommend a qualified repairer at a location reasonably convenient to the insured motor vehicle who will repair the damaged motor vehicle at the insurer’s estimated cost of repairs, but in either event the provisions of [subsection] (f) [of this Section] **below** apply.

(e) (No change.)

(f) If the insured’s vehicle is repaired at a repair shop whose name is required to be furnished by the insurer under [subsection (d) of this Section] **(d) above** for a sum estimated by the insurer as the reasonable cost to repair the vehicle, the insurer:

1.-2. (No change.)

(g) (No change.)

(h) Deductions for betterment and[/or] depreciation are permitted only for parts normally subject to repair and replacement during the useful life of the insured motor vehicle. Deductions for betterment and[/or] depreciation shall be limited to the lesser of an amount equal to the proportion that the expired life of the part to be repaired or replaced bears to the normal useful life of that part, or the amount which the resale value of the vehicle is increased by the repair or replacement. Calculations for betterment, depreciation and normal useful life must be included in the insurer’s claim file.

(i) Deductions for previous damage or prior condition of the vehicle must be measurable, discernible, itemized and specific as to the dollar amount, and [such] **those** deductions must be included in the insurer’s claim file. [Such] **The** deductions shall be limited to the amount by which the resale value of the motor vehicle is increased by the estimation of the previous damage or the correction of the prior condition.

(j) (No change.)

(k) The insured shall have the right to receive the proceeds of any settlement [in accordance with policy provisions. For example, in the absence of a specific policy provision so requiring, t]. The insurer may not insist on making settlement proceeds jointly payable to the insured and the vehicle repairer, **or payable to the vehicle repairer only.**

[l]1. The insured may elect to have the insurer pay the repairer directly in order to expedite recovery of the motor vehicle. The insured must make this election in writing.

11:3-10.4 Adjustment of total losses

(a) If the insurer elects to make a cash settlement, it must bear in mind at all times that insured’s position is that of a retail consumer and the settlement value arrived at must be reasonable and fair for a person in that position. If the insurer elects to make a cash settlement, its offer, subject to applicable deductions, must be one of the following plus applicable sales tax:

1. The average of the retail value for a substantially similar motor vehicle as listed in the current editions of the two valuation manuals approved by the Commissioner.

i. The average figure arrived at may be reduced by considering all factors, including but not limited to mileage tables and presence or absence of extras.

ii. **If the destroyed vehicle included an option which is listed in one manual but not in the other, the value of the option shall not be averaged. The insured shall receive full value for the option by carrying over the amount listed to the other manual.**

iii. Manuals approved for use on and after January 1, 1976, are the “Redbook”, published by National Market Reports, Inc., and the “N.A.D.A. Official Used Car Guide”, published by the National Automobile Dealers Association Used Car Guide Company. The use of other manuals may be approved by the Commissioner upon demonstration of need, suitability and accuracy.

(b) (No change.)

(c) If the insured vehicle is a private passenger automobile of the current model year, meaning that [it] **the vehicle** has not been superseded in the market place by an officially introduced succeeding model, the insurer shall utilize one of the following methods in the settlement of the loss, unless the utilization of [subsections] (a) or (b) [of this Section] **above** is more favorable to the consumer.

1. Either the insurer shall pay the insured an amount equal to the reasonable purchase price on the date of loss of a new identical vehicle, less any applicable deductible and an allowance for depreciation in accordance with the schedule below; or

2. The insurer shall provide the insured with a new identical replacement vehicle charging the insured for any applicable deductible and for depreciation in accordance with the schedule below:

Depreciation schedule	
Purchase Price	Depreciation per mile
\$2,101-\$ 2,750	\$0.05
2,751- 3,700	0.06½
3,701- 5,000	0.09
5,001- 6,500	0.11½
6,501- 10,000	0.16½
more than \$10,000	0.20

Up to \$6,500	\$0.10
\$ 6,501-\$ 8,000	0.12
8,000- 10,000	0.15
10,001- 12,001	0.18
12,000- 15,000	0.21
15,001- 20,000	0.25
More than \$20,000	0.29

(d) (No change.)

(e) The following provisions of [Section 3 of this Subchapter] **N.J.A.C. 11:13-1.3** also shall apply to the adjustment of total losses, except that the insurer shall have a total of 14 working days to comply with the requirements of subsections (a), (b), (c), (h), (i), (j) and (k) of [Section 3.] **N.J.A.C. 11:13-1.3**.

(f) This [S]section [4] does not prohibit an insurer from issuing a stated value policy insuring against physical damage where the amount of damages to be paid in the event of a total loss is a specified dollar amount.

(g) (No change.)

11:3-10.5 Unreasonable delay

(a) Unless a clear justification exists, [it is expected that] physical damage claims will have a maximum payment period of 30 calendar days. A payment period is the period between the date of the receipt of the notice of loss by the insurer, and:

1.-3. (No change.)

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

(d) A copy of the second update letter sent 60 days after the date of receipt of notice of loss, and all thereafter sent to any New Jersey insured, shall be mailed simultaneously to the insured and the [Consumer Services Division] **Marketplace Regulation and Consumer Assistance Division**, New Jersey Department of Insurance, 201 East State Street, CN 325 Trenton, New Jersey 08625.

11:3-10.6 Loss of use

In the event of the theft of the entire vehicle [it shall be the duty of] the insurer at the time of notification of loss [to] shall advise the insured of his or her right under the policy to be reimbursed for transportation expenses. [Such] **The** notification must be confirmed in writing immediately after receipt of notice of theft. All conditions and benefits related to this coverage as stated in the policy must be contained in the notification to the insured.

11:3-10.7 Subrogation agreements

(a) [Where] **If** an insured has received payment under his or her physical damage coverage that is subject to a deductible, the insured shall share, pro rata, with the insurer any net recovery received by the insurer from third parties.

(b) Net recovery shall be the total recovery less the insurer's allocated loss adjustment expenses attributable to such recovery. The formula for computing net recovery and the insured's share of recovery of the deductible may be stated as follows:

1. Total recovery - Allocated loss adjustment expenses = Net recovery.

$\frac{\text{Deductible}}{\text{Total loss}} \times \text{Net recovery} = \text{Insured's Share of recovery.}$

2. Application of formula: Assume a loss of \$500.00 subject to a \$100.00 deductible with \$50.00 in allocated loss adjustment expenses:

i. If there is full recovery of \$500.00: computation of net recovery:

$\$500.00 - \$50.00 = \$450.00$

Computation of insured's share of recovery:

$\$100.00 \times \$450.00 = \$90.00$

\$500.00

ii. If there is a partial recovery of \$300.00: computation of new recovery: $\$300.00 - \$50.00 = \$250$

Computation of insured's share of recovery:

$\$100.00 \times \$250.00 = \$50.00$

\$500.00

(c) Unless the insurer returns its insured's full deductible [it] **the insured** shall attempt to effect full recovery in clear liability cases and shall not enter into any intercompany agreements that provide for the acceptance of lesser amounts on a formula basis.

(d) (No change.)

11:3-10.10 Examinations by the New Jersey Insurance Department

To [insure] **ensure** compliance with this [regulation] **rule**, the Department of Insurance personnel will investigate the market performance of insurers. To enable department personnel to reconstruct an insurer's activities pursuant to the provisions of this [regulation] **rule**, each insurer must maintain a complete file on each claim settled pursuant to this [regulation] **rule**. The claim file shall contain all communications, transactions, notes and work papers relating to the claim. All papers in the file must be accurately dated by the insurer.

(a)

**DIVISION OF ACTUARIAL SERVICES,
LIFE AND HEALTH**

**Actuarial Services
Charitable Annuities**

Proposed Amendment: N.J.A.C. 11:4-8

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:17-13.1.
Proposal Number: PRN 1984-668.

The agency proposal follows:

Summary

Charitable annuities are written by charitable organizations, rather than by insurance companies. The person or organization purchasing the annuity is simultaneously purchasing an annuity and making a charitable contribution. In order to offer charitable annuities, the charitable organization must obtain a special permit as provided in N.J.S.A. 17B:17-13.1. All annuities, charitable and otherwise require that adequate reserves be maintained to assure payments of future benefits to annuitants.

The proposed amendment to N.J.A.C. 11:4-8 requires that all special permit holders of charitable annuities include a qualified actuary's opinion as to the adequacy of the reserves held for future annuity payments. Domestic organizations

must further submit to the Department of Insurance for review to determine compliance with N.J.S.A. 17B:19, Reserves and Valuations the workpapers used by their actuary in valuing the reserves.

All other changes in the subchapter are editorial.

Social Impact

Purchasers of charitable annuities will benefit from the proposed amendment because the present value of the future benefits will be certified by a qualified actuary.

The certification by a qualified actuary will also assist the Department of Insurance in enforcing N.J.S.A. 17B:19.

Economic Impact

The Department of Insurance does not anticipate any additional costs from the proposed amendment.

The special permit holders will incur the cost of engaging a qualified actuary to certify to the adequacy of the reserves.

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

SUBCHAPTER 8. CHARITABLE ANNUITIES

11:4-8.1 Purpose

(a) [The Life and Health Insurance Code, N.J.S.A. 17B:17-13.1 hereafter referred to as the "code";] **N.J.S.A. 17B:17-13.1** provides that qualified organizations as defined therein may enter into annuity agreements under conditions which are different from those which are applicable to organizations which are deemed to be insurers. [Although it is recognized that it is in the public interest that these special conditions be provided, the requirements of this regulation are primarily for the protection of the individual holders of annuities and their beneficiaries.] **This subchapter protects** the interest of individual holders of annuities and their beneficiaries [are safeguarded] by **requiring**:

1. The use of forms which clearly set forth the conditions of the agreement being entered into;
2. The maintenance of segregated assets in such form and such amount as will protect the interest of the annuitants; and
3. The submission to the Commissioner, by the issuers of charitable annuities, of periodic reports which will enable the Commissioner to determine that the requirements of law and of this **subchapter** [regulation] are being met.

(b) Charitable annuities are different from other annuities in that a significant part of the consideration paid for the annuity represents a gift to the issuing organization. In order to assure that such a gift results, this **subchapter** [regulation will specify] **specifies** maximum rates of income to annuitants for charitable annuities.

11:4-8.3 Annuity rates

(a) The original consideration for periodic payments payable to the holder of a charitable annuity may not be less than the net single premium, computed according to interest and mortality assumptions permitted by **N.J.S.A. 17B:19** [chapter 19 of the code] for guaranteed periodic payments, plus a life insurance net single premium, computed according to the same assumptions for an amount of death benefit equal to one-half of such original consideration. For this purpose the original consideration shall include the gross amount paid by the annuitant to the special permit holder in order to provide the annuity payments and the residue.

1. A special permit holder, proposing to use the rates adopted by the Conference on Gift Annuities, must demon-

strate to the Commissioner that these rates meet the above requirements.

(b) An applicant for a special permit shall submit, with his application to the Commissioner, a schedule of its annuity rates for each form of annuity that it proposes to issue.

(c) A special permit holder which adopts rates for a proposed new form of annuity or which proposes to change the rates on its existing annuities shall submit such rates to the Commissioner for his approval before they become effective.

11:4-8.4 Surplus and reserves

(a) Each special permit holder shall have and maintain segregated assets at least equal to the sum of:

1. The reserves on its outstanding agreements calculated in accordance with the provisions of **N.J.S.A. 17B:19** [chapter 19 of the code]; and

2. A surplus equal to \$100,000 or to ten per cent of the amount in paragraph 1 **above**, whichever is greater.

(b) In determining the reserves of any special permit holder, a deduction shall be made for all or any portion of an annuity risk which is lawfully reinsured by an authorized insurer, but such reinsurance shall not relieve a special permit holder from the requirement that the surplus shall be at least \$100,000.

(c) The Commissioner may consider that each corporation or association in a group of two or more corporations and/or associations which has met all other requirements of this section [of the code] has met the requirements as to the amount of segregated annuity fund assets, provided:

1. The segregated assets of each such organization shall equal at least 110 per cent of the sum of the reserves on its outstanding agreements calculated in accordance with the provisions of **N.J.S.A. 17B:19** [chapter 19 of the code];

2. The combined segregated assets of all such organizations, when considered as a unit, meet the requirements of this section [of the code] concerning the amount of segregated assets;

3. The organizations enter into an agreement by which each organization pledges the full amount of its segregated annuity assets as liable for the payment of each annuity and all annuities issued under the agreement by each organization and all organizations in the group;

4. Such agreement shall be determined by the Commissioner to protect the public at least to the same extent as though all annuities were issued by a single organization;

5. No change may be made in such agreement and no organization may be added to or released from such agreement without the prior approval of the Commissioner; and

6. The Commissioner may require that, in addition to any other reports that he shall normally require from permit holders, the group of organizations file annually a consolidated report in order to demonstrate that the requirements of this section [of the code] are met on a consolidated basis.

(d) Each member organization within the group will be subject to all requirements of the law and of this [regulation] **subchapter** other than the requirement of \$100,000 minimum surplus; this minimum must be satisfied by the group, however.

11:4-8.5 Compliance with investment requirements

The segregated assets held by a special permit holder shall be invested in the same manner and subject to the same restrictions as provided in [the code] **N.J.S.A. 17B:20** for domestic insurers, unless more restrictive provisions are contained in applicable statutes regulating any such special permit holder. [However, prior to January 1, 1977, a fraction of the

segregated assets of a special permit holder shall not be subject to such investment restrictions. Such fraction shall be determined by dividing the sum of reserves for all annuity agreements entered into prior to January 1, 1972, by the sum of reserves for all annuity agreements. Such reserves shall be calculated in accordance with the provisions of chapter 19 of the code.]

11:4-8.6 Annual report

(a) As of December 31 of the calendar year in which a special permit is issued, [but not before the calendar year in which this regulation becomes effective,] and as of December 31 of each succeeding calendar year, the holder of a special permit shall submit a report to the Commissioner. Such report shall be submitted to the Commissioner within 120 days following the end of the calendar year to which the report applies. The annual report shall be in such form as the Commissioner shall prescribe within three months prior to the end of each preceding calendar year.

(b) Each special permit holder shall submit, as part of the annual report, a statement by a qualified actuary setting forth his or her opinion as to the adequacy of reserves. A qualified actuary for the purpose of this subsection means a member in good standing of the American Academy of Actuaries, or a person who has otherwise demonstrated his or her actuarial competence to the satisfaction of the insurance regulatory official of the domiciliary state.

(c) Each domestic special permit holder shall submit, as part of the statement by the qualified actuary, a copy of the workpapers used by the actuary to calculate the required reserves.

(d) Each special permit holder shall respond on a timely basis to any inquiry of the Commissioner, or his designee, regarding the annual report.

11:4-8.7 Special permit

Anything in this [regulation] **subchapter** to the contrary notwithstanding, no organization referred to by **N.J.S.A. 17B:17-13.1** [section 13.1 of chapter 17 of the code] may enter into annuity agreements with donors until it has satisfied the Commissioner of Insurance that it satisfies all of the requisite provisions of the law and has received from the Commissioner a special permit authorizing it to do such business.

11:4-8.8 Separability of provisions

If any provision of this **subchapter** [regulation] or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect the provisions or applications of this **subchapter** [regulation] which can be given effect without the invalid provision or application, and for this purpose the provisions of the **subchapter** [regulation] are separable.

11:4-8.9 [Effective date]

[This regulation shall become effective immediately.]

Penalties

Failure to comply with the provisions of this subchapter will subject any special permit holder to the penalties provided by **N.J.S.A. 17B:17-13.1d.** and any other penalties available to the Commissioner of Insurance.

LAW AND PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES

Proposals numbered PRN 1984-637, 638 and 657 are authorized by Clifford W. Snedeker, Director, Division of Motor Vehicles.

Address comments and inquiries to:

Clifford W. Snedeker, Director
Division of Motor Vehicles
25 South Montgomery Street
Trenton, New Jersey 08666

(a)

Notification of Insurance Coverage Termination

Proposed Amendment: N.J.A.C. 13:18-6.1

Authority: N.J.S.A. 39:3-4e.

Proposal Number: PRN 1984-657.

The agency proposal follows:

Summary

An insurer is currently required to notify the Division of Motor Vehicles whenever a motor vehicle liability insurance policy is cancelled within six months of the effective date. This information is submitted to the Division on notice of termination (FS-4) cards, which are then manually processed by Division employees. The proposed amendments require an insurer to notify the Division whenever a motor vehicle liability insurance policy has been cancelled prior to its expiration date, regardless of whether the policy cancellation occurred more or less than six months after the effective date. The proposed amendments also require that each insurer submit all notice of termination information to the Division of Motor Vehicles on computer magnetic tapes in lieu of cards commencing March 1, 1985. The proposed amendments also specify the notice of termination information which an insurer must supply to the Division on and after March 1, 1985.

Social Impact

The proposed amendments will have a beneficial impact on the ability of the Division of Motor Vehicles to identify those New Jersey motorists who have failed to maintain continuous liability insurance on their vehicles in violation of this State's compulsory insurance law. The Division's increased ability to detect uninsured drivers should reduce the number of such motorists using this State's highways.

Economic Impact

The proposed amendments will have a positive economic impact on the State of New Jersey. The use of computer magnetic tapes by insurers in lieu of cards will eliminate the manual processing of notice of termination cards by the Division of Motor Vehicles. Hence, the Division of Motor Vehicles will be able to perform the task of insurance verification more expeditiously and economically. Insurers required to

submit notice of termination information on computer magnetic tapes pursuant to these amendments will incur one-time costs in connection with writing computer programs to generate the information needed by the Division of Motor Vehicles.

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

13:18-6.1 Notification of insurance coverage termination

(a) An insurer shall [issue a] **submit** notice of termination [(FS-4)] **information** to the Division of Motor Vehicles whenever a motor vehicle liability insurance policy is cancelled, **by either the insurer or the named insured, or lapses due to nonpayment.**[within six months of the original effective date.]

(b) An insurer shall not [issue an FS-4] **submit notice of termination information to the Division of Motor Vehicles** if the policy is not renewed. [, except where it is within six months of the original effective date, or] **An insurer shall not submit notice of termination information to the Division of Motor Vehicles** when a vehicle is added to or dropped from a policy, or when the policy holder transfers his insurance to another state.

[(c) The FS-4 shall be the same notice presently in use except that the policy effective or anniversary date should be shown immediately following the policy number.]

(c) **Commencing March 1, 1985, an insurer shall supply the following notice of termination information to the Division of Motor Vehicles:**

1. **The complete driver license number of the named insured;**
2. **The full name and address of the named insured;**
3. **The insurance company name and code number;**
4. **The insurance policy number;**
5. **The insurance policy effective date and expiration date;**
6. **The insurance policy termination date;**
7. **The vehicle identification number, year and make of the vehicle for which insurance coverage has been terminated;**
8. **Any other information deemed necessary and appropriate by the Director of the Division of Motor Vehicles.**

[(d) Two copies of the notice of termination (FS-4) shall be issued and mailed to the Division of Motor Vehicles within 30 days following (not before) the effective date of a cancellation.]

(d) **Commencing March 1, 1985, an insurer shall submit notice of termination information to the Division of Motor Vehicles on computer magnetic tape(s), said information to be in such tape record format as the Director of the Division of Motor Vehicles shall prescribe.**

(e) **Commencing March 1, 1985, notice of termination information shall be submitted to the Division of Motor Vehicles on computer magnetic tape(s) on a monthly cycle. The tape(s) shall be submitted to the Division of Motor Vehicles within 30 days following (not before) the effective dates of the cancellations contained in the tape(s).**

(a)

**Enforcement Service
Motor Vehicle Reinspection Centers**

Proposed Amendment: N.J.A.C. 13:20-32.14

Authority: N.J.S.A. 39:8-34 (P.L. 1983, c.417).
Proposal Number: PRN 1984-637.

The agency proposal follows:

Summary

The proposed amendment implements P.L. 1983, Chapter 417, by exempting reinspection centers licensed on or before June 30, 1983 from the mechanic certification requirements until May 1, 1985. N.J.A.C. 13:20-32.14 presently exempts reinspection centers licensed prior to May 1, 1983, from the mechanic certification requirements.

Social Impact

The proposed amendment implements the statutory exemption contained in P.L. 1983, c.417. Reinspection centers licensed on or before June 30, 1983, are required to comply with the mechanic training and certification requirements by May 1, 1985, in order to perform inspections and make repairs for compensation after that date.

Economic Impact

There will be an economic impact on the State in monitoring the training course and certification program. There will be an economic impact on mechanics who will have to comply with the training and certification requirements.

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

13:20-32.14 Mechanic qualifications

(a) If licensed as a reinspection center [prior to May 1, 1983,] **on or before June 30, 1983,** it shall be sufficient until May 1, 1985 for the licensee to meet the requirements of this rule if the licensee or someone in his employ shall have:

1. At least three years of paid experience in general automotive repair and service; or
2. Have completed a course in automotive repair at an approved vocational school and at least one year of applicable experience; or
3. Have been certified as a general mechanic, or in the applicable categories, by the National Institute for Automotive Service Excellence.

(b) If licensed as a reinspection center subsequent to [May 1, 1983,] **June 30, 1983,** and for all licensees subsequent to May 1, 1985, the licensee or someone in his employ shall meet one of the following criteria:

1. One year experience as a paid automotive mechanic and successful completion of advanced courses in automotive mechanics, specifically designed for and restricted to profession-

als engaged in the trade which shall meet the requirements of N.J.A.C. 13:20-32.15; or

2. Three or more years paid experience in general automotive repair and service or at least one year paid experience and completion of an automotive repair course at a vocational school may be certified, provided the applicant has successfully passed the National Institute for Automotive Service Excellence test for engine tuneup and at least one other test from the following areas:

- i. Brakes;
- ii. Front End;
- iii. Automotive Electrical Systems.

(a)

**Executive and Administrative Services
Overhang Standards**

Proposed New Rule: N.J.A.C. 13:20-38

Authority: N.J.S.A. 39:3-84a(10).
Proposal Number: PRN 1984-638.

The agency proposal follows:

Summary

The purpose of these proposed new rules is to establish the maximum length dimension for any vehicle or combination of vehicles built and used solely to transport automobiles. Pursuant to N.J.S.A. 39:3-84a(10) (P.L. 1983, chapter 349, section 5) the Director of the Division of Motor Vehicles may adopt rules and regulations specifying the maximum length of vehicles used to transport other vehicles.

The maximum overall length of the vehicle is established to be 65 feet. A three foot overhang is permitted at the front and a four foot overhang is permitted at the rear. In establishing these dimensions, the Director has used the minimum length standards set by the Federal government for use on Interstate highways. These dimensions are the minimum that can be established by the states. In establishing these, the Director has reviewed the overall Federal regulations and comments to those regulations found at 49 C.F.R. 658.13d.

A separate section exempts automobile transporters from the overhang standards found at N.J.A.C. 13:18-8.1.

Social Impact

The proposed new rules will foster highway safety in the State by setting maximum length and overhang standards for vehicles used to transport other vehicles. The transporters of automobiles will be directly affected by the rules since they will be required to maintain compliance with the maximum length and overhang provisions.

Economic Impact

There will be no economic impact on the State or the general public. There may be an economic impact on persons who transport motor vehicles in complying with the proposed new rules. In the event of a violation of the rule's provisions, the transporters may be subject to fines.

Full text of the proposed new rule follows.

**SUBCHAPTER 38. DIMENSIONAL STANDARDS FOR
AUTOMOBILE TRANSPORTERS**

13:20-38.1 Vehicle combination lengths

No vehicle or combination of vehicles designed, built and utilized solely to transport other vehicles when operated on the highways of this State shall exceed 65 feet in overall length, excluding the load.

13:20-38.2 Load overhang automobile transporters

(a) A vehicle or combination of vehicles designed, built and utilized solely to transport other vehicles when operated on the highways of this State may have a load overhang of no more than three feet to the front and/or no more than four feet to the rear.

(b) Vehicles designed, built and utilized solely to transport other vehicles shall be exempt from the overhang standards set forth at N.J.A.C. 13:18-8.1.

13:20-38.3 Number of vehicles; overall length

(a) Pursuant to N.J.S.A. 39:4-54 no more than two vehicles may be drawn by a motor vehicle.

(b) No vehicle or combination of vehicles operated in a saddlemount or fullmount operation shall exceed 65 feet in overall length, inclusive of load.

(b)

DIVISION OF CONSUMER AFFAIRS

**Board of Architects and Certified Landscape
Architects**

Proposed Amendment: N.J.A.C. 13:27-3.13

Authorized By: New Jersey Board of Architects and Certified Landscape Architects, M. Lisbeth De Coitiis, President.

Authority: N.J.S.A. 45:3A-1 et seq. (L. 1983, c.337, § 12) and 45:3-3.

Proposal Number: PRN 1984-658.

Address comments and inquiries to:

Barbara S. Hall, Executive Secretary
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 establishes the fees to be charged by the Board of Architects and Certified Landscape Architects for applications for landscape architecture certification, certificates, seals, renewal of certification and rosters.

Social Impact

The proposed amendment will have no broad significant social impact other than such salutary effects as may be asso-

ciated with certifying landscape architects to establish a class of professionals who may represent themselves as having particular expertise in the field.

Economic Impact

The proposed fee schedule should yield sufficient revenues to cover the expenses which will be generated by the statutory requirement that the Board certify those individuals who are qualified and wish to use the title "certified landscape architect." To the extent that such fees may be passed along to the client as a cost of doing business, the costs of professional services to the consumer may be increased.

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

13:27-3.13 Fees

(a) (No change.)

(b) The following fees shall be charged by the Board of Architects for Landscape Architect Certification matters. Unless otherwise provided herein, all fees are non-refundable.

1. Application for certification under the grandfather clause of L. 1983, c.337, § 17: \$50.00. If an applicant under the grandfather clause is found not qualified for certification under that provision, the \$50.00 fee may be applied toward the examination fee in paragraph 3, below.

2. Application to sit for examination: \$100.00.

3. Examination fee: Such fee as is charged by the Council of Landscape Architectural Review Board (CLARB) for the Uniform National Examination. Such proportion of the examination fee as may be established by CLARB shall be subject to refund, upon request, if the applicant is determined to be ineligible for examination, withdraws his application, or fails to appear for examination.

4. License fee for newly certified landscape architects (New Jersey residents), including seal and certificate: \$140.00. Such fee shall be subject to refund upon request, if the applicant is determined to be ineligible for examination, withdraws his application, or fails to appear for examination.

5. License fee for newly certified landscape architects (non-New Jersey residents), including seal and certificates: \$140.00. Such fee shall be subject to refund upon request, if the applicant is determined to be ineligible for examination, withdraws his application, or fails to appear for examination.

6. The fee for biennial renewal of certification shall be \$100.00.

7. The fee for reinstatement of certification shall be \$50.00 in addition to the fee for biennial renewal of certification.

8. A fee for late registration: \$10.00.

9. The fee for reissuing a certificate to any certified landscape architect who attests that the original certificate has been lost, mislaid or destroyed shall be \$15.00.

10. The fee for reissuing a seal to any certified landscape architect who attests that the original has been lost, mislaid or destroyed shall be \$25.00.

11. The fee for transmittal of an applicant or certificate holder's examination grades to another state shall be \$15.00.

12. The fee for a roster of certified landscape architects shall be \$8.00.

BOARD OF MEDICAL EXAMINERS

Proposals numbered PRN 1984-644 and 659 are authorized by the Board of Medical Examiners, Edwin H. Albano, M.D., President.

Address comments and inquiries to:

Charles A. Janousek, Executive Secretary
Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08608

(a)

Requirements For Approval Of Colleges Of Chiropractic

Proposed Amendment: N.J.A.C. 13:35-2.4

Authority: N.J.S.A. 45:9-2.

Proposal Number: PRN 1984-644.

The agency proposal follows:

Summary

The proposed amendment will assure that applicants for chiropractic licensure in this State are graduates of professional schools which have undergone a rigorous review of their academic credentials and program by accrediting agencies with appropriate expertise in evaluating professional schools. The Medical Board retains its legal responsibility to make final review and approval of the school, which review may include a site inspection.

Social Impact

The proposed amendment will promote reliability of professional preparation of chiropractors by providing two levels of review: (1) a basic screening and evaluation by an accrediting agency found by the Medical Board to be competent and responsible (comparable in function and quality to the accrediting agencies with regularly review and evaluate medical schools in this country) and (2) final review by the Board which is given this responsibility by N.J.S.A. 45:9-2, 45:9-41.5 and 45:9-41.6. As a matter of policy, however, the amendment will accommodate the prior expectations of persons who have already commenced chiropractic training at schools having a lesser level of review and evaluation, by allowing persons who are now freshmen to complete their educations and to promptly sit for the New Jersey State Licensing Examination. Those who have not yet begun their education at a school not qualifying under this rule or who delay in taking the New Jersey examination will be forewarned that this State will expect higher standards of training as this rule becomes fully effective in its applicability.

Economic Impact

The proposed amendment is expected to have a highly beneficial impact on patients seeking chiropractic care, as New Jersey licensees will be graduates of professional schools of reliable, recognized and accepted quality as evaluated preliminarily by experts in the field of professional school instruction and also by this Board which has the responsibility of interpreting the Chiropractic Practice Act in the best interests of the health, safety and welfare of the public.

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

13:35-2.4 Requirements for Approval of Colleges of Chiropractic

(a)-(j) (No change.)

(k) The requirement of N.J.S.A. 45:9-41.5 that an applicant for chiropractic licensure shall have graduated from an approved school(s), institution(s) or college(s) of chiropractic shall mean that the school was approved during the entire course of the applicant's training by the Council on Chiropractic Education or other accrediting agency having prior approval of the Board [and the school or schools have also been approved by the Board, which may inspect such school prior to determining approval]. **Board approval of a college's accreditation shall be effective for a period not to exceed five years. Renewed approval may be sought prior to the end of that period. The Board may also inspect the school prior to determining its approval. However, any graduate of a chiropractic college who was a bona fide student in good standing enrolled at a school which, prior to the effective date of this rule, was approved by the Board, shall upon proof of satisfaction of all other statutory prerequisites, be deemed eligible to sit for the licensure examination in this State until August 1, 1987, and not thereafter.**

[(1) This rule shall become effective November 6, 1983.]

(a)

Practice Identification

Proposed Repeal: N.J.A.C. 13:35-6.1

Proposed New Rule: N.J.A.C. 13:35-6.1

Authority: N.J.S.A. 45:9-2.

Proposal Number: PRN 1984-659.

The agency proposal follows:

Summary

The proposed new rule would replace the present text of N.J.A.C. 13:35-6.1, the substance of which was invalidated by the Superior Court in *Eatough v. Bd. of Med. Ex.*, 191 N.J. Super. 166 (App. Div. 1983) insofar as it required a physician to always list after his or her name the educational degree conferred by the medical school. The proposed new rule requires a physician to communicate truthful information about education or practice, but allows the physician to select how this will be done. This rule would require physicians to identify themselves by the true professional degree conferred by their medical school. If they wish to abbreviate their conferred educational degree, they must use only the recognized abbreviation for the actual degree conferred. If they do not wish to use the actual degree or recognized abbreviation thereof, then they must describe the nature of their practice.

Social Impact

At present many persons licensed to practice medicine and surgery in this State are graduates of medical schools conferring the academic degree of Doctor of Medicine or Doctor of

Osteopathic Medicine (abbreviated traditionally as M.D. or as D.O., respectively). Many practitioners in this State are graduates of foreign medical schools, many of which confer the academic degree of Doctor of Medicine and many of which confer a variety of other degrees including, for example, Bachelor of Medicine-Bachelor of Surgery, Licenciante, Vrac, Igakushi, etc., and some of which titles cannot readily be transliterated into English. The proposed new rule would require physicians to identify themselves by the true professional degree conferred by their medical schools. If they wish to use an abbreviation of the academic degree, they must use only the recognized abbreviation thereof. Specifically, a physician whose educational degree is something other than Doctor of Medicine (as written in English or as directly translated) would not be permitted to advertise as an "M.D." At present, some doctors represent themselves not by degree but by describing the nature of their practice: for example, Dr. Francis Smith, physician and surgeon. A physician may, however, prefer to list himself or herself simply as Francis Smith, M.D. (or D.O. as the case may be). M.D. is the customary abbreviation of the academic degree of Doctor of Medicine; this degree is conferred by the majority of medical schools in the world and sometimes is set forth on the diploma as Doctor of Medicine in English; it is often set forth in Latin, a universal language of academia. D.O. is the customary abbreviation of the academic degree of Doctor of Osteopathy; that degree, although indicating plenary training to practice all branches of medicine, is the culmination of a professional school program which differs somewhat from that taught to doctors of medicine and it is at present conferred by a number of recognized medical schools only in the United States. The proposed rule would limit those persons electing to list themselves as M.D. or D.O. (as the case may truthfully be) to those physicians who are graduates of the 123 medical schools accredited by an agency recognized by the New Jersey State Board of Medical Examiners, that is, the Liaison Committee on Medical Education or the American Osteopathic Association, or are graduates of a foreign school whose diploma confers the actual degree of Doctor of Medicine. Under this proposal, the graduate of a foreign medical school would have the choice of using either the true degree conferred by that educational institution or the option to describe the nature of the doctor's actual practice, for example, pediatrics, internal medicine or more generally "physicians" or "surgeons," etc. The proposal would apply prospectively, so as not to affect settled arrangements of current licensees. This proposal does not affect a professional with a limited license such as a podiatrist, chiropractor, laboratory director, or midwife—all of whom are already required to clearly indicate their licensed profession or to use the recognized and accepted abbreviation of degree.

In any event, all Board licensees are permitted to include in their advertising all truthful descriptions of their educational background and other pertinent information, such as specialty board certifications, honors, hospital privileges, languages spoken, services offered, fee and credit arrangements.

Economic Impact

No substantial economic impact is anticipated, as the practice privileges of all licensees will remain exactly the same. Work performed in offices, clinics and hospitals, and eligibility as health care providers for third party insurance carriers should not be affected in any way.

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

13:35-6.1 [Degree designation] **Practice identification**

(a) A physician with a plenary license to practice medicine and surgery in the State of New Jersey shall identify himself or herself for professional purposes (office identification, stationery, professional cards, etc.) in a manner clearly indicating the academic professional degree earned (M.D. or D.O.) and which is imprinted on the license issued to said person by the Board.

(b) A licensee with a limited license issued by the Board shall identify himself or herself for professional purposes in a manner clearly indicating the licensed profession by name or by using the recognized and accepted abbreviation: for example, John Doe, Chiropractor or John Doe, D.C.; Jane Smith, Podiatrist or Jane Smith, D.P.M.; John Doe, Physical Therapist or John Doe, R.P.T.; Jane Smith, Certified Nurse Midwife or Jane Smith, C.N.M.; John Doe, Bioanalytical Laboratory Director or John Doe, B.L.D.; Jane Smith, Specialty Bioanalytical Laboratory Director in Chemistry, etc.]

(a) A physician with a plenary license to practice medicine and surgery in the State of New Jersey shall make representation for professional purposes (office identification, stationery, professional cards, signature on insurance claim forms, education, etc.) in a manner clearly indicating such plenary licensure and/or practice specialty; for example: **Dr. John Doe, physician and surgeon; or Dr. Jane Smith, physician; or Dr. John Doe, surgeon; or Dr. Jane Smith, licensed to practice medicine and surgery; or Dr. Jane Doe, physician, practice limited to (name of specialty); or similar accurate descriptive terms.**

(b) A graduate of an accredited professional medical school located outside the United States or Canada who receives a plenary license to practice medicine and surgery in New Jersey shall make public representation for professional purposes only as permitted in (a) above, and/or may use the degree or degrees actually granted by the medical school or the standard and accepted abbreviation of that degree. This section shall apply prospectively to persons licensed in New Jersey after the effective date of this rule.

(c) A graduate of an accredited professional medical school located within the United States or Canada who receives a plenary license to practice medicine and surgery in New Jersey and who elects to use an abbreviation of title, shall use the standard and accepted abbreviation of professional degree conferred by the medical school, that is, **John Smith, M.D.; Jane Smith, D.O., as the case may be. One who is a graduate of both an A.M.A.-accredited allopathic professional school and an A.O.A.-accredited osteopathic professional school may elect to use either M.D. or D.O. as the primary abbreviation following the name and shall notify the Board of such election.**

(d) A licensee with a limited license issued by the Board shall identify himself or herself for professional purposes in a manner clearly indicating the licensed profession by name or by using the recognized and accepted abbreviation of the degree actually conferred by the professional college; for example: **John Doe, Chiropractor or John Doe, D.C.; Jane Smith, Podiatrist or Jane Smith, D.P.M.; John Doe, Bioanalytical Laboratory Director or John Doe, B.L.D. or John Doe, Specialty Bioanalytical Laboratory Director in Chemistry, etc.; Jane Smith, Certified Nurse Midwife or C.N.M.**

(e) The use of any letters in immediate conjunction with the name of a licensee shall be deemed a representation of earned academic professional degree. Any such degree shall have been conferred by an educational institution authorized by the appropriate higher education authorities in its state of domi-

cile to do so. The licensee may also list abbreviations of membership in non-profit incorporated professional societies.

(f) All representations by licensees of degree abbreviations or of professional society affiliations shall comply with this rule, and any use of an academic degree or professional or membership abbreviation not in accordance with these standards shall be deemed a misrepresentation and professional misconduct.

(a)

**DIVISION OF CONSUMER AFFAIRS
BOARD OF NURSING**

**Licensure by Examination and Endorsement;
Foreign Nurses; Nursing Procedures
Proposed Readoption: N.J.A.C. 13:37-2
through 6**

Authorized By: State Board of Nursing, Dr. Kathleen M. Dirschel, President.

Authority: N.J.S.A. 45:11-23, 45:11-24(d)(8) and (19), 45:11-26 and 45:11-27.

Proposal Number: PRN 1984-662.

Address comments and inquiries to:
Sister Teresa Louise Harris
Executive Secretary
State Board of Nursing
Room 319
1100 Raymond Boulevard
Newark, NJ 07102

The adoption becomes effective upon acceptance for filing of the notice of adoption by the Office of Administrative Law.

The agency proposal follows:

Summary

The Board of Nursing proposes to readopt the provisions of N.J.A.C. 13:27-2 through 6 concerning licensure by examination and endorsement. These rules were initially promulgated prior to 1978. However, they were subsequently amended on November 7, 1983 and adopted on April 16, 1984. The amendments were published in full in the New Jersey Register at 15 N.J.R. 1850 and 16 N.J.R. 923. Pursuant to Executive Order 66(1978), subchapters 2, 5 and 6 will expire on April 16, 1989; Subchapter 3 will expire on November 27, 1984 and Subchapter 4 will expire on September 25, 1985. The readoption sets forth the standards and requirements of persons desiring to become licensed as a registered (N.J.A.C. 13:37-2) or licensed practical nurse (N.J.A.C. 13:37-3) by examination or endorsement (N.J.A.C. 13:37-5), and the requirements for persons graduating from foreign schools to become licensed as a nurse (N.J.A.C. 13:27-4). The readoption also allowed the Board of Nursing to determine on a case-by-case basis the scope of nursing practice within the definition of nursing (N.J.S.A. 45:11-23). The Board has reviewed the rules in accordance with Executive Order 66(1978) and has deter-

mined that they are necessary, adequate, reasonable, efficient, understandable and responsible to the purposes for which they were promulgated. The rules provide explicit standards for the qualification of candidates for a nursing license. The rules protect the public interest in that only properly qualified persons are licensed as nurses. The rules proposed for readoption will continue to serve the public interest by maintaining strict licensing standards.

Social Impact

The Board of Nursing pursuant to N.J.S.A. 45:11-23 is responsible for the licensing of over 110,000 nurses in the State. The rules proposed for readoption have a beneficial social impact in that explicit standards are provided for the qualifications of these nurses. Continued effectiveness of the rules is necessary in order to assure that only those persons who meet the requirements of the rules adopted in furtherance of the law are qualified as proper persons under the law to be licensed as a nurse in this State.

Economic Impact

The proposed readoption will not impose any new or additional economic impact on either the Board of Nursing or the nurse licensees. The only economic impact of the rules concerns the license fees which the nurses must pay to the Board in order to be licensed. These fees are found at N.J.A.C. 13:37-12.1 which are used by the Board to cover expenses of its operation.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:37-2 through 13:37-6.

NEW JERSEY RACING COMMISSION

Proposals numbered PRN 1984-660 and 661 are authorized by the New Jersey Racing Commission, Harold G. Handel, Executive Director.

Address comments and inquiries to:

Bruce H. Garland, Deputy Director
New Jersey Racing Commission
Justice Complex
CN 088
Trenton, New Jersey 08625

(a)

Thoroughbred Racing: Medication and Testing Procedures

Proposed Readoption With Amendments: N.J.A.C. 13:70-14A

Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1984-660.

The agency proposal follows:

Summary

The rules of the New Jersey Racing Commission govern all aspects of pari-mutuel wagering and the conduct of harness and thoroughbred racing. Individual subchapters delineate specific areas of regulation such as medication and testing procedures. N.J.A.C. 13:70-14A "Stimulation and Tests," deals with testing procedures and prohibited the administration of drugs to horses entered in races. Pursuant to Executive Order 66, that subchapter is scheduled to expire on December 19, 1984. The New Jersey Racing Commission has undertaken an intensive review of the foregoing rules prior to notice for readoption. As a result of that review, several substantive changes are proposed. New sections have been added and other sections entirely redrafted. The sections have been reworded and consolidated with other sections throughout the chapter. In *Lepman v. New Jersey Racing Commission* the Appellate Division noted problems of syntax in the old rules and pointed out that the regulations were physically separated. The court suggested restructuring and reframing. The proposed amendments are the result of that restructuring and reframing. Because of the extensive restructuring and amendments to the current rules, the commission has deleted the current text of the rules and proposed them in an orderly structure for clarity and readability. Although the proposal looks like a new rule the substantive provisions of the current rules have been essentially retained with the addition of several amendments.

The new subchapters begin with a statement of the "Intent of the Medication Rules, N.J.A.C. 13:70-14A.1, which is that no horse, participating in a race, shall carry in its body any drug or substance which is foreign to the natural horse. This is followed by sections dealing with the authority to test, pre and post race testing procedures and the procedure following positive chemical analysis, at N.J.A.C. 13:70-14A-2 through 14A-5. These sections have been reworded, but are essentially the same as the old rules.

The section on "Trainers," N.J.A.C. 13:70-14A-6, is new, combining portions of other sections and subchapters with some totally new material. This section clarifies the trainer's responsibility by declaring that, "a trainer shall be the absolute insurer of and is responsible for the condition of a horse within his care and custody."

The section of "Penalties," N.J.A.C. 13:70-14A-7, puts in one section the penalties for violations of all sections in this subchapter. Formerly, these were spread out in other rules.

Finally, there is a section which prohibits possession of drugs and drug instruments except in certain circumstances, N.J.A.C. 13:70-14A-8.

The section on "Respiratory Bleeders," N.J.A.C. 13:70-14A-9, draws together the rules dealing with respiratory bleeders and administering approved medication.

The Racing Commission expects public comment to be received stimulating further review as a result of the readoption procedure being instituted. The agency has determined the subchapter is necessary to protect the public interest with respect to pari-mutuel horse racing and that it constitutes a reasonable and effective means to such a goal.

Social Impact

The subchapter proposed for readoption has the stated intent of protecting the integrity of horse racing, guarding the health of the horse and safeguarding the interest of the public and racing participants through the prohibition and/or control of all drugs and/or substances foreign to the natural horse. To this extent the social impact is a positive one. The

subchapter deals directly with safety and the public's confidence in the integrity of racing and is adequate, reasonable and necessary in its stated objectives and should be continued.

Economic Impact

There is no direct economic impact upon the public or the State of New Jersey. The costs of the testing are borne by the track associations and are funded from deductions from the parimutuel pool. Although the rules have been restructured and reframed, there will be no additional expense to the track associations. To the extent the rules foster public confidence in the racing industry the economic impact is a positive one. This is because the racing industry cannot function without public confidence that no participant has an unfair advantage. Public confidence in the integrity of racing is reflected in the parimutuel pools which provide revenue to the tracks, horsemen and to the State, in addition to thousands of employment opportunities.

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

SUBCHAPTER 14A [STIMULATION AND TESTS] MEDICATION AND TESTING PROCEDURES

Delete the current text of N.J.A.C. 13:70-14A and **replace with new text** as follows:

13:70-14A.1 Intent of medication rules

It shall be the intent of the contained in this subchapter to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition and/or control of all drugs and/or substances foreign to the natural horse. No horse participating in a race shall carry in its body any drug and/or substance which is foreign to the natural horse, except as otherwise provided for in the rules and regulations of the Commission, irrespective of when administered or injected.

13:70-14A.2 Testing

(a) Any horse entered to start at any licensed race meeting may be subjected to a pre-race and/or post-race blood, and/or urine test, at the direction of the State Veterinarian, and/or State Steward, in the manner prescribed by the New Jersey Racing Commission. The costs so incurred shall be borne by the track association. The cost to the track association for testing each sample shall be established by the New Jersey Racing Commission.

(b) Every owner, or his authorized agent, or trainer or any horse entered to race at any licensed racetrack shall immediately submit the said horse to any veterinarian designated by the Commission, for examination and/or testing whenever so requested by the Commission, Stewards, State Veterinarians, or Associate State Veterinarians.

13:70-14A.3 Pre-race testing program

(a) All horses entered to start in any race where parimutuel wagering is conducted shall be subject to a pre-race blood and/or urine test.

(b) Such horses shall be tested in their respective barn area on the grounds of the permitholder on the day of the race at such time as designated by the Commission and shall be under the care of a duly licensed attendant designated by the trainer of the horse.

(c) A licensed veterinarian approved by the Commission shall be the only person allowed to draw blood for testing. A quantity of 20 cubic centimeters or such amount as the veterinarian may designate shall be extracted from each horse for testing purposes.

(d) Should the forensic analysis of such sample be classified as suspicious for any drug, or substance foreign to the natural horse, the horse shall be scratched.

(e) Should the forensic analysis of such sample be classified as positive for any drug, or substance foreign to the natural horse, the horse shall be scratched and placed on the Steward's list for seven days.

(f) The entry of a horse shall constitute permission for a veterinarian appointed by the New Jersey Racing Commission to obtain biological samples, and consent to the scratching of the horse from the race in the event such test is positive or suspicious.

(g) A trainer shall receive a warning for the first time a horse in his charge shall show a positive pre-race test. If the same horse shall again be positive on a pre-race test, then the trainer may be fined, suspended or both.

13:70-14A.4 Post-race testing program

(a) No drug shall be administered or applied, internally or externally, to any horse that is to be sampled after a race until the blood and/or urine samples have been obtained unless permission from the State Veterinarian is obtained.

(b) Every horse to be tested shall be taken to a detention barn, to be supplied by the association in accordance with specifications set forth by the Commission. All blood samples shall be taken by a State Veterinarian while urine samples shall be secured by the State Veterinarian or a chemical inspector of the Commission at the direction of the State Veterinarian.

(c) During the taking of any blood and/or urine sample by the veterinarian representing the Commission, from the horse entered to race, the owner, trainer or their designated representative shall be present and witness the procedure. The sample so taken shall be immediately sealed and tagged on the form provided by the Commission and the evidence of such sealing shall be indicated by the signature of such owner, trainer or representative. It shall be the obligation of the owner, trainer or representative to cooperate fully with the State Veterinarian in obtaining any samples which may be required and to attend and witness the taking and securing of such sample.

13:70-14A.5 Procedure following positive chemical analysis

(a) On receiving written notice from the official chemist that a specimen has been found "positive" for any drug or substance foreign to the natural horse, the stewards shall proceed as follows:

1. They shall notify the State Police and authorize a search of the premises occupied by the stable involved.

2. They shall, as quickly as possible, notify the owner and trainer of the horse involved.

3. They shall, with the assistance of the State Police, conduct a thorough investigation, interviewing the trainer, assistant trainer and any other persons who may have pertinent knowledge of the circumstances involved.

4. During the progress of such investigation, the stable involved shall be permitted to race; save that the particular horse (or horses) involved shall not be entered or start until allowed to do so by the Stewards.

13:70-14A.6 Trainers

(a) A trainer shall be the absolute insurer of and is responsible for the condition of a horse within his care and custody.

(b) A trainer shall not enter or start a horse that has in its body any drug or substance foreign to the natural horse except as otherwise provided for in these rules and regulations.

(c) A trainer has the duty to be familiar with the medication rules of this Commission and with any drug or substances foreign to the natural horse administered to said horse at his direction or while in his care and custody.

(d) The trainer, owner, veterinarian, groom or other person charged with the custody, care and responsibility of a horse are all obligated to protect and guard the horse against administration of any drug or substance foreign to the natural horse by any unauthorized individual.

13:70-14A.7 Penalties

(a) Should the stewards determine that any person or persons have violated any section of this subchapter, they may punish the offending party consistent with the penalties provided for in these rules and regulations.

(b) In addition to (a) above, the Stewards shall penalize the owner of any horse, or any entry of which said horse is a part, that has started in any race with any drug or substance foreign in its body by disqualification and denial of any part of the purse with redistribution of purse moneys as in the case of a disqualification.

(c) Any individual suspended or disciplined in any fashion for a second or subsequent violation of N.J.A.C. 13:70-14A.6 (a), (b), (d) or any comparable rule of any other racing commission or turf governing body may be deemed a repetitive offender and may constitute grounds for further disciplinary action by the Commission.

(d) Horses owned wholly or in part by persons suspended for violation of N.J.A.C. 13:70-14A.6 (a), (b) or (d) are ineligible to start during the pendency of such suspension, unless sold to a bona fide purchaser. Horses trained by a person suspended for such a violation, wherein the trainer does not have an ownership interest, are automatically eligible to start when placed in the hands of a licensed trainer approved by the Stewards.

(See N.J.A.C. 13:70-13A for rules concerning Appeals.)

13:70-14A.8 Possession of drugs or drug instruments

(a) No person aside from licensed veterinarians shall have in his possession anywhere within the grounds of any association conducting a race meeting, any drugs not possessed in accordance with the laws of the State of New Jersey, nor any contraband drug or unauthorized prescription legend drugs, nor any hypodermic syringes or needles, or any other instrument which may be used for injection, unless the injectable device is possessed for self-administration, and further provided that the individual possessing such device promptly notify the State Steward:

1. That he is in possession of such device; and,
2. Of the chemical substance to be administered.

13:70-14A.9 Administering medication to respiratory bleeders

(a) The stewards may permit the administration of medication to control respiratory bleeding in animals that:

1. At any time have been charted to have bled in the "Daily Racing Form"; or
2. At any time have received a comprehensive cardiopulmonary examination at an approved equine hospital or school

of veterinary medicine and as a result thereof, are certified as bleeders and therefore are in need of medication in order to race; or

3. Are observed in New Jersey to bleed during the running or driving of a workout or race at a duly licensed New Jersey racetrack, or in the detention barn following such workout or race by the State or Associate State Veterinarian and have been placed on a veterinarian's list for at least 14 days; or

4. Have been certified as respiratory bleeders in racing jurisdictions wherein such certification is pursuant to criteria substantially similar to this section. The Executive Director of the Commission shall make annual report to the Commission of those jurisdictions in compliance herewith, which compliance shall be certified by the Commission.

(b) All horses that are placed on the veterinarian's list shall be required to be brought to the detention barn no later than five hours prior to race time and shall remain in said detention barn until race time. During the said five hour period the horse shall be under the care and custody of a groom or caretaker appointed by the trainer. Any diuretic medication that is intended to control respiratory bleeding shall be administered by a licensed practicing veterinarian in said detention barn under the direct supervision of the State Veterinarian or an Associate State Veterinarian, five hours prior to race time. Said practicing veterinarian shall make daily reports of all such treatments.

(c) Post-race urine and blood samples may be taken by or under the supervision of the State Veterinarian from all horses treated with diuretic medication to control respiratory bleeding pursuant to the requirements set forth above.

(d) A horse placed on the veterinarian's list for bleeding must remain on the list for 14 calendar days and a second time bleeder must remain on the respiratory list for three months. A bleeder in the above categories is automatically released from the veterinarian's list after these dates; however, a horse which evidences respiratory bleeding a third time is barred from further racing in New Jersey.

(a)

Harness Rules: Medication and Testing Procedures**Proposed Repeal and New Rules: N.J.A.C. 13:71-23**

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1984-661.

The agency proposal follows:

Summary

The rules of the New Jersey Racing Commission govern all aspects of pari-mutuel wagering and the conduct of harness and thoroughbred racing. Individual subchapters delineate specific areas of regulation such as medication and testing procedures. N.J.A.C. 13:71-23, "Stimulation and Tests," deals with testing procedures and prohibited the administration of drugs to horses entered in races. The New Jersey

Racing Commission has undertaken an intensive review of the foregoing rules. As a result of that review, substantial changes are proposed. New sections have been added and other sections entirely redrafted. The sections have been reworded and consolidated with other sections throughout the chapter. In *Lepman v. New Jersey Racing Commission* the Appellate Division noted problems of syntax in the old rules and pointed out that the regulations were physically separated. The court suggested restructuring and reframing. The proposed new rules are the result of that restructuring and reframing.

The new subchapters begin with a statement of the "Intent of the Medication Rules", at N.J.A.C. 13:71-23.1, which is that no horse, participating in a race, shall carry in its body any drug or substance which is foreign to the natural horse. This is followed by sections dealing with the authority to test, pre and post race testing procedures and the procedure following positive chemical analysis, at N.J.A.C. 17:71-23.2 through 23.5. These sections have been reworded, but are essentially the same as the old rules.

The section on "Trainers", at N.J.A.C. 17:71-23.6, is new, combining portions of other sections and subchapters with some totally new material. This section clarifies the trainer's responsibility by declaring that, "a trainer shall be the absolute insurer of and is responsible for the condition of a horse within his care and custody."

The section of "Penalties", at N.J.A.C. 17:71-23.7, puts in one section the penalties for violations of all the sections in this subchapter. Formerly, these were spread out in other rules.

The section on "Respiratory Bleeders", at N.J.A.C. 17:71-23.8, draws together the rules dealing with respiratory bleeders and administering approved medication.

N.J.A.C. 17:71-23.9 prohibits possession of drugs and drug instruments except in certain circumstances.

N.J.A.C. 13:17-23.10 concerns illegal devices.

N.J.A.C. 13:17-23.11 concerns Narcotics conviction and denial of license.

N.J.A.C. 13:17-23.12 concerns cooperation with other agencies and violation of the law.

N.J.A.C. 13:17-23.13 concerns responsibilities of the State Police.

The Racing Commission expects public comment to be received stimulating further review as a result of the readoption procedure being instituted. The agency has determined this subchapter as necessary to protect the public interest with respect to pari-mutuel horse racing and that it constitutes a reasonable and effective means to such a goal.

Social Impact

This subchapter has the stated intent of protecting the integrity of horse racing, guarding the health of the horse and safeguarding the interest of the public and racing participants through the prohibition and/or control of all drugs and/or substances foreign to the natural horse. To this extent the social impact is a positive one. The subchapter deals directly with safety and the public's confidence in the integrity of racing.

Economic Impact

There is no direct economic impact upon the public or the State of New Jersey. The costs of the testing are borne by the track associations and are funded from deductions from the pari-mutuel pool. Although the rules have been restructured and reframed, there will be no additional expense to the track

associations. To the extent the rules foster public confidence in the racing industry the economic impact is a positive one. This is because the racing industry cannot function without public confidence that no participant has an unfair advantage. Public confidence in the integrity of racing is reflected in the pari-mutuel pools which provide revenue to the tracks, horsemen and to the State, in addition to thousands of employment opportunities.

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

SUBCHAPTER 23. [STIMULATION AND TEST] MEDICATION AND TESTING PROCEDURES

Delete the current text of N.J.A.C. 13:71-23 and **replace with new text** as follows:

13:71-23.1 Intent of medication rules

It shall be the intent of the rules contained in this subchapter to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition and/or control of all drugs and/or substances foreign to the natural horse. No horse participating in a race shall carry in its body any drug and/or substance which is foreign to the natural horse, except as otherwise provided for in the rules and regulations of the Commission, irrespective of when administered or injected.

13:71-23.2 Testing

(a) Any horse entered to start at any licensed race meeting may be subjected to a pre-race and/or post-race blood, and/or urine test, at the direction of the State Veterinarian and/or State Steward, in the manner prescribed by the New Jersey Racing Commission. The costs so incurred shall be borne by the track association. The cost to the track association for testing each sample shall be established by the New Jersey Racing Commission.

(b) Every owner, or his authorized agent, or trainer of any horse entered to race at any licensed racetrack shall immediately submit the said horse to any veterinarian designated by the Commission, for examination and/or testing whenever so requested by the Commission, Stewards, Judges, State Veterinarians, or Associate State Veterinarian.

13:71-23.3 Pre-race blood testing program

(a) All horses entered to start in any race where pari-mutuel wagering is conducted shall be subject to a pre-race blood and/or urine test.

(b) Such horses shall be in the paddock at least two hours prior to post-time under the custody and care of a duly licensed attendant designated by the trainer of the horse.

(c) A licensed veterinarian approved by the Commission shall be the only person allowed to draw the blood for testing. A quantity of 20 cubic centimeters or such amount as the veterinarian may designate shall be extracted from each horse for testing purposes.

(d) Should the forensic analysis of such sample be classified as suspicious for any drug or substance foreign to the natural horse, the horse shall be scratched.

(e) Should the forensic analysis of such sample be classified as positive for any drug or substance foreign to the natural

horse, the horse shall be scratched and placed on the judge's list for seven days.

(f) The entry of a horse shall constitute permission for a veterinarian appointed by the New Jersey Racing Commission to obtain biological samples, and consent to the scratching of the horse from the race in the event such test is positive or suspicious.

(g) A trainer shall receive a warning for the first time a horse in his charge shall show a positive pre-race test. If the same horse shall again be positive on a pre-race test, then the trainer may be fined, suspended or both.

13:71-23.4 Post-race testing program

(a) No drug shall be administered or applied, internally or externally, to any horse that is to be sampled after a race until the blood and/or urine samples have been obtained unless permission from the State Veterinarian is obtained.

(b) Every horse to be tested shall be taken to a detention barn, to be supplied by the association in accordance with specifications set forth by the Commission. All blood samples shall be taken by a State Veterinarian while urine samples shall be secured by the State Veterinarian or a chemical inspector of the Commission at the direction of the State Veterinarian.

(c) During the taking of any blood and/or urine sample by the veterinarian representing the Commission, from the horse entered to race, the owner, trainer, or their designated representative shall be present and witness the procedure. The sample so taken shall be immediately sealed and tagged on the form provided by the Commission and the evidence of such sealing shall be indicated by the signature of such owner, trainer or representative. It shall be the obligation of the owner, trainer or representative to cooperate fully with the State Veterinarian in obtaining any samples which may be required and to attend and witness the taking and occurring of such sample.

13:71-23.5 Procedure following positive chemical analysis

(a) On receiving written notice from the official chemist that a specimen has been found "positive" for any drug or substance foreign to the natural horse, the steward shall proceed as follows:

1. They shall notify the State Police and authorize a search of the premises occupied by the stable involved.
2. They shall, as quickly as possible, notify the owner and trainer of the horse involved.
3. They shall, with the assistance of the State Police, conduct a thorough investigation, interviewing the trainer, assistant trainer and any other persons who may have pertinent knowledge of the circumstances involved.
4. During the progress of such investigation, the stable involved shall be permitted to race; save that the particular horse (or horses) involved shall not be entered or start until allowed to do so by the stewards.

13:71-23.6 Trainers

(a) A trainer shall be the absolute insurer of and is responsible for the condition of a horse within his care and custody.

(b) A trainer shall not enter or start a horse that has in its body any drug or substance foreign to the natural horse except as otherwise provided for in these rules and regulations.

(c) A trainer has the duty to be familiar with the medication rules of this Commission and with any drug or substances foreign to the natural horse administered to said horse at his direction or while in his care and custody.

(d) The trainer, owner, veterinarian, groom or other person charged with the custody, care and responsibility of a horse are all obligated to protect and guard the horse against administration of any drug or substances foreign to the natural horse by any unauthorized individual.

13:71-23.7 Penalties

(a) Should the judges determine that any person or persons have violated any section of this subchapter, they may punish the offending party consistent with the penalties provided for in these rules and regulations.

(b) In addition to (a) above, the judges shall penalize the owner of any horse, or any entry of which said horse is a part, that has started in any race with any drug or substance foreign in its body by disqualification and denial of any part of the purse with redistribution of purse moneys as in the case of a disqualification.

(c) Any individual suspended or disciplined in any fashion for a second or subsequent violation of N.J.A.C. 13:71-23.6 (a), (b), (d) or any comparable rule of any other racing commission or turf governing body may be deemed a repetitive offender and may constitute grounds for further disciplinary action by the Commission.

(d) Horses owner wholly or in part by persons suspended for violation of N.J.A.C. 13:71-23.6 (a), (b) or (d) are ineligible to start during the pendency of such suspension, unless sold to a bona fide purchaser. Horses trained by a person suspended for such a violation, wherein the trainer does not have an ownership interest, are automatically eligible to start when placed in the hands of a licensed trainer approved by the judges.

(See N.J.A.C. 13:71-3 for rules concerning Appeals.)

13:71-23.8 Administering medication to respiratory bleeders

(a) The judges may permit the administration of medication to control respiratory bleeding in animals that:

1. At any time have received a comprehensive cardiopulmonary examination at an approved equine hospital or school of veterinary medicine and as a result thereof are certified as bleeders and therefore are in need of medication in order to race; or
2. Are observed in New Jersey to bleed during the running or driving or a workout or race at a duly licensed New Jersey racetrack, or in the detention barn following such workout or race by the State or Associate State Veterinarian and have been placed on a veterinarian's list for at least 14 days; or
3. Have been certified as respiratory bleeders in racing jurisdictions wherein such certification is pursuant to criteria substantially similar to this section. The Executive Director of the Commission shall make annual report to the Commission of those jurisdictions in compliance herewith, which compliance shall be certified by the Commission.

(b) All horses that are placed on the veterinarian's list shall be required to be brought to the detention barn no later than five hours prior to race time and shall remain in said detention barn until race time. During the said five-hour period the horse shall be under the care and custody of a groom or caretaker appointed by the trainer. Any diuretic medication that is intended to control respiratory bleeding shall be administered by a licensed practicing veterinarian in said detention barn under the direct supervision of the State Veterinarian or an Associate State Veterinarian five hours prior to race time. Said practicing veterinarian shall make daily reports of all such treatments.

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(c) Post-race urine and blood samples may be taken by or under the supervision of the State Veterinarian from all horses treated with diuretic medication to control respiratory bleeding pursuant to the requirements set forth above.

(d) A horse placed on the veterinarian's list for bleeding must remain on the list for 14 calendar days and a second time bleeder must remain on the respiratory list for three months. A bleeder in the above categories is automatically released from the veterinarian's list after these dates; however, a horse which evidences respiratory bleeding a third time is barred from further racing in New Jersey.

13:71-23.9 Possession of drugs or drug instruments

(a) No person aside from licensed veterinarians shall have in his possession anywhere within the grounds of any association conducting a race meeting, any drugs not possessed in accordance with the laws of the State of New Jersey, nor any contraband drugs or unauthorized legend drugs, nor any hypodermic syringes or needles or any other instrument which may be used for injection, unless the injectable device is possessed for self-administration, and further provided that the individual possessing such device promptly notify the State Steward:

1. That he is in possession of such device; and
2. Of the chemical substance to be administered.

13:71-23.10 Illegal devices

No electrical, mechanical or other appliance or device other than the ordinary whip shall be applied to a horse at any place on the grounds of any licensed racetrack. Any person so offending shall be suspended by the judges and referred to the Commission for license revocation. Possession of any such device anywhere on the grounds of a licensed racetrack may be punished by fine and/or suspension.

13:71-23.11 Narcotics conviction; denial of license

Any person who has been convicted of possession or use of narcotics by any court in the land shall be denied a license or ruled off or both as the Commission may decide.

13:71-23.12 Cooperation with other agencies; violations of law

Every association, all officials and employees thereof, and all persons licensed in any capacity by the Commission shall give every possible cooperation aid and assistance to any department, bureau, division, officer, agent or inspector, or any other person connected with the United State Government or with the State of New Jersey, who may be investigating or prosecuting any matter involving a violation of any law, or any rules or regulations of the Commission.

13:71-23.13 State Police; responsibilities

The enforcement of N.J.S.A. 5:5-71 and other criminal laws of the State of New Jersey shall be the responsibility of the State Police. Investigation pursuant to the enforcement of N.J.S.A. 5:5-71 or other criminal laws of the State shall take precedence over any action taken by the association or the Racing Commission concerning an incident arising from an alleged violation of the provisions of this subchapter. Every association and Racing Commission official and employee shall render full cooperation, aid and assistance in any investigation undertaken for a reasonably apparent violation of N.J.S.A. 5:5-71 or other criminal statutes of the State. Further, every association and Racing Commission official and employee, on becoming aware of a reasonably apparent viola-

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tion of N.J.S.A. 5:5-71 or other criminal laws of the State of New Jersey, shall communicate in writing the circumstances of such immediately to the New Jersey Racing Commission and the State Police who shall evaluate same and take whatever further action is deemed necessary.

TRANSPORTATION

The following proposals are authorized by John P. Sheridan, Jr., Commissioner, Department of Transportation.

Address comments and inquiries to:

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

(a)

TRANSPORTATION OPERATIONS

Speed Limits For State Highways Route 21, 21 Freeway and 21 Service Road (River Drive)

Proposed Amendments: N.J.A.C. 16:28-1.47

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.
Proposal Number: PRN 1984-574.

The agency proposal follows:

Summary

The proposed amendment will establish maximum legal speed limits along Route 21 Service Road (River Drive) in Passaic City, Passaic County for the safe and efficient flow of traffic, the enhancement of safety and the safety and well-being of the populace. Based upon a request from local officials the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the imposition of the speed limits designated was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.47 in compliance with the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish maximum speed limits along Route 21 Service Road (River Drive) in Passaic City, Passaic County for the safe and efficient flow of traffic, the enhancement of safety and the safety and well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:28-1.47 Route 21, [and] 21 Freeway **and 21 Service Road (River Drive)**

(a) The rate of speed designated for the certain parts of State highway [routes] **Routes** [number] 21, [and] 21 Freeway and **21 Service Road (River Drive)** described in this section shall be [and hereby is] established and adopted as the maximum legal rate of speed thereat:

1. (No change.)
2. **Along Route 21 Service Road (River Drive) in Passaic City, Passaic County:**
 - i. **For northbound traffic:**
 - (1) **40 miles per hour between 250 feet north of Terhune Avenue and 150 feet north of Van Houten Avenue.**
 - ii. **For southbound traffic:**
 - (1) **40 miles per hour between 150 feet north of Van Houten Avenue and 250 feet north of Terhune Avenue.**

(a)

**Restricted Parking and Stopping
Routes U.S. 1, 9, 17, 27, 28, 88 and 168**

**Proposed Amendments: N.J.A.C.
16:28A-1.1, 1.7, 1.9, 1.18, 1.19, 1.44 and
1.51**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and 39:4-199.
Proposal Number: PRN 1984-575.

The agency proposal follows:

Summary

The proposed amendments will establish "no parking" zones along: Route 27 in Metuchen Borough, Middlesex County; Route 28 in Somerville Borough, Somerset County; Route 168 in Gloucester Township, Camden County; "No parking" bus stop zones along U.S. 1 in South Brunswick Township, Middlesex County; no parking bus stop and no parking zones along Route U.S. 9 in Eagleswood Township, Ocean County; Route 28 in Bridgewater Township, Somerset County; No parking bus stop zones along Routes 88 in Lake-wood Township, Ocean County, U.S. 9 in Freehold Town-ship, Monmouth County, Little Egg Harbor and Lakewood Townships, Ocean County and Route 17 in Lyndhurst Town-ship, Bergen County.

The "no parking" and "no parking" bus stop zones are being established for the safe and efficient flow of traffic, the enhancement of traffic safety, the safety and well-being of the

populace and the safe on/off loading of passengers at estab-lished bus stops.

Based upon requests from local officials, the Department's Bureau of Traffic Engineering and Safety Programs con-ducted traffic investigations in the various Counties. The traf-fic investigations proved that the establishment of "no park-ing" and "no parking" bus stop zones were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.1, 1.7, 1.9, 1.18, 1.19, 1.44 and 1.51 in compliance with the requests from the local officials and the traffic inves-tigations conducted.

Social Impact

The proposed amendments to establish no parking zones and no parking bus stop zones along the designated routes will provide for the safe and efficient flow of traffic, enhance traffic safety, provide safety and well-being of the populace using those Routes and insure the safe on/off loading of passengers at the established bus stops along the designated Routes. Appropriate signs will be erected to advise the motor-ing public.

Economic Impact

The Department and local officials will incur direct and indirect costs for its workforce for mileage, personnel and equipment requirements. The local officials will bear the costs for the installation of signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:28A-1.1 Route U.S. 1

- (a) (No change.)
- (b) **The certain parts of State Highway Route U.S. 1 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:**
 1. **Along the northbound (easterly) side in South Brunsw-ick Township, Middlesex County:**
 - i. **Near side bus stop:**
 1. **Whispering Woods Boulevard (105 feet).**
 2. **Along the southbound (westerly) side in South Brunsw-ick Township, Middlesex County:**
 - i. **Near side bus stop:**
 1. **Wynwood Drive (105 feet).**

16:28A-1.7 Route US 9

- (a) (No change.)
- (b) **The certain parts of State highway Route [US] U.S. 9 described in this subsection shall be designated and estab-lished 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.-2. (No change.)
 3. **Along the northbound (easterly) side in Freehold Town-ship, Monmouth County:**
 - i. **Far side bus stops:**
 - (1) (No change.)
 - (2) **Craig Road—Beginning at the northerly curb line of Craig Road and extending [280] 205 feet northerly therefrom.**
 - ii. **Near side bus stops:**

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- (1) (No change.)
- (2) **Three Brooks Road**—Beginning at the southerly curb line of Three Brooks Road and extending 105 feet southerly therefrom.
 - iii. Mid-block bus stops:
 - (1) (No change.)
 - (2) **Schibanoff Road**—Beginning at a point 180 feet north of the northerly curb line of Schibanoff Road and extending 135 feet northerly therefrom.
- 4. Along the southbound (westerly) side in Freehold Township, Monmouth County:
 - i. Mid-block bus stops:
 - (1) (No change.)
 - (2) **Schanck Road**—Beginning at a point 2,555 feet south of the southerly curb line of Schanck Road and extending 135 feet southerly therefrom.
 - ii. Far side bus stop:
 - (1) **Elton-Adelphia Road (Co. Rd. 524)**—Beginning at the southerly curb line of Elton-Adelphia Road (Co. Rd. 524) and extending 200 feet southerly therefrom.
 - iii. Near side bus stops:
 - (1) **Craig Road**—Beginning at the northerly curb line of Craig Road and extending 105 feet northerly therefrom.
 - (2) **Schibanoff Road**—Beginning at the northerly curb line of Schibanoff Road and extending 105 feet northerly therefrom.
- 5.-24. (No change.)
- 25. Along the [easterly northbound] northbound (easterly) side in Lakewood Township, Ocean County:
 - i. Far side bus stops:
 - (1)-(2) (No change.)
 - ii. Near side bus stop:
 - (1) **John Street**—Beginning at the southerly curb line of John Street—and extending 105 feet southerly therefrom.
- 26. Along the [westerly (southbound)] southbound (westerly) side in Lakewood Township, Ocean County:
 - i. Near side bus stop[s]:
 - (1) (No change.)
 - ii. Far side bus stop:
 - (1) **John Street**—Beginning at the prolongation of the southerly curb line of John Street—and extending 100 feet southerly therefrom.
- 27.-29. (No change.)
- 30. Along the southbound (westerly) side in Eagleswood Township, Ocean County:
 - i. Far side bus stop:
 - (1) **Holly Road (100 feet)**.
- 31. Along the northbound (easterly) side in Eagleswood Township, Ocean County:
 - i. Mid-block bus stop:
 - (1) **Holly Road**: Beginning at a point 100 feet north of the prolongation of the northerly curb line of Holly Road extended and extending 135 feet northerly therefrom.
- 32. Along the southbound (westerly) side in Little Egg Harbor Township, Ocean County:
 - i. Far side bus stop:
 - (1) **Mathistown Road**: Beginning at the prolongation curb line of Mathistown Road and extending 105 feet southerly therefrom.
 - ii. Near side bus stop:
 - (1) **Gifford Road**: Beginning at the northerly curb line of Gifford Road and extending 105 feet northerly therefrom.
- 33. Along the northbound (easterly) side in Little Egg Harbor Township, Ocean County:
 - i. Near side bus stop:

- (1) **Mathistown Road**: Beginning at the southerly curb line of Mathistown Road and extending 105 feet southerly therefrom.
- 16:28A-1.9 Route 17
- (a) (No change.)
 - (b) The certain parts of State Highway Route 17 described in this section 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 [hereby] granted to erect appropriate signs at the following established bus stops:
 - 1.-5. (No change.)
6. Along (Rutherford Avenue) eastbound on the southerly side thereof in Lyndhurst Township, Bergen County:
 - i. Near side bus stop:
 - (1) **Orient Way**—Beginning at the westerly curb line of Orient Way and extending 105 feet westerly therefrom.
- 16:28A-1.18 Route 27
- (a) The certain parts of State Highway Route 27 described in this section shall be 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.-15. (No change.)
 - 16. No stopping or standing in Metuchen Borough, Middlesex County:
 - i. Along both sides:
 - (1) From a point 310 feet east of the easterly curb line of Lake Avenue.
 - ii. Along the northbound (east) side:
 - (1) From a point 500 feet east of the easterly curb line of Grove Avenue to a point 260 feet west of the westerly curb line of Grove Avenue.
 - iii. Along the southbound (west) side:
 - (1) From a point 300 feet east of the easterly curb line of Grove Avenue to a point 500 feet west of the westerly curb line of Grove Avenue.
- (b)-(d) (No change.)
- 16:28A-1.19 Route 28
- (a) The certain parts of State Highway Route 28 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.-7. (No change.)
 - 8. No stopping or standing in Somerville Borough [:] Somerset, County:
 - i. Along the eastbound side:
 - (1)-(5) (No change.)
 - (6) Beginning at the easterly curb line of Mountain Avenue Extension and extending 128 feet easterly therefrom.
 - (7) Beginning at the westerly curb line of Mountain Avenue Extension and extending 158 feet westerly therefrom.
 - (8) Beginning at a point 110 feet from the easterly curb line of South Doughty Avenue and extending 67 feet easterly therefrom.
 - (9) West End Avenue—Beginning at the westerly curb line of (West Main Street)-Somerset Street and extending 115 feet westerly therefrom.
 - ii. Along the westbound side:
 - (1)-(3) (No change.)
 - (4) Beginning at the easterly curb line of Mountain Avenue and extending 160 feet easterly therefrom.

(5) Beginning at the westerly curb line of Mountain Avenue and extending 130 feet westerly therefrom.

(6) Beginning from a point 90 feet from the westerly curb line of North Doughty Avenue and extending 109 feet westerly therefrom.

(7) Beginning at the easterly curb line of North Doughty Avenue and extending 60 feet easterly therefrom.

9. No stopping or standing in [the Township of Bridgewater:] **Bridgewater Township, Somerset County.**

i. Along the northbound side [of Route 28] (Union Avenue):

(1) Between Adamsville Road and Fairmount Avenue.

ii. **Along the north side from a point 100 feet west of Van Buren Street and along the south side from Rehill Avenue easterly to and including all ramps and connections which are under the jurisdiction of the Commissioner of Transportation at Interstate highway Route 287.**

10.-13. (No change.)

(b)-(e) (No change.)

16:28A-1.44 Route 88

(a) The certain parts of State Highway Route 88 described in [(a) of] this section shall be [and hereby 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.-5. (No change.)

(b) The certain parts of State Highway Route 88 described in this section shall be [and hereby are] designated and established as "no parking" zones where parking is prohibited at all times. [and i]In accordance with the provisions of N.J.S.A. 39:4-199 permission is [hereby] granted to erect appropriate signs at the following established bus stops:

1. (No change.)

2. **Along the westbound (northerly) side thereof in Lakewood Township, Ocean County:**

i. **Far side bus stop:**

(1) **New Hampshire Avenue: beginning at the westerly curb line of New Hampshire Avenue and extending 200 feet westerly therefrom.**

16:28A-1.51 Route 168

(a) The certain parts of State Highway Route 168 described in [(a) of] this section are designated and established as "no parking" zones where stopping 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 Gloucester Township, Camden County:**

i. **Along both sides:**

(1) **Black Horse Pike from Marshall Road to Asyla both sides, sometimes referred to as Lakewood Road.**

(b) The certain parts of State Highway Route 168 described in [(b) of] this section shall be[, and hereby are,] designated and established as "no parking" zones where parking is prohibited at all times. [and in]In accordance with the provisions of N.J.S.A. 39:4-199 permission is [hereby] granted to erect appropriate signs at the following established bus stops:

1.-4. (No change.)

(a)

**Restricted Parking and Stopping
Route 38 in Mount Laurel Township
Route 70 in Pennsauken Township**

**Proposed Amendments: N.J.A.C.
16:28A-1.27 and 1.37**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and 39:4-199

Proposal Number: PRN 1984-571.

Summary

The proposal will establish "no parking" zones along Route 38 in Mount Laurel Township, Burlington County for the safe and efficient flow of traffic, the enhancement of safety and the safety of the well-being of the populace.

The proposal will also establish "no parking" bus stop zones along Route 70 in Pennsauken Township, Camden County for the safe and efficient off/on loading of passengers at established bus stops.

Based upon a request from the local officials the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no parking" zones in Mount Laurel Township and Pennsauken Township was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.27 and 1.37 based upon the request from local officials and the traffic investigations conducted.

Social Impact

The proposed amendment will establish "no parking" zones along Route 38 in Mount Laurel Township, Burlington County and no parking bus stop zones along Route 70 in Pennsauken Township, Camden County for the safe and efficient flow of traffic, the enhancement of safety, well-being of the populace and safe off/on loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:28A-1.27 Route 38

(a) The certain parts of State highway Route 38 described in [(a) of] 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.-2. (No change.)

[2.]3. No stopping or standing in Maple Shade Township, Burlington County:

i. Along Buttonwood Avenue—both sides:

(1) Between Route 38 and Rudderow Avenue.

4. No stopping or standing in Mount Laurel Township, Burlington County:

i. Along both sides:

(1) From the westerly curb line of Ark Road to a point 250 feet westerly therefrom.

(b) The certain parts of State highway Route 38 described in [(b) of] this section 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 [hereby] granted to erect appropriate signs at the following established bus stops:

(1) (No change.)

16:28A-1.37 Route 70

(a) (No change.)

(b) The certain parts of State highway Route 70 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. Along the southerly (eastbound) side in Pennsauken Township, Camden County:

i. Near side bus stop:

(1) McClellan Drive (170 feet).

(a)

**Restricted Parking and Stopping
Route US 322 in Harrison Township
Route 109 in Lower Township**

**Proposed Amendment: 16:28A-1.93
Proposed New Rule: N.J.A.C. 16:28A-1.101**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-139.

Proposal Number: PRN 1984-576.

The agency proposal follows:

Summary

The proposed new rule will establish "no parking" zones along Route 109 in Lower Township, Cape May County.

The proposed amendment will establish "no parking" zones along Route U.S. 322 in Harrison Township, Gloucester County. Both proposals will provide for the safe and efficient flow of traffic, the enhancement of traffic safety and for the safety and well-being of the populace.

Based upon requests from local officials of Harrison and Lower Townships the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations in both townships. The investigation proved that the establishment of "no stopping or standing" zones in both townships was warranted.

The Department therefore proposes new rule N.J.A.C. 16:28A-1.101 and proposes amendments to N.J.A.C. 16:28A-1.93 in compliance with the requests from local officials and the traffic investigation.

Social Impact

The proposed new rule and proposed amendment will establish "no stopping or standing" zones in Lower Township and Harrison Township for the safe and efficient flow of traffic, the enhancement of traffic safety and for the safety and well-being of the populace. Appropriate signs will be installed to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:28A-1.93 Route U.S. 322

(a) The certain parts of State Highway Route U.S. 322 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 stopping or standing in Harrison Township, Gloucester County:

i. (No change.)

ii. Along the west side from the northerly curb line of Route 45 to a point 100 feet northerly therefrom.

2.-3. (No change.)

16:28A-1.101 Route 109

(a) The certain parts of State highway Route 109 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 stopping or standing in Lower Township, Cape May County:

i. Along both sides:

(1) Between Route U.S. 9 and City of Cape May—Lower Township corporate line, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

(b)

**No Passing Zones
Routes 38, 53, 71, 72, 88, 169, 173 and 182**

**Proposed Amendment: N.J.A.C. 16:29-1.26
Proposed New Rules: N.J.A.C. 16:29-1.39,
1.40, 1.41, 1.42, 1.43, 1.44 and 1.45**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-201.1.
Proposal Number: PRN 1984-591.

The agency proposal follows:

Summary

The proposed amendment and new rules will establish "no passing" zones along: Route 88 in Lakewood and Brick

Townships and Point Pleasant Borough, Ocean County; Route 169 in Jersey and Bayonne Cities, Hudson County; Route 173 in Bloomsbury Borough, Clinton, Bethlehem and Union Townships and the Town of Clinton, Hunterdon County; Route 182 in the Town of Hackettstown, Warren County; and Route 71 in Brielle, Manasquan, Sea Girt, Spring Lake Heights, Belmar, Avon-By-The-Sea, Bradley Beach, Allenhurst, Deal, West Long Branch, Oceanport and Eatontown Boroughs; Wall, Neptune and Ocean Townships; Asbury Park and Long Branch Cities and the Village of Loch Arbor, Monmouth County; Route 72 in Woodland Township, Burlington County; Route 53 in Morris Plains Borough, Parsippany-Troy Hills and Denville Townships, Morris County; and Route 38 in Mount Laurel, Hainesport, Lumberton and Mount Holly Townships, Burlington County. This proposal will provide for the safe and efficient flow of traffic, the enhancement of safety and the safety of the well-being of the public.

Based upon requests from the local officials the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no passing" zones along the Routes in question were warranted.

The Department therefore proposes to amend N.J.A.C. 16:29-1.26 and proposes new rules N.J.A.C. 16:29-1.39 through 1.45 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendment and new rules will establish "no passing" zones along the designated Routes which will provide for the safe and efficient flow of traffic, the enhancement of safety and the safety of the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:29-1.26 Route 72

(a) The following certain parts of State highway Route 72 shall be designated and established as "No Passing" zones:

1. (No change.)
2. **That part in Woodland Township, Burlington County and described in drawing number HNPZ-064, dated April 7, 1983.**

16:29-1.39 Route 53

(a) The following certain parts of State highway Route 53 shall be designated and established as "No Passing" zones:

1. **That part in Morris Plains Borough, Parsippany-Troy Hills and Denville Townships, Morris County and described in drawing number HNPZ-039A, dated February 29, 1984.**

16:29-1.40 Route 38

(a) The following certain parts of State highway Route 38 shall be designated and established as "No Passing" zones:

1. **That part in Mount Laurel, Hainesport, Lumberton and Mount Holly Townships, Burlington County and described in drawing number HNPZ-061, dated April 11, 1983.**

16:29-1.41 Route 88

(a) The following certain parts of State highway Route 88 shall be designated and established as "No Passing" zones:

1. **That part in Lakewood and Brick Townships and Point Pleasant Borough, Ocean County and described in drawing number HNPZ-067, dated April 28, 1984.**

16:29-1.42 Route 169

(a) The following certain parts of State highway Route 169 shall be designated and established as "No Passing" zones:

1. **That part in Jersey and Bayonne Cities, Hudson County and described in drawing number HNPZ-073, dated August 9, 1984.**

16:29-1.43 Route 173

(a) The following certain parts of State highway Route 173 shall be designated and established as "No Passing" zones:

1. **That part in Bloomsbury Borough, Clinton, Bethlehem and Union Townships and the Town of Clinton, Hunterdon County and described in drawing number HNPZ-074, dated August 14, 1984.**

2. **That part in Greenwich Township, Warren County and described in drawing number HNPZ-075, dated August 4, 1984.**

16:29-1.44 Route 182

(a) The following certain parts of State highway Route 182 shall be designated and established as "No Passing" zones:

1. **That part in the Town of Hackettstown, Warren County and described in drawing number HNPZ-076, August 9, 1984.**

16:29-1.45 Route 71

(a) The following certain parts of State highway Route 71 shall be designated and established as "No Passing" zones:

1. **That part in Brielle, Manasquan, Sea Girt, Spring Lake Heights, Belmar, Avon-By-The-Sea, Bradley Beach, Allenhurst, Deal, West Long Branch, Oceanport and Eatontown Boroughs; Wall, Neptune and Ocean Townships, Asbury Park, Long Branch and the Village of Loch Arbor Cities, Monmouth County and described in drawing number HNPZ-051, dated August 31, 1984.**

NOTE: Drawings are on file in Department's Bureau of Traffic Engineering & Safety Programs, 25 Scotch Road, Trenton, New Jersey 08625, and the Office of Administrative Law.

(a)

**CONSTRUCTION AND MAINTENANCE
UNIT****Contract Administration
Requirements****Proposed Amendment: N.J.A.C. 16:44-5.1**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1 et seq.,
14A:1-1 et seq., and 14:15-2.
Proposal Number: PRN 1984-589.

The agency proposal follows:

Summary

The proposed amendment will incorporate new language regarding requirements for irregular proposals, disqualification of prequalified prospective bidders and disqualification of bidders.

Based upon research of the bid process and revision of the Department's Standard Specifications For Road and Bridge Construction, 1983, which contained new data affecting the Department's bidding process within the Bureau of Contract Administration the Department considered it vital and necessary to amend and update the bidding process.

The Department therefore proposes to amend N.J.A.C. 16:44-5.1 in accordance with the Standard Specifications For Road and Bridge Construction, 1983.

The amendments include charges to the process conducted by the bid opener; review by the deputy attorney general; review by the narrator; and rejection of bids by the Commissioner.

Copies of the "Standard Specifications For Road and Bridge Construction, 1983" may be obtained for \$7.50 or C.O.D. upon request, from the Department of Transportation, Bureau of Contract Administration, 1035 Parkway Avenue, CN600, Trenton, New Jersey, 08625.

Social Impact

The proposed amendment will establish additional standards and guidelines to be followed in the bidding process such as the rejection of irregular proposals, disqualification of prequalified bidders and disqualification of bidders. The amendments will impact on bidders who are not in compliance with the requirements of the bidding process.

Economic Impact

The Department will incur direct and indirect costs for its workforce in the screening of prospective bidders. Some bidders may experience costs involved in their not meeting the standards and requirements specified in the bid process due to rejection of bids.

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

SUBCHAPTER 5. RECEIPT OF BIDS

16:44-5.1 Requirements
(a)-(h) (No change.)

(i) The bid opener shall compare the bidder's classification rating with the engineer's estimate of cost for the project. If the rating is below the estimate, he shall notify the deputy attorney general that the bid is being opened provisionally.

1.-2. (No change.)

3. He shall check the total amount of the bid against the rating of the bidder. If the bid is actually higher than the classification rating, it shall be announced that the bid is rejected. [and the amount not read.]

4. He shall determine whether all addenda have been included in the proposal.

5. After examining these portions of the proposal, he shall deliver it to the deputy attorney general, informing him of any error or omission which could cause rejection of the proposal.

Renumber 4.-6. as **6.-8.** (No change in text.)

(j) [The deputy attorney general shall determine that the proposal has been properly signed, that the non-collusion affidavits and the "Appointment of registered agent by non-resident contractors" are in proper order; that the proposal guarantees meet the department's requirements.] **The deputy attorney general shall review the proposal, the proposal guarantee and the contractor's financial and equipment statement as to form and all necessary dates, signatures, notarizations and authorizations, to ascertain whether these conform to departmental specifications.** Having satisfied himself that all items are in proper form, he shall deliver the proposal and all other documents submitted[,] to the narrator. In the event that a bid must be rejected, he shall inform the presiding officer and the narrator of the reason for rejection, which shall then be announced to the meeting **along with the amount of the bid.**

(k) The narrator shall review the prices submitted in the bid proposal and bring any omissions or alterations in unit prices or amounts to the attention of the deputy attorney general, who shall determine whether the bid should be rejected. In the event that a bid must be rejected, the narrator shall inform the presiding officer of the reason for rejection, which shall then be announced to the meeting, along with the amount of the bid. The narrator shall also announce the bidder's name and the municipality in which his office is located, and read the total price bid for the project for all other bids. He shall then hand the proposal to the microfilm machine operator for photographic recording. After each sheet has been photographed, the operator shall return the proposal to the narrator.

(l) (No change.)

(m) The Commissioner of Transportation may reject any bid at any time prior to his executing the contract where subsequent to qualification and classification events occur to affect, in his opinion, the responsibility and qualification of the bidder. Before taking such action, the Commissioner will notify the bidder and give him an opportunity to present additional information. Such developments include, but are not limited to:

- 1. Lack of competency or lack of adequate machinery, plant or other equipment;**
- 2. Uncompleted work which, in the judgment of the Department, might hinder or prevent the prompt completion of additional work, if awarded;**
- 3. Failure to pay, or satisfactorily settle, all bills due for labor, equipment or material on previous contracts;**
- 4. Failure to comply with any prequalification regulations of the Department;**
- 5. Default under any previous contract;**

6. Unsatisfactory performance on previous or current contracts;

7. Questionable moral integrity as determined by the Attorney General of New Jersey or the Commissioner;

8. Failure to reimburse the State for monies owed on any previously awarded contracts including those where the prospective bidder is a party to a joint venture and the joint venture has failed to reimburse the State for monies owed;

9. More than one proposal has been submitted for the same work contemplated from an individual, firm, partnership, corporation, or combination thereof, under the same or different names. Reasonable grounds for believing that any individual, firm, partnership, corporation, or combination thereof, is interested in more than one proposal for the work contemplated may cause the rejection of all Proposals in which such individual, firm, partnership, corporation, or combination thereof, is interested;

10. Evidence of collusion among bidders, participants in such collusion will receive no recognition as bidders for future work of the Department until reinstatement as a qualified bidder by the Commissioner;

11. If any bid prices are obviously unbalanced. However, non-rejection of a bid on this basis shall not be deemed to be a determination by the Department that the bid is balanced.

TREASURY-GENERAL

DIVISION OF PENSIONS

Address comments and inquiries to:
 Peter J. Gorman, Esq.
 Administrative Practice Officer
 Division of Pensions
 20 West Front Street
 CN 295
 Trenton, New Jersey 08625

(a)

Administration Minimum Adjustments to Members' Accounts

Proposed Amendments: 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.

Proposal Number: PRN 1984-634.

The agency proposal follows.

Summary

The proposed amendment essentially alters the amount of minimum adjustments for purposes of reconciliation of mem-

bers' accounts that will be made from \$3.00 to \$10.00 involving death, withdrawal, loans and arrearages. A \$5.00 minimum adjustment is proposed concerning retired members.

Social Impact

The proposed amendment may affect members whose account reconciliations result in adjustments between \$3.00 and \$10.00, the previous amount of a minimum adjustment and the new amount, respectively.

Economic Impact

Although the proposed amendment may not have a significant, adverse economic effect upon the members whose accounts are being reconciled, it may reduce administrative expenses within the Division of Pensions by reducing the number of accounts audited.

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

17:1-1.10 Minimum adjustments

(a) In order to facilitate the reconciliation of [members] members' accounts upon death, [retirement,] withdrawal, loans and arrearages, no rebates or additional contributions shall be made if such adjustments involve amounts of [\$3.00] \$10.00 or less. **At the end of the quarter in which the withdrawal or death number is posted to the member's account, all bad balances of \$10.00 or less will be removed by the Withdrawal or Death Sections within the \$10.00 tolerance.**

(b) No rebates or additional contributions shall be made for retired members if the adjustments involve amounts of \$5.00 or less. **At the end of the quarter in which the retirement number is posted to the member's account, all bad balances of \$5.00 or less will be removed by the Retirement Section within the \$5.00 tolerance. A member's retirement benefits will be recalculated if the total salary used for computing retirement benefits changes by more than \$100.00.**

[(b)] (c) Audit differences of \$2.00 or less in a member's pension or insurance payments during a quarter will not require a cash adjustment.

[(c)] (d) Audit differences of \$8.00 or less in a member's pension or insurance payments covering a calendar year are not subject to [case] cash adjustments.

(b)

State Health Benefits Commission Retired Coverage Limitations

Proposed Amendments: N.J.A.C. 17:9-6.3

Authorized by: State Health Benefits Commission,
 Gaius B. Mount, Acting Secretary.
 Authority: N.J.S.A. 52:14-17.27.

Proposal Number: PRN 1984-642.

The agency proposal follows.

Summary

The proposed amendments liberalize the limitations for retired employees' coverage in the State Health Benefits Program by allowing subsequently acquired spouses and dependents to receive coverage and permitting separate payments when the pension is less than the charge for such medical coverage after retirement.

Social Impact

The proposed amendments may affect retirants participating in the State Health Benefits Program who acquire spouses and/or dependents after retirement and desire medical insurance coverage for them as well as retirants who receive a retirement allowance less than the charge for their post-retirement medical insurance.

Economic Impact

Since this proposal liberalizes benefits in the sense that more people, who previously could not participate in the program, would be permitted to participate in the program, the cost of such medical insurance may increase and such increases may have to be borne by the participants, employers, and ultimately the taxpayers.

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

17:9-6.3 Retired coverage; limitation

(a) For purposes of retired coverage [or where coverage is provided to eligible survivors, such coverage cannot be increased; it can be decreased.], **coverage may be increased to include a spouse and dependents acquired subsequent to the date of retirement. In all other instances, coverage cannot be increased.**

(b) [Only a pensioner, whose original retirement allowance or pension is equal to or greater than the charge to be deducted to pay for the cost of the coverage available to such pensioner, will be permitted to continue coverage.] **Pensioners, whose original retirement allowance or pension is less than the charge to be deducted to pay for the cost of the coverage to such pensioner, will be permitted to continue coverage provided that the pensioner pays for the cost of such coverage in advance on a quarterly basis, in which case there will be no pension deduction.**

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

TREASURY-TAXATION

DIVISION OF TAXATION

The following proposals are authorized by John R. Baldwin, Director, Division of Taxation.

Address comments and inquiries to:

Jack Silverstein
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, New Jersey 08646

(a)

**Sales and Use Tax
Urban Enterprise Zones; Special Tax Rates
for Certified Vendors**

Proposed Amendment: N.J.A.C. 18:24-31.4

Authority: P.L. 1983, c.303, section 22 (N.J.S.A. 52:27H-81) and N.J.S.A. 54:32B-24.

Proposal Number: PRN 1984-645.

The agency proposal follows:

Summary

The New Jersey Urban Enterprise Zones Act, Chapter 303, Laws of 1983, N.J.S.A. 52:27H-60, et seq., approved August 15, 1983, provides for the establishment of up to ten urban enterprise zones in urban areas suffering from high unemployment and economic distress.

The Urban Enterprise Zone Authority, in accordance with the Act, designated enterprise zones within the cities of Newark and Camden. Both Newark and Camden had to accept the designation by ordinance before the zones could come into being legally. At the same meeting, the Authority granted corporation business tax benefits and sales and use tax benefits to "qualified businesses." There are administrative procedures to be followed before becoming a "qualified business" to obtain tax benefits.

Thereafter, after becoming a "qualified business", that "qualified business" may apply to the Division of Taxation to become a "certified vendor" if it is a retailer (within the enterprise zone) of tangible personal property, other than motor vehicles, machinery, apparatus and equipment, and it does not make mail or catalog sales.

Rules proposed in the June 4, 1984 issue of the New Jersey Register at 16 N.J.R. 1332(a) (see Notice of Adoption in the November 5, 1984 Register) set forth procedures for becoming a "qualified business" and, when qualified, a "certified vendor" in the enterprise zone. A certified vendor within an enterprise zone can make retail sales at one-half the sales tax rate; today that rate would be three percent.

The Division of Taxation is proposing an amendment which requires face-to-face sales between the sales person at the place of business and the purchaser in order to qualify for the three percent sales tax rate. The amendment also specifies procedural qualifications and indicates when the full sales tax rate, six percent, must be charged.

Social Impact

The purpose of the Urban Enterprise Zones Act is to encourage employers to continue business in an urban enterprise zone, or to start new businesses in these zones. It is anticipated that the zones will stimulate economic activity in the inner cities by creating jobs, decreasing unemployment and public assistance, encouraging new commercial construction, and raising the income level of residents of the municipalities involved. It is also expected that the urban enterprise zones will help end the progressive decay which is continuing to damage various New Jersey municipalities. The purpose of the proposed amendment is to prevent tax evasion by persons who might improperly sell or buy tangible personal property without both buyer and seller being face-to-face. This provision was intended but not spelled out in the original urban enterprise sales tax rules. The new proposal clears up possible misunderstandings.

Economic Impact

The proposed amendment will prevent a greater sales tax revenue loss than the liberal benefit bestowed by the Urban Enterprise Zones Act, the Authority, this Division's rules and other rules, directives, instructions and summaries circulating among the businesses in Newark, Camden and other cities hoping to become the next two enterprise zones. The public shopping in the enterprise zones will save three percent of the sales tax on purchases of taxable items. Some of those sales tax proceeds will go to the cities of Newark and Camden.

The purpose of the Urban Enterprise Zones Act is to encourage and assist business enterprises within an enterprise zone. If retailers with outlets both inside and outside of an enterprise zone are permitted to route telephone and mail order sales through the outlet within a zone, it will not provide substantial employment within the zone, and will result in a substantial decrease in State-wide collections of sales and use tax. Purchasers wishing to take advantage of the reduced rates will then bring their business into the zone, as intended by the Urban Enterprise Zones Act.

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

18:24-31.4 Partial exemption for retail sales of tangible personal property by a certified vendor
(a)-(d) (No change.)

(e) All sales made by a qualified and certified vendor must be made from his place of business within an enterprise zone. Only receipts from sales which originate and are completed by the purchaser in person at the vendor's place of business within an enterprise zone qualify for the reduced rate of sales tax; provided, however, that after a sale has been completed within an enterprise zone, the vendor may deliver the tangible personal property to the purchaser at a location outside an enterprise zone.

1. Receipts from mail order, telephone, telex and similar sales transactions are subject to sales tax at the regular rate where delivery is made to a location within this State.

(a)

**Savings Institution Tax
Proposed Readoption: N.J.A.C. 18:36**

Authority: P.L. 1979, c.160, section 4, N.J.S.A. 54:10D-14, 54:10D-12 and 54:50-1.
Proposal Number: PRN 1984-639.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 18:36 expires on January 2, 1985. The readoption of this rule becomes effective upon acceptance for filing by the Office of Administrative Law of a notice of adoption.

The agency proposal follows:

Summary

In New Jersey, savings banks, savings and loan associations and building and loan associations were not subject to State taxation until the enactment of P.L. 1973, c.31 (N.J.S.A. 54:10D-1 et seq.), "The Savings Institution Tax Act." The Act was amended by P.L. 1979, c.160. Pursuant to statutory authority, the Director, Division of Taxation promulgated rules cited as N.J.A.C. 18:36-1 et seq., in order to implement the statute, to regulate savings banks, savings and loan associations and building and loan associations, and to set forth the Division's position in 1980. Pursuant to Executive Order No. 66(1978), a review of the rule found it to be reasonable, adequate, and necessary.

The tax rate was five percent for taxes payable through the calendar year 1979 and three percent each year thereafter, with provisions for a minimum tax (N.J.A.C. 18:36-1.1). Taxes were payable on or before the fifteenth day of the fourth month after the close of taxpayer's fiscal or calendar year accounting period. This excise tax is imposed upon taxpayer's net income as of the close of its preceding tax year (N.J.A.C. 18:36-1.3). Partial payments are provided for and the taxpayer receives credit for overpayment (N.J.A.C. 18:36-1.4). Most of the remaining provisions of the Act and the rules contain administrative directives common to most State of New Jersey taxing statutes and rules.

PROPOSALS

Social Impact

Savings banks, building and loan associations and savings and loan associations are generally referred to as thrift institutions. They are generally depositories for small depositors, savers or customers. Deposits are often used by these institutions in the funding of mortgages on real property. The present tax rate of three percent upon net income will generally produce a lesser tax than would liability for tax payments under the Corporation Business Tax Act. Commercial banks are subject to the Corporation Business Tax Act, N.J.S.A. 54:10A-1 et seq. Legislation was enacted so that some of the tax burden of financial institutions be shared by savings banks, savings and loan applications, and building and loan associations, who are competitors of commercial banks.

Economic Impact

Based on the State of New Jersey's fiscal year, below appear State tax revenues for these taxpayers:

1980	\$3,954,792.00
1981	108,299.00
1982	128,190.00
1983	376.00

The decrease in revenue was occasioned by the general economic conditions of the time in question.

Full text of the proposed reoption appears in the New Jersey Administrative Code at N.J.A.C. 18:36.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Fire Safety Unit

Proposed New Rule: N.J.A.C. 19:41-2.8

Authorized by: Casino Control Commission, Theron G. Schmidt, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 5:12-69(a), and 5:12-96(a).
Proposal Number: PRN 1984-646.

Address comments and inquiries to:
Catherine A. Walker
Assistant Counsel
Casino Control Commission
Tennessee Ave. & Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

Proposed new rule N.J.A.C. 19:41-2.8, would require the establishment of a Fire Safety Unit within each casino li-

OTHER AGENCIES

licensee's organization and set standards for operation of the Fire Command Center within each hotel-casino complex. Additionally, minimal training and certification requirements for employees of the Fire Safety Unit have been established.

Social Impact

The new proposed rule will require that only trained and certified personnel be permitted to operate the Fire Command Center as members of the Fire Safety Unit. The social impact on personnel is that a certain amount of approved specialized training will be necessary to qualify for a position with the Fire Safety Unit, whereas now such positions are open to any employee at the discretion of management. The social impact on patrons of the hotel casino complex will be of greater significance as their safety and welfare in a fire emergency may be better assured by having personnel trained in the applicable fire safety laws, the Fire Command Center operations, and the procedures, equipment and operation of the specific hotel casino complex.

Economic Impact

The establishment of a Fire Command Center is presently required by the Uniform Construction Code, N.J.A.C. 5:23. The Code also requires that the Center be supervised, although not necessarily by on-site personnel. Due to the high value of property being protected and the number of persons usually on the premises of the hotel casino complex, the new rule will require that the Fire Command Center be supervised within the facility by personnel trained in applicable fire safety laws, the Fire Command Center operations, and the procedures, equipment and operation of the specific hotel casino complex. Training programs for employees will be an additional expense to hotel casino operations, however, such expense will be minimal in comparison to the potential loss and liability resulting from a fire incident.

Full text of the proposed new rule follows.

19:41-2.8 Fire command center and training of fire safety personnel

(a) Each casino licensee in accordance with the requirements of the Uniform Construction Code (N.J.A.C. 5:23) shall maintain a Fire Command Center. Each casino licensee shall establish a fire safety unit consisting of trained personnel responsible for the operation of the Fire Command Center and for general fire safety within the hotel casino complex. The fire safety unit shall be under the supervision of a fire safety officer who shall report directly to the Director of the department under which the fire safety unit is organized. The department under which the fire safety unit is organized shall be left to the discretion of the casino licensee, however, the organizational structure of this department must be approved by the Casino Control Commission. The casino licensee, through a fire safety officer, shall be responsible for, but not limited to, the following:

1. In-house training and the certification of all fire safety employees to ensure that all personnel possess a thorough knowledge of the Fire Command Center and its operations, and of fire safety procedures in the hotel casino complex;

2. Ensure that the Fire Command Center is staffed by certified fire safety personnel at all times;

3. Ensure that access to the Fire Command Center is controlled and limited due to the nature of the operations conducted therein;

4. Ensure that the hotel casino complex remains in compliance with all applicable fire safety laws.

(b) The casino licensee, through the fire safety unit, shall be required to maintain a Daily Incident Log. The log shall be maintained in the Fire Command Center and shall include, at the minimum, the following:

1. The signature of each employee on duty in the Fire Command Center and the date and time of arrival and departure;

2. A description of each incident including, but not limited to, date, time and location of each incident;

3. Summary of action taken; and

4. Summary of the results of action taken.

(c) For the purposes of this subsection, an incident shall include, but not be limited to:

1. Fires;

2. False alarms;

3. Fire protection equipment malfunctions; and

4. Telephone and other unrecorded communications pertaining to fire or life safety, which are made to or from the Fire Command Center.

(d) The casino licensee, through a fire safety officer, shall ensure that the hotel casino complex is regularly inspected for fire safety compliance by a certified fire safety employee, and that a Fire Safety Inspection Log be maintained which lists at the minimum the following:

1. The area inspected;

2. The date and approximate time of each inspection;

3. Any irregularities observed;

4. Persons notified of the irregularities; and

5. Remedial action taken.

(e) The Fire Safety Inspection Log and the Daily Incident Log shall be held available for inspection at any time by authorized personnel of the Commission, Division and fire officials.

(f) No person shall be employed by a casino licensee as a fire safety employee or fire safety officer unless such person has successfully completed an approved training program designed to train such person in the applicable fire safety laws, the Fire Command Center operations, and the procedures, equipment and operations of that specific hotel casino complex.

(g) All proposed training programs and revisions thereto, shall be filed with and approved by the Commission in consultation with the local fire officials. Each submission shall include an outline showing each component of the program and a copy of all materials to be used in conjunction with such program together with the names, licensure status, and backgrounds of any person serving as an instructor in such program.

(h) A copy of a certificate evidencing successful completion of the training program shall be retained in the Fire Command Center for each employee working as a fire safety employee. A copy of said certificate shall also be submitted to the Commission in conjunction with the work permit submission made for each fire safety employee.

RULE ADOPTIONS

COMMUNITY AFFAIRS

HEALTH

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Private Enforcing Agencies

Adopted Amendment: N.J.A.C. 5:23-4.12

Proposed: September 4, 1984 at 16 N.J.R. 2321(a).
Adopted: October 16, 1984 by John P. Renna, Commissioner, Department of Community Affairs.
Filed: October 23, 1984 as R.1984 d.523, **without change.**

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

Effective Date: November 19, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 1, 1988.

Summary of Public Comments and Agency Responses:

The Northern New Jersey Chapter of the National Electrical Contractors Association expressed support for this amendment, saying that it will correct inequities. The Building Officials Association of New Jersey also expressed support.

Full text of the adoption follows.

5:23-4.12 Private enforcing agencies-establishment

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

(c) Any person who enters into an agreement, other than a hiring as a bona fide municipal employee, to serve as a municipal subcode official shall be required to be first authorized by the department as an on-site inspection and plan review agency.

1. In order to be deemed a bona fide municipal employee for purposes of this subsection, such person shall receive no compensation for his service other than a fixed salary or hourly wage, which shall be subject to F.I.C.A. and Federal and State income tax withholding, and shall have minimum fixed working hours.

2. A person shall not be deemed to be a bona fide municipal employee if he holds two or more jobs which are determined by the department to be incompatible by reason of conflicting time requirements.

(b)

HOSPITAL REIMBURSEMENT

1985 Procedural and Methodological Regulations

Adopted Amendment: N.J.A.C. 8:31B-3

Proposed: September 4, 1984 at 16 N.J.R. 2321(b).
Adopted: October 29, 1984 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board) with change.

Filed: October 31, 1984 as R.1984 d.531, **with changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

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

Effective Date: November 19, 1984.

Operative Date: January 1, 1985.

Expiration Date pursuant to Executive Order 66(1978): October 17, 1985.

Summary of Public Comments and Agency Responses:

Comment: 8:31B-3.3

Respondents state that criteria and additional wording for exceptions to the \$200.00 per day penalty should be added.

Response:

Late submissions of audited statements remain a persistent problem which handicaps the ability of the State to complete its work in a timely manner. The proposed amendment leaves the final decision of whether a penalty is warranted to the discretion of the Commission and hospitals may present mitigating circumstances for review.

Comment: 8:31B-3.17

All respondents agreed with the \$50,000 threshold for audit adjustments. It was suggested that a three year limit similar to that used by the Internal Revenue Service (IRS), be established after which a year will be considered closed and no longer subject to further adjustments.

Response:

The Department does not feel that additional modification is appropriate at this time. Audit time frames often exceed the proposed three year limit in part due to late submission of data. This change would unreasonably restrict the Department.

HEALTH

Comment: 8:31B-3.22

Several hospitals asserted that New Jersey's categorization of teaching hospitals is inadequate.

A variety of solutions to the perceived inequities of the current classifications were suggested. These included:

1. Create a separate class for minor teaching.
2. Implement a "continuous" teaching adjustment, (not explained)
3. Eliminate the teaching peer groups and substitute a similar allowance for teaching costs as provided by Prospective Payment System (PPS).
4. Include University Hospital.
5. Inclusion of University Hospital in the rates.

Other comments were that in the future, the Department's teaching committee should renew the teaching categories.

Response:

The comments stated by the respondents did not address the proposed changes, but, in fact, proposed a change to the teaching classification as a whole. Therefore, the Department need not provide a response at this time. Although the Department will not address the generic comments in this text, it will take them under consideration when it next conducts an in-depth analysis of the implications of graduate medical education to the setting of hospital rates. It should be noted the Federal Administration has repeatedly stressed dissatisfaction with its PPS for teaching costs and Congressional meetings are being scheduled for the next session.

Comment: 8:31B-3.23

Seven respondents stated that the coefficient of variation was made part of the rate computation based on the explicit recognition that some Diagnosis Related Groups (DRGs) were more homogeneous than others and, therefore, more reliable predictors of hospital performance. Moving to a uniform standard is automatically provided for in New Jersey through rebasing. The present reimbursement system puts more or less of the standard costs into rates depending on the confidence level in each DRG. To revert to a reimbursement system as proposed in the 1985 regulation would not provide an equitable method of reimbursement.

Response:

The Department, after consideration of all respondent comments has decided not to adopt the proposed change. The Department will continue to study the need for a coefficient of variation along with related issues including review of trim points in 1985.

Comment: 8:31B-3.24

Respondents strongly urged that these changes are inconsistent with the incentive philosophy which was an integral part in the development of New Jersey's prospective reimbursement system. The present balance of Incentives/Disincentives appears appropriate. Therefore to eliminate incentives would upset that balance and run counter to the budget neutrality concept which the N.J. Hospital Association urges to be adopted for 1985.

Response:

The Department is not adopting its proposed changes for reimbursement of indirect costs and the current language will be retained. The Department feels that the incentive which is currently awarded to hospitals is a reasonable return for their efficient behavior. Hospitals which exceed the level of 110 percent at the Statewide median will continue to have disincentives calculated per the current regulations. In addition, no additional screens will be proposed for 1985.

ADOPTIONS

Comment: 8:31B-3.26

A few of the respondents were in favor of adopting the Federal economic factor proxies, however, others were opposed to the change. In consideration of the number of changes to the regulations in 1985, most respondents felt it advisable to maintain the existing proxies of the economic factor rather than convert to the Federal proxies, since both are similar.

Response:

The Department has decided not to adopt this proposed change. The initially perceived economics in adopting the Federal factor were not achievable given the additional New Jersey specific proxies which would have to be developed. Further study will be given to the issue of adopting one State factor similar to the Federal system.

Comment: 8:31B-3.27

Hospital respondents felt that losses will be created for those hospitals where depreciation and interest are greater than debt service and Capital Facility Allowance (CFA). In addition, since there is a current group reviewing this issue, no changes should be made until that group's recommendation is issued.

Response:

The Department intends to withdraw its recommendation to eliminate Option II of the Capital Facility Allowance. The Governor's Special Advisory Committee on Capital Expenditures for Health Care Facilities is currently addressing this issue and the Department intends to carefully review its findings.

Comment: 8:31B-3.38

Billing for both outliers and outpatients should remain at charges and reconciled to approved rates at year end. Changing from controllable charges would cause problems for hospitals that have instituted charge structures in their Emergency Rooms based upon that kind of care.

Response:

It was never the Department's intention to change the billing mechanism for outpatients. Patients receiving these services will be billed at controlled charges; however, the approved rate per visit will still be used for purposes of reconciliation. The outlier methodology will be addressed separately. Outpatient ancillary services and private referred outpatients will be reconciled as in the past.

Comments:

The respondents are in agreement with the methodology if 100 percent of the high and low outlier per diems are paid. That would be "budget neutral" for each hospital. All respondents unanimously agreed that the outlier per diems set at something other than 100 percent would unfairly penalize some and reward other hospitals. All respondents felt that implementation of a per diem billing system will be difficult and costly. However, no specific problems or cost estimates were provided to describe the magnitude of the problem. Most agree that controlled charges should be continued for billing with the outlier methodology, at budget neutrality, used for Final Reconciliation. Some respondents criticized the fact that this methodology is an attempt to copy the Federal PPS Outlier Methodology which applies a 60 percent per diem on high outliers only.

Several respondents felt that the methodology could have negative impact on hospital's revenues with a high percentage of Medicare patients and hospitals which are: tertiary care,

trauma centers, or specialty care hospitals. Confusion regarding outpatient costs, outpatients with or without rates and ancillary charges was expressed by some respondents.

A number of the respondents disagreed with the Department position that Revenue Maximization can exist and must be eliminated.

Response:

The Department is preparing an Outlier Methodology Rationale, Formula and Cost Impact document to assist the hospitals in the implementation process.

The implementation of a per diem methodology may pose some timing problems for hospitals and intermediaries. The Department would be agreeable to consider a phase-in during 1985 with the understanding that no later than April 1, 1985 the outlier methodology will be in effect and that hospitals agree to reconcile revenue during the year.

The Department recognizes the fact that the use of a 90 percent high outlier per diem will be less than budget neutral in those hospitals. The Department also recognizes that hospitals with a low outlier population would be rewarded. Therefore, the per diems will be set at 100 percent for both the high and low outliers. The Department is continuing to study alternatives to reimbursement including revisions to the trim points. However, the use of PPS trim points is not a valid alternative. The PPS trim points reflect only the Medicare patient population. Those patients are more homogeneous than the entire patient population. PPS trim points would be statistically invalid if applied to a non-homogeneous population.

The physician component of the rate setting system is separate from the non-physician rate setting. Direct physician costs were not considered when the per diems were calculated. Billing of "Part B" physician services are still linked to services actually provided to the patient.

Hospitals with incentives earned on their inpatient inlier population will continue to receive those incentive dollars.

The Department will continue to reconcile out patients with or without rates and the associated ancillary charges as in the past. The outlier methodology only applies to inpatients.

There has been no evidence that going from a controlled charge system to a per diem system will create undue hardship on hospitals, insurance carriers or patients. As stated above, the Department believes that the cost savings and predictability of the outlier methodology is well worth the effort to revise the system which will be phased in by April 1, 1985.

The Department believes that this methodology is a necessary and positive step towards a better overall prospective payment system. It will enhance hospital management's ability to budget (predict) the hospital's operation and identify areas which require immediate attention. There will be an added emphasis on reducing the length of stay in those DRGs which are losing money. This methodology is not an attempt to copy the Federal Prospective Payment System. The Federal system would appear to reimburse less for very high length of stay outliers. The Department believes that the outlier methodology closes a loophole and adds predictability to the entire inpatient payment system.

Comment: 8:31B-3.43

Although many of the hospitals were in favor of the proposed change from a theoretical point of view all were opposed from a practical point of view. They stated that the proposed corridor reduction would create additional administrative and management problems because of the unpredictability of patient volumes and would require frequent and

significant charge revisions to ensure compliance with the established parameters. This would deter hospitals' ability to compete with other health care providers through strategic price setting.

Response:

The Department has agreed to withdraw this proposed change to the 1985 Regulation, with the approval of the outlier methodology. It will review this issue in the future if change in outlier methodology does not result in improvement of the cross-subsidization situation.

Comment: 8:31B-3.51

It is inappropriate to consider for appeal only Certificate of Need (CN) projects which would result in cost savings because there may be certain projects such as Nuclear Magnetic Resonators (NMRs) which are necessary and would not result in cost savings. Therefore, the regulations should continue to stipulate only that "emphasis be given to cost savings."

Response:

The Department, after further consideration, is withdrawing this proposed change regarding CN review process. Recommendations will be made at a later date following further review by the Department about the impact of the CN process on the rate setting system.

Comment: 8:31B-3.64

The majority of respondents asserted that allowing the Commissioner of Health to have broad powers would violate the Health Care Facilities Planning Act.

Response:

The Department had requested that its Counsel review the proposed change prior to presenting it at the August 2, 1984 Health Care Administration Board (HCAB) meeting. Counsel advised that the proposed change would not violate the Health Care Facilities Planning Act, and that the HCAB could delegate its power to the Commissioner if it wished to do so. Assuming the Medicare and Medicaid waivers are approved, payments will be monitored on a quarterly basis to project any excess payments. The Department acknowledges the sense of the HCAB that technically, the Commissioner of Health would summon the HCAB for an emergency meeting to determine and approve a corrective plan of action; therefore, the necessity for the adoption of this amendment is negated at the present time.

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]***).

8:31B-3.3 Uniform reporting: current costs

(a) (No change.)

(b) Late submission of current cost data, as defined in N.J.A.C. 8:31B-4.6(c), including Audited Financial Statements, may result in a penalty, payable to the Commission, of up to \$200.00 per working day past the appropriate submission date. The penalty shall be levied at the discretion of the Commission.

8:31B-3.17 Financial elements reporting/audit adjustments

(a) (No change.)

(b) All reported financial information shall be reconciled by the hospital to the hospital's audited financial statement. In addition, having given adequate notice to the hospital, the Department of Health may perform a cursory or detailed on-

site review at the Department's discretion of all financial information and statistics to verify consistent reporting of data and extraordinary variations in data relating to the development of the Preliminary Cost Base (PCB). Any adjustments made subsequent to the financial review (including Medicare audits and New Jersey State Department of Health reviews) shall be brought to the attention of the Commissioner by the hospital, the Department of Health, appropriate fiscal intermediary or payor where appropriate, pursuant to N.J.A.C. 8:31B-3.63 through 3.70 or N.J.A.C. 8:31B-3.71 through 3.86, and shall be applied proportionately to the Preliminary Cost Base and Schedule of Rates (and to the extent pragmatic, applied to fixed and variable financial elements) at the time of the reconciliation to the Schedule of Rates (see N.J.A.C. 8:31B-3.71 through 3.86). All such adjustments shall be determined retroactively to the first payment on the Schedule of Rates and shall be applied prospectively. Any additional discrepancies determined beyond final reconciliation will be reflected in the hospital's current Schedule of Rates, if the net impact is greater than \$50,000 or one percent of the hospital's total gross revenue.

8:31B-3.22 Standard costs per case

(a) (No change.)

(b) Classification of Teaching (Major, Minor) and Non-Teaching Hospitals

1. Teaching hospitals are defined as those hospitals which, during the current cost base reporting period, meet all of the following requirements:

i. Four or more residencies approved by the Liaison Committee on Graduate Medical Education (LCGME) or American Osteopathic Association (AOA), of which at least two are in the following five clinical services:

- (1) Internal Medicine;
- (2) General Surgery;
- (3) Family Practice;
- (4) Pediatrics;
- (5) Obstetrics and Gynecology.

ii. A minimum of 45 full-time equivalent residents in all approved residencies combined;

iii. Twenty-five full-time equivalent residents must be in the five clinical services listed in (b)1i(1) through (5) above, and half of these residents (at least 12.5 full-time equivalents) must be in Internal Medicine, Family Practice and/or Pediatrics. The hospital must have the principal residencies for these core areas and not just rotating residencies.

2.-5. (No change.)

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

8:31B-3.23 Reasonable direct costs per case

(a) Inpatient:

1. The Reasonable Direct Cost Per Case (DRG) of the Preliminary Cost Base for those hospitals first receiving rates in accordance with these regulations are determined for teaching and non-teaching hospitals, for every DRG with greater than five merged patients and shall include incentives and disincentives, as appropriate, which shall be termed the boundaries of payment and are calculated as follows:

$$\begin{aligned} & \text{degree of confidence} \times \text{labor market standard} \\ & \text{plus} \\ & (1 - \text{degree of confidence}) \times \text{hospital current} \\ & \quad \text{non-physician direct cost per case} \\ & \text{plus} \\ & \text{hospital current physician patient service cost per case} \end{aligned}$$

i. Where the degree of confidence of a DRG is one (1) minus the DRG's coefficient of variation;

***[i. Where the degree of confidence of a DRG is determined from the coefficient of variation according to the following equation:**

$$DC = 1 - (CV \cdot X)$$

ii. Where:

$$\begin{aligned} DC &= \text{degree of confidence} \\ CV &= \text{coefficient of variation} \\ X &= .75 \text{ in 1985} \\ & .50 \text{ in 1986} \\ & .25 \text{ in 1987 and following} \end{aligned}$$

iii. By 1987 the Department shall study whether hospital rates should be moved closer to the statewide standards, and shall make a recommendation at that time, whether to set X equal to 0 (100 percent standard) or to allow it to remain at .25.]*

[iv.]* *ii. And where the coefficient of variation of a DRG is the standard deviation divided by the mean, or incentive standard cost;

***iii. And where the standard deviation of a DRG is calculated as:**

$$\frac{\sum_{i=1}^N (\text{Cost}_i)^2 - (N \cdot \text{cost})^2}{N^*}$$

iv. Where N is the number of patients in a DRG in teaching or non-teaching hospitals upon which the standard was calculated;

v. And if the Coefficient of Variation, as calculated above, is greater than 1, the degree of confidence shall equal zero. (Reasonable non-physician direct cost per case equals hospital's costs per case.)

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

8:31B-3.24 Reasonable indirect patient care costs

(a) (No change.)

(b) The reasonable amount of indirect costs (exclusive of skilled nursing apportionment) will be determined for those hospitals that will receive an initial PCB. ***The General Service Related centers will be screened to determine disincentive amounts.*** [The following cost centers will be screened to determine disincentive amounts.]* ***Disincentive amounts will be screened in the Physician and Teaching Related Centers.*** The screening methodology will compare base year actual cost data. Such screens will be applied to the indirect cost centers defined below by cost center (or combined cost center) with the exception of sales and real estate taxes, outside collection costs and purchased employee health insurance, through comparison with limits relative to the median cost per unit of service. ***The incentive amounts of the general Service Related centers will be one-half the difference between a hospital's actual cost and 90 percent of the median unit cost. The remaining indirect*** [The indirect]* cost centers will be included in the Preliminary Cost Base at the *[screened]* base year level as adjusted by the economic factor. Appeals of these indirect cost centers will be subject to the provisions of N.J.A.C. 8:31B-3.53 through 3.57.

(c) (No change.)

(d) Cost centers subject to screening:

ADOPTIONS

HEALTH

Cost Centers	Peer Group	Unit of Service	Reasonable Cost Limit
(A&G & FIS) Administrative & General & Fiscal	teaching/minor teaching non-teaching	Adjusted Admissions ²	*1.1* *[1.0]*
(PLT) Plant	Statewide	Total PLT Square Feet	*1.1* *[1.0]*
(PCC) Patient Care Coordination	teaching/minor teaching non-teaching	Adjusted Admissions	*1.1* *[1.0]*
(RSD) Residents Non-physician	teaching/minor teaching non-teaching	Full time Equivalent in RSD	*1.1* *[1.0]*
(PHY) Physicians Non-physician	teaching/minor teaching non-teaching	Full time Equivalent in PHY	*1.1* *[1.0]*
(RSD) Residents Physician	teaching/minor teaching non-teaching	Full time Equivalent in RSD	*1.1* *[1.0]*
(PHY) Physicians and Physician	teaching/minor teaching non-teaching	Full time Equivalents in PHY and EDR	*1.1* *[1.0]*
(FDR) Education & Research			
*[UTC Utilities	Statewide	Total PLT Square Feet	1.0
OGS Other General Services	Statewide	Total PLT Square Feet	1.0
MAL (Malpractice)	teaching/minor teaching non-teaching	Full time Equivalent in PHY	1.0)*

[(e) The 1983 indirect costs shall be the approved 1982 indirect costs, including Commission-approved continuous adjustments for 1982, adjusted by an Economic Factor.]

8:31B-3.26 Economic factor

(a) An economic factor shall be calculated for each hospital. It shall take into account the level of hospital expenses and replacement cost of major moveable equipment, using the cost components reported to the New Jersey State Department of Health. The factor is the measure of the change in the prices of goods and services used by New Jersey hospitals. It is to be based, as far as possible, on recorded price changes, *[as promulgated in the Federal Register]*. For that part of the period covered by the economic factor for which recorded price changes are unavailable, the economic factor shall be based on the best available forecast of price trends.

(b) *The cost components of the economic factor are shown on Appendix II.* The proxy used for labor costs will change in 1983 and subsequent years to the Bureau of Labor Statistics series "Average Hourly Wages Hospital Workers (US)." The labor proxy for the 1982 rate year will remain the Employment Cost Index Northeast. *[The proxies used in the economic factor are published in the Federal Register with the exception of: Beds and Nursing Equipment; General Services Equipment; Business Service Equipment; and Diagnostic Equipment. These 4 proxies will be promulgated by the New Jersey State Department of Health (Appendix II).]*

(c) The hospital specific economic factor is the weighted average of the recorded and projected change in the value of its components. The weight given to each component is its share of that hospital's total expenditure *as described in Appendix II*. The projection of individual components shall be based where appropriate, on legal or regulatory charges which fix the future value of the proxy (i.e., FICA). Components which are of particular importance may be projected

through the use of time series analysis on other relevant indicators.

8:31B-3.27 Capital Facilities

(a) Capital Facilities as defined in N.J.A.C. 8:31B-4.42, shall be included in the Preliminary Cost Base in the following manner:

1. Building and fixed equipment:

i.-iii. (No change.)

iv. The yearly Capital Facilities Allowance is computed per information provided by the Uniform Cost Reporting Regulation as *the higher of*:

(1) The current yearly amount of capital indebtedness of the hospital, excluding any portion associated with major moveable equipment, plus the deficiency of the Plant Fund (and any funds designated by the hospital's board for the Capital Facilities Formula Allowance (CFFA) against the Fund Target, divided by the adjusted remaining useful life of the hospital;

(2) The prospective year's depreciation and interest expense.

v. For building replacement or major renovations, *regardless of which of the above options (a or b) is higher in any given year,* the maximum amount reimbursed through the Capital Facilities Allowance shall be the higher of one of the alternatives summed over the applicable number of years.

vi. (No change.)

2. (No change.)

8:31B-3.38 Derivation from Preliminary Cost Base

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

(c) Basic rate order:

1. Each hospital shall receive from the Commission a rate order detailing the Schedule of Rates as follows:

SCHEDULE OF RATES	
ITEM	RATE PER CASE
DIRECT COSTS RELATED TO PATIENT CARE	
DRG 1	\$ _____
DRG 2	\$ _____
DRG 3	\$ _____
CLINIC PATIENTS	\$ _____ ***
HOME HEALTH PATIENTS	\$ _____ ***
EMERGENCY SERVICE OUTPATIENTS	\$ _____ ***
OUTPATIENT DIALYSIS TRTAMENT	\$ _____ ***
AMBULATORY SURGERY	\$ _____ ***
SAME-DAY PSYCHIATRY	\$ _____ ***
HOME DIALYSIS	\$ _____ ***
OTHER AMBULATORY	\$ _____ ***
INDIRECT FINANCIAL ELEMENTS	
INDIRECT COSTS RELATED TO PATIENT CARE	\$ _____
NET INCOME FROM OTHER SOURCES	\$ () _____
CAPITAL FACILITIES ALLOWANCE	\$ _____
COMMISSION APPROVED WORKING CASH INFUSION	\$ _____
GRANTS ON BEHALF OF THE MEDICALLY INDIGENT	\$ () _____
ESTIMATED UNCOMPENSATED CARE _____%	
ESTIMATED PERSONNEL HEALTH PROGRAM _____%	

NOTE: The Schedule of Rates shall be adjusted to reflect 5 percent working capital increases and _____ percent for payor differentials as specified by the Commis-

sion. Payor Class A shall pay _____ percent of this Schedule of Rates. Payor Class B shall pay _____ percent of this Schedule of Rates and all other Payor Classes shall pay 100 percent of this Schedule of Rates.

Patients receiving these services will be billed at controlled charges; however, this rate per visit will be used for purposes of reconciliation.

2. The six outlier categories will have rates and/or per diems included on the Schedule of Rates as follows:

i. High length of stay outlier—the rate per case plus a modified per diem for each day above the high trim point.

ii. Low length of stay—per diem only.

iii. Low volume (fewer than six cases)—standard rate per case.

iv. Clinical outliers—a rate per case based upon historical cost.

v. Against Medical Advice and Death (AMA's) and Deaths—these outlier categories are eliminated. The DRG rate per case or outlier rate, as described above, will apply.

vi. Transfer patients—patients transferred from one to another acute care facility (inpatient) were considered outliers in each facility. The transferring hospital will now receive a per diem rate and the transferee hospital will receive a price per case equal to the rate received by a non-transferred patient.

3. Charges for the same services must not differ due to patient inlier/outlier status. Charges will be used for the purpose of bill proration and rate setting.

(d) (No change.)

8:31B-3.43 Adjustment of charges

(a) (No change.)

(b) The hospital may, subject to analysis and approval by the Department, adopt a plus or minus *[15]* ***20*** percent variance applied to its charge to Direct Cost ratio for any specific revenue center.

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

8:31B-3.51 Notification appeal and review

(a) All hospitals within 15 working days of receipt of the Proposed Schedule of Rates, shall notify the Commissioner of any calculation errors in the rate schedule. If upon review it is determined by the Commissioner that the error is of substantive value, a revised rate will be issued to the hospital within five working days. If the discrepancy is determined to be substantive and a revised Schedule of Rates is not issued by the Department within five working days, notification time frames above will not become effective until the hospital receives a revised Schedule of Rates.

(b) Notification by hospitals: Within 45 working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing, of their decision to:

1. (No change.)

2. Conditionally accept the Certified Revenue Base: Conditional acceptance is contingent upon approval by the Commission of the Schedule of Rates. Subject to approval, conditional acceptance waives the right of the hospital to appeals set forth under N.J.A.C. 8:31B-3.53 through 3.54. Following Commission approval, rates conditionally accepted shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45. A hospital with an overall direct patient care disincentive will be required to present to the Hospital Rate Setting Commission a proposal to reduce its rates and have the Commission approve this proposal prior to the hospital being

allowed to conditionally accept the Certified Revenue Base. The reduction in its rates will reflect the hospital's plans to eliminate inefficiencies. Rates conditionally accepted shall not include the additional one percent of all direct patient care costs. Hospitals may appeal the following items:

i.-ii. (No change.)

iii. Approved certificates of need which is defined as capital and patient care costs arising from projects for which a certificate of need has been granted. Adjustments in Patient Care Costs in excess of that which would otherwise be deemed reasonable under N.J.A.C. 8:31B-3.20 through 3.36 shall be permitted by the Commissioner acting under this Section only when:

(1) ***The hospital's historical level of depreciation on major moveable equipment fails to adequately reflect purchases of equipment subject to the State's Standards and General Criteria for Certificate of Need for regionalized tertiary services; or*** ***[The Hospital has purchased new equipment and can demonstrate that no historical level on major moveable equipment has been included in the base for this piece of equipment, subject to the State's Standards of General Criteria for Certificate of Need for regionalized tertiary services. Appeals for depreciation on replacement major moveable equipment may only be heard under N.J.A.C. 8:31-3.53-3.54 or.]***

(2) The hospital has no overall disincentive, and no disincentive in the Patient Care Cost Centers most directly affected by the project.

Note: In evaluating appeals, for (b)2iii above the Commission ***shall give emphasis to any cost savings projected by the hospital in its application for such a Certificate of Need and to any existing debt obligations on existing equipment,*** ***[will only review projects where cost savings have been identified in the hospital's application for such a Certificate of Need. Existing debt obligations on existing equipment will be given emphasis when the Commission evaluates appeals as related to (b)2iii.]***

iv.-v. (No change.)

3. (No change.)

8:31B-3.64 Modification of proposed Schedule of Rates

(a)-(d) (No change.)

[(e) The Commissioner of Health upon advising the Health Care Administration Board shall have the authority to adjust the economic factor, or other reimbursement regulations to insure that total hospital system costs to Federal payors (Medicare, Medicaid) do not exceed what these payors would have paid in the absence of waivers of Federal regulations.]

8:31B-3.75 Schedule of rates reconciliation

(a) (No change.)

(b) To the extent that an institution's actual Net Revenues Related to Patient Care differ from the Commission approved Preliminary Cost Base, an adjustment to the current year PCB will be calculated. A compliance adjustment to the Rate Order will then be issued to include this adjustment and adjustments for actual uncompensated care, payor differentials, and net income from other sources, in order to align gross revenue and payors' payments with net revenue requirements for the new prospective year.

1. Commission approved revenue: On an annual basis, within 90 days of receipt of all reports set forth in N.J.A.C. 8:31B-3.42 through 3.45, the Schedule of Rates, as adjusted for economic factors and other adjustments issued by the Commission during the year, will be calculated for the hospital's actual discharges and patient visits for a reported period.

Reasonable direct patient care costs per case will be multiplied by the number of cases in each DRG, to determine reasonable direct patient care costs for patients assigned to a DRG. Actual outpatient volumes for Emergency Services (EMR), Clinics (CLN), Home Health Agency (HHA), Ambulatory Surgery, Home Dialysis, Same Day Psychiatry, and outpatient dialysis (DIA) groups will be determined from the Uniform Cost Reporting Regulations. Outlier cases will be reconciled to the appropriate rate and/or per diem as described in N.J.A.C. 8:31B-3.37.

2. Hospital gross revenue related to patient care: The hospital's actual rate year charge to Direct Cost ratio shall be calculated for each revenue center. Next, the hospital's actual rate year total charge to total Direct Cost ratio shall be calculated. Each revenue center ratio will be compared to the total ratio, adjusted by the discretionary subsidy of plus or minus *[15]* *20* percent. Any difference by revenue center (either positive or negative) shall be divided in half and multiplied by total rate year direct cost for the revenue center and deemed excess subsidized revenue.

3.-4. (No change.)

(a)

CONSUMER HEALTH SERVICES

Controlled Dangerous Substances Security Requirements Over Controlled Dangerous Substances

Readoption with Amendments: N.J.A.C. 8:65-2

Proposed: June 4, 1984 at 16 N.J.R. 1311(a).

Adopted: October 29, 1984 by J. Richard Goldstein,
M.D., Commissioner, Department of Health.

Filed: October 31, 1984, as R.1984 d.529, **without
change.**

Authority: N.J.S.A. 24:21-9.

Effective Date of Amendments: November 19, 1984.

Summary of Public Comments and Agency Responses:

The Department of Health received only one comment. The comment was received from Ciba-Geigy Corporation, Summit, N.J. supporting the readoption of these regulations with the proposed amendment. Since there were no other comments and the one received was in support of the proposal, the Department made no changes in the readoption.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:65-2.

Full text of the amendment to the readoption follows.

8:65-2.2 Physical security controls for nonpractitioners: storage areas

(a) Raw materials, bulk materials awaiting further processing, and finished products which are controlled substances listed in Schedule I or II shall be stored in one of the following secure storage areas;

1. Where small quantities permit, a safe or steel cabinet:

i. Which safe or steel cabinet shall have the following specifications or the equivalent; 30 man-minutes against surreptitious entry, 10 man-minutes against forced entry, 20 man-hours against lock manipulation, and 20 man-hours against radiological techniques;

ii. Which safe or steel cabinet, if it weighs less than 750 pounds, is bolted or cemented to the floor or wall in such a way that it cannot be readily removed; and

iii. Which safe or steel cabinet, if necessary, depending upon the quantities and type of controlled substances stored, is equipped with an alarm system, which upon attempted unauthorized entry, shall transmit a signal directly to a central protection company or a local or State police agency which has a legal duty to respond, or a 24-hour control station operated by the registrant, or such other protection as the Department may approve.

2. A vault constructed before, or under construction on, September 1, 1971 which is of substantial construction with a steel door, combination of key lock, and an alarm system; or

3. A vault constructed after September 1, 1971:

i. The walls, floors and ceilings of which vault are constructed of at least eight inches of reinforced concrete or other substantial masonry, reinforced vertically and horizontally with ½ inch steel rods tied six inches on center, or the structural equivalent to such reinforced walls, floors and ceilings;

ii. The door and frame unit of which vault shall conform to the following specifications or the equivalent; 30 man-minutes against surreptitious entry, ten man-minutes against forced entry, 20 man-hours against lock manipulation, and 20 man-hours against radiological techniques;

iii. Which vault, if operations require it to remain open for frequent access, is equipped with a "day-gate" which is self-closing and self-locking, or the equivalent, for use during the hours of operation in which the vault door is open;

iv. The walls or perimeter of which vault are equipped with an alarm, which upon unauthorized entry shall transmit a signal directly to a central station protection company, or a local or State police agency which has a legal duty to respond, or a 24-hour control station operated by the registrant, or such other protection as the Department may approve, and, if necessary, holdup buttons at strategic points of entry to the perimeter area of the vault;

v. The door of which vault is equipped with contact switches; and

vi. Which vault has one of the following; complete electrical lacing of the walls, floor and ceilings; sensitive ultrasonic equipment within the vault; a sensitive sound accumulator system; or such other device designed to detect illegal entry as may be approved by the Department.

(b) Raw materials, bulk materials awaiting further processing, and finished products which are controlled substances listed in Schedules III, IV, and V shall be stored in one of the following secure storage areas:

1. Where small quantities permit, a safe which complies with the requirements set forth in subsection (a)1 of this Section;

2. A vault which complies with the requirements set forth in either subsection (a)2 or 3 of this Section; or

3. A building or area located within a building, which building or area:

i. Has walls or perimeter fences of sufficient height and construction to provide security from burglary;

ii. Has substantial doors which may be securely locked during non-working hours by a multiple position combination or key lock;

iii. Is equipped with an alarm which, upon unauthorized entry, shall transmit a signal directly to a central station protection company, or local or State police agency which has a legal duty to respond, or a 24-hour control station operated by the registrant, or such other protection as the Department may approve; and

iv. In which all controlled substances are segregated from all other merchandise and kept under constant surveillance during normal business hours.

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

(e) A registrant or authorized agent may request an exception from the provisions of this subchapter from the Department, when, due to the bulk volume of the controlled substance, achieving the required level of security may appear to be economically unreasonable or technically infeasible. Upon receipt of a request, the Department will assess the physical arrangements of the present or proposed security system. Based on considerations of public health and safety, the Department may accept a lesser level of security. A final decision of the Department, and the reasons therefore, shall be entered upon the records of the Department and sent to the registrant or authorized agent.

8:65-2.4 Other security controls for nonpractitioners

(a) Before distributing a controlled substance to any person who the registrant does not know to be registered to possess the controlled substance, the registrant shall make a good faith inquiry with the New Jersey State Department of Health to determine that the person is registered to possess the controlled substance.

(b) The registrant shall design and operate a system to disclose suspicious orders of controlled substances. The registrant shall inform the New Jersey State Department of Health, Drug Control Program, of suspicious orders when discovered by the registrant. Suspicious orders include orders of unusual size, orders Deviating substantially from a normal pattern, and orders of unusual frequency.

(c) The registrant shall notify the New Jersey State Department of Health, Drug Control Program, of any theft or significant loss of any controlled substances upon discovery of such theft or loss. The supplier shall be responsible for reporting in-transit losses of controlled substances by the common or contract carrier selected pursuant to N.J.A.C. 8:65-2.4(e) upon discovery of such theft or loss. The registrant shall also complete DDC-52 form regarding such theft or loss. Thefts must be reported whether or not the controlled substances are subsequently recovered and/or the responsible parties are identified and action taken against them.

(d) The registrant shall not distribute any controlled substance listed in Schedules II through V as a complimentary sample to any potential or current customer without the prior written request of the customer, to be used only for satisfying the legitimate medical needs of patients of the customer, and only in reasonable quantities. Such request must contain the name, address and registration number of the customer and the name and quantity of the specific controlled substance desired. The request shall be preserved by the registrant with other records of distribution of controlled substances. In addition, the requirements of Subchapter 6 of this Act shall be

complied with for any distribution of a controlled substance listed in Schedule II. For purposes of this paragraph, the term "customer" includes a registrant to whom a complimentary sample of a substance is given in order to encourage the prescribing or recommending of the substance by the registrant.

(e)-(g) (No change.)

8:65-2.5 Physical security controls for practitioners

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

(d) The registrant shall notify the New Jersey State Department of Health, Drug Control Program, of the theft or significant loss of any controlled substances upon discovery of such loss or theft. The registrant shall also complete DDC-52 form regarding such loss or theft.

(e)-(g) (No change.)

(a)

CONSUMER HEALTH SERVICES

Controlled Dangerous Substances
Addition of Alfentanil to Schedule I

Adopted Amendment: N.J.A.C. 8:65-10.1

Proposed: September 4, 1984 at 16 N.J.R. 2332(a).

Adopted: October 29, 1984, by J. Richard Goldstein, M.D., Commissioner, Department of Health.

Filed: October 31, 1984, as R.1984 d.532, **without change.**

Authority: N.J.S.A. 24:21-3(d).

Effective Date: November 19, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): Exempt pursuant to N.J.S.A. 24:21-3.

Full text of the adopted amendment follows.

8:65-10.1 Controlled dangerous substances, Schedule I

(a) (No change.)

(b) The following is Schedule I listing of the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substances code number.

1. Opiates: Unless specifically expected or unless listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation (listed by generic/established or chemical name with CDS code):

Acetylmethadol	9601
Alfentanil	9737
Allylprodine	9602
.....
.....

2.-6. (No change.)

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Tuition Policies for Unemployed Persons: Job Training Program

Adopted New Rule: N.J.A.C. 9:5-2

Proposed: July 16, 1984 at 16 N.J.R. 1931(a).

Adopted: October 31, 1984 by Board of Higher Education, T. Edward Hollander, Secretary.

Filed: October 31, 1984 as R.1984 d.536, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 18A:64-13.4 and 18A:64A-23.4.

Effective Date: November 19, 1984.

Expiration Date pursuant to Executive Order 66(1978):
October 3, 1985.

Summary of Public Comments and Agency Responses:

Five comments concerning the proposed new rule were received in response to the New Jersey Register publication.

Specific comments and Agency responses follow:

Comment: 9:5-2.1 sets no standards as to the length of unemployment or the manner in which it occurred, nor a requirement that employment be actively pursued or accepted, therefore opening the program to possible abuse.

Response: The agency has amended the proposal to require that eligible individuals present proof of unemployment status recognized by the Department of Labor, Division of Employment Services. Guidelines defining unemployment as accepted by that agency should prevent the majority of abuses under the program in this area.

Comment: The institutions cannot easily verify current unemployment to satisfy 9:5-2.1.

Response: The above amendment made by the agency requiring proof of unemployment status recognized by the Department of Labor, Division of Employment Services will resolve this concern.

Comment: 9:5-2.2 should be amended to include student loans.

Response: The agency rejected this suggestion because it interprets the enabling legislation to not require persons participating within the program to incur indebtedness through student loans in order to take advantage of the program.

Comment: 9:5-2.3 should define eligible coursework under the program.

Response: The agency believes this area would be best served by each individual institution defining which of its courses qualify. Each institution is best qualified to make such a determination. Any definition offered in the regulations to cover all institutions among the sectors would necessarily be so general that it would be of little guidance to the institutions.

Comment: 9:5-2.6 should be deleted as the program is intended to be conducted at no expense to institutions or the State as evidenced by the space available concept and the prohibition against counting participants in the program toward State aid.

Response: The agency has amended the proposal to delete 9:5-2.6.

Full text of the adoption follows (additions to the proposal shows in boldface with asterisks ***thus***; deletions from the proposal shown in brackets with asterisks ***[thus]***).

SUBCHAPTER 2. TUITION POLICIES FOR UNEMPLOYED PERSONS: JOB TRAINING PROGRAM

9:5-2.1 Proof of eligibility

(a) Eligible individuals seeking to enroll under the job training program shall sign a statement, as prepared by the institution, verifying their past presence in the labor market for at least two years, their unemployed status or receipt of a lay off notice as proof of eligibility to participate in the program.

(b) Eligible individuals currently unemployed must submit proof of recognition of their unemployed status by the New Jersey Department of Labor, Division of Employment Services, to the institution.

[(b)]* *(c) For the purpose of determining eligibility, presence in the labor market for at least two years shall be defined as either full-time employment or the active pursuit of full-time employment or a combination thereof extending over at least a two-year period.

[(c)]* *(d) Any institution may require further proof of eligibility if it is deemed necessary.

9:5-2.2 Eligibility for financial aid

(a) Eligible individuals seeking to enroll under this program must complete a New Jersey Financial Aid Form to determine possible eligibility for financial aid. ***Those seeking to attend on a part-time basis must only complete a Federal financial aid form.***

(b) Each individual is responsible for completing the form and providing the institution with all information necessary to determine possible financial aid eligibility.

(c) Financial aid shall include both State and Federal sources of aid including grants, scholarships and any other sources of financial aid available to the institution's general student population but shall not include loans.

(d) Each institution shall apply consistent standards for all students, including participants in this program, in determining eligibility for financial aid.

(e) Any eligible individual receiving financial aid which is not sufficient to entirely pay the full amount of tuition at the institution shall be entitled to have the remaining amount of tuition not covered by financial aid waived by the institution.

HUMAN SERVICES

9:5-2.3 Eligible coursework

(a) Each institution shall provide a list of courses which shall be designated as job training courses for eligibility under this program.

(b) Only those courses in which classroom space is available and tuition paying students constitute the minimum number required for the course shall be open to eligible individuals under this program.

9:5-2.4 Employment during semester

Any individual participating in the program who obtains employment subsequent to the commencement of the semester shall be permitted to complete the semester in progress as a participant in the program.

9:5-2.5 Application for general institutional rules

When not inconsistent with applicable statutes or these regulations, students participating under this program shall be governed by those procedures and rules applicable to each institution's regularly enrolled student population.

*[9:5-2.6 County colleges' chargebacks

The provisions of N.J.S.A. 18A:64A-23 and the regulations governing chargebacks at the county colleges, N.J.A.C. 9:4-1.5, shall apply to all students attending any county college pursuant to this program.]*



(a)

STUDENT ASSISTANCE BOARD

**Tuition Aid Grant Program
1984-1985 Award Table**

Readoption: N.J.A.C. 9:7-3.1

Proposed: August 20, 1984 at 16 N.J.R. 2308(a).
Adopted: October 19, 1984 by Student Assistance Board, Joseph Streit, Chairman.
Filed: October 31, 1984 as R.1984 d.535 **without change.**

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

Effective Date: November 19, 1984.
Expiration Date pursuant to Executive Order 66(1978):
April 13, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

9:7-3.1 Tuition Aid Grant Award Table

The value of the grant is related to the tuition charges of the various institutional sectors in New Jersey and the student's

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ability to pay for educational costs. The award table below shows approximate award levels depending upon tuition and ability to pay.

(Delete the existing table in the New Jersey Administrative Code at N.J.A.C. 9:7-3.1 and replace it with the following table.)

**TUITION AID GRANT (TAG) AWARD TABLE FOR
1984-85
APPROXIMATE TUITION AID GRANT VALUES
NEW JERSEY COLLEGES AND UNIVERSITIES**

New Jersey Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers U. & UMDNJ ¹	NJ Inst. of Tech.	Renewal ² Out-of-State Colleges & Universities
A	B	C	D	E	F	G
Under 750	\$750	\$1088	\$1900	\$1520	\$1796	\$450
750-1049	650	980	1800	1420	1690	260
1050-1349	550	880	1700	1320	1590	260
1350-1649	450	780	1600	1220	1490	260
1650-1949	350	680	1500	1120	1390	200
1950-2249	250	580	1400	1020	1290	0
2250-2549	200	480	1300	920	1190	
2550-2849	0	380	1200	820	1090	
2850-3149		280	1100	720	990	
3150-3449		200	1000	620	890	
3450-3749		0	900	520	790	
3750-4049			800	420	690	
4050-4349			700	320	590	
4350-4649			600	200	490	
4650-4949			500	0	390	
4950-5249			400		290	
5250-5549			300		200	
5550-5849			200		0	
Over 5849			0			

¹ Rutgers Engineering and Pharmacy students will receive the award values shown in column F up to their maximum tuition charge. Approved programs only at UMDNJ. Contact the financial aid office for details.

² "Renewals" are students who received a Tuition Aid Grant in 1981-82 or prior years.

HUMAN SERVICES

(b)

DIVISION OF PUBLIC WELFARE

Assistance Standards Handbook Income

**Readoption: N.J.A.C. 10:82-4
Adopted Amendments: N.J.A.C. 10:82-4.5,
4.6 and 4.9**

Proposed: September 4, 1984 at 16 N.J.R. 2336(b).
Adopted: October 26, 1984, by George J. Albanese, Commissioner, Department of Human Services.
Filed: October 29, 1984, as R.1984 d.528 **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 44:7-6 and 44:10-3; and 45 CFR 233.20(a)(3)(xvii)(B) and (C).

Effective Date of Readoption: October 29, 1984.
Effective Date of Amendments: November 19, 1984.
Expiration Date pursuant to Executive Order 66(1978):
October 29, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Changes Subsequent to Proposal:

N.J.A.C. 10:82-4.6 A publication error has been corrected in the title to read "disregard of".

4.6(b) The period of the exclusion of earnings from JTPA participation has been revised from six months in any 12 consecutive months to six months in a calendar year to maximize the utilization of the disregard by JTPA participants and to align this disregard policy to that which was adopted as an Emergency Rule at N.J.A.C. 10:82-4.7 (see 16 N.J.R. 2837(a)) relating to the disregard of full-time student earnings.

4.6(b)1 New language has been added for clarity to distinguish that the income disregard for a JTPA participant may be in addition to the income disregard allowed for income from non-JTPA employment.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:82-4.

Full text of the changes upon adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

10:82-4.5 Disregard of earned income in AFDC-N segment
 (a) Rules on the N segment are as follows.

1. The first \$60.00 of gross monthly earnings of each employed member of the eligible AFDC-N unit shall be the initial disregard. In addition, in determining the amount of payment for an otherwise eligible unit, one third of the total remaining earned income shall be disregarded and, where applicable, the following:

- i. (No change.)
- ii. All earned income of children 16 to 19 years of age who are attending an accredited educational institution on a full-time basis shall be exempt. (See also N.J.A.C. 10:82-4.7.)

(b) (No change.)

10:82-4.6 Disregard ***[to]* *of*** certain allowances and payments in AFDC (all segments)

(a) Unearned income (including monies to offset training expenses) received by an AFDC dependent child through the Job Training Partnership Act (JTPA) is exempt in the determination of initial eligibility, maximum income eligibility, prospective needs test, and grant entitlement.

(b) Earned income received through the JTPA by an AFDC dependent child is exempt in the determination of income eligibility and grant entitlement. However, the exclusion of such income shall not exceed six months in any *[12 consecutive months]* ***calendar year***.

***1. This disregard of income is independent of the earned income disregard found at N.J.A.C. 10:82-4.7(g). If a full-time student secures employment unrelated to JTPA partici-**

ation, a second six-calendar-month period shall be established in accordance with the provisions of that subsection.*

(c) Income received by an AFDC parent or parent-person through the JTPA is treated as any other income received by such an individual with the exception of those payments classified as "needs based payments". Needs based payments (that is, monies paid to offset expenses related to training) are to be disregarded in the determination of initial eligibility, maximum income determination, prospective needs test, and grant computations.

10:82-4.9 Division of Youth and Family Services
 (a)—(b) (No change.)

(c) The basic monthly rates for foster care as established by the Division of Youth and Family Services are as follows:

- 1. Child under six years, \$176.00 per month;
- 2. Six through nine years, \$188.00 per month;
- 3. Ten through 14 years, \$208.00 per month;
- 4. Fifteen years and over, \$220.00 per month.

LAW AND PUBLIC SAFETY

(a)

BOARD OF EXAMINERS OF OPHTHALMIC DISPENSERS AND OPHTHALMIC TECHNICIANS

Use of Trade or Corporate Names; Fee Schedule Equipment; Minimum Optical Equipment

Adopted Repeal: N.J.A.C. 13:33-1.28
Adopted Amendments: N.J.A.C. 13:33-1.41
and 13:33-2.1, 2.2

Proposed: August 6, 1984 at 16 N.J.R. 2062(a).

Adopted: October 3, 1984 by State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, J. Leo Kymer, President.

Filed: October 31, 1984 as R.1984 d.534, **without change.**

Authority: N.J.S.A. 52:17B-41.9, 41.9a, 41.9b and 41.13.

Effective Date: November 19, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): Subchapter 1, March 19, 1989. Subchapter 2, November 19, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of adopted repeal appears in the New Jersey Administrative Code at N.J.A.C. 13:33-1.28.

Full text of the adopted amendments follows.

13:33-1.28 (Reserved)

13:33-1.41 Fee schedule

- (a) (No change.)
- 1.-5. (No change.)
- 6. Permit renewal:
 - i.-ii. (No change.)
 - 7.-9. (No change.)

SUBCHAPTER 2. EQUIPMENT

13:33-2.1 Minimum optical equipment in establishments where apprentices are registered and/or where fabricating is done on the premises

(a) All optical establishments where apprentices are registered or where fabricating is done on the premises, shall be equipped with a minimum of optical equipment as follows: (NOTE: For the purpose of this rule, fabricating shall be construed to mean the producing and reproducing of lenses and mounting the same to supporting materials.)

1. One set of hand tools consisting of files, screwdrivers, pliers, hammers/anvils or hand press, reamers, taps, calipers and millimeter ruler;
2. One automatic lens analyzer (lensometer, vertometer, or any other automatic electronic equipment to measure the power of a lens and lens clock.
3. Hand or automatic protractor for marking up lenses;
4. One colmascope or similar instrument, lens hardening equipment, drop ball tester;
5. One frame heater;
6. One automatic edger and hand finishing stone; and
7. One set of samples of frames and mountings, minimum 25, including zyl, rimless and metal rims.

13:33-2.2 Optical equipment required for practice of ophthalmic dispensing in establishments where no fabricating is done on premises and where no apprentices are registered

(a) All optical establishments where ophthalmic dispensers practice and where no fabricating is done on the premises and no apprentices are registered, shall be equipped with a minimum of optical equipment as follows:

1. One set of hand tools consisting of files, screwdrivers, pliers, hammers/anvils or hand press, reamers, taps, calipers and a millimeter ruler;
2. One automatic lens analyzer (lensometer, vertometer, or any other automatic electronic equipment to measure the power of a lens) and lens clock;
3. One colmascope or similar instrument;
4. One frame heater;
5. One set of samples of frames and mountings, minimum 25, including zyl, rimless and metal rims.
6. A sign in a conspicuous location stating "No laboratory on the premises".

(a)

BOARD OF MEDICAL EXAMINERS

Chiropractic Practice Standards and Score

Adopted New Rule: N.J.A.C. 13:35-7.1

Proposed: April 2, 1984 at 16 N.J.R. 686(a).

Adopted: October 10, 1984 by Board of Medical Examiners, Edward W. Luka, M.D., President.

Filed: October 31, 1984 as R.1984 d.533, with technical and substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 45:9-2.

Effective Date: November 19, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): November 19, 1989.

Summary of Public Comment and Agency Responses:

Some 1200 letters were received from the public on this rule proposal. Those opposing the proposal did so on the expressed belief that it was an expansion of the current scope of practice. This was not the Board's intent and was deemed to be an erroneous interpretation by such writers. Other objectors included physical therapists who complained that chiropractors would now be able to hold themselves out as licensed or certified to perform physical therapy; a simple reading of the rule shows this not to be so. The new rule does not permit a chiropractor to hold him or herself out to the public as a "physical therapist" nor does it even permit the use of physical modalities as an independent method of treatment or for treatment not associated with the spine. Modalities may be utilized solely in preparation for a spinal adjustment. However, in recognition of the concerns of physical therapists for possible billing abuses, the section originally designated as (e)6. has been modified to require a chiropractor to specify the services provided, rather than to list their presumed monetary value separately.

The New Jersey Physical Therapist Association suggested that chiropractors could not be permitted to use any physical modalities whatever, particularly light and electricity, relying upon the annotation of cases to N.J.S.A. 45:9-14.5, which held that the use of electric modalities was the unlicensed practice of medicine. However, the writers failed to note that all of the cited cases predated the present form of the statute, which is believed to have been amended in response to those now obsolete decisions. In fact, both chiropractors and plenary licensed physicians have long used certain modalities to prepare the body to receive other forms of manipulative treatment.

Many comments were received in favor of the proposal. Some of these were similarly in error in commending what the writers thought to be an expansion of current practice. Others more properly recognized the proposal as a clarification for the guidance and convenience of consumers and practitioners.

As noted above, this rule does not intend to expand current scope of practice; it merely codifies long-standing Board interpretation of the pertinent statutes.

Some opponents criticized the ordering and performing of urinalysis and/or performing venipuncture to obtain biochemical laboratory data, or to order laboratory tests at all, which they erroneously referred to as "for use in the diagnosis of illness." Those writers failed to recognize that since 1973 the Legislature has authorized chiropractors to request laboratory tests. See N.J.S.A. 45:1-10. However, the purpose is not "to diagnose illness" but it may be done solely for the purpose of protecting the patient by grossly ruling out patients with obvious contraindications for chiropractic treatment or who manifest obvious problems needing referral to a plenary licensed physician. Nevertheless, in light of the many and thoughtful letters addressing this issue, the Board has determined to delete paragraph 2 and to modify paragraph 3 of published subsection (c) and to delete subsections (c)4, 5 and 6 as unnecessary in light of its reformulation of subsections (a) and (b). In particular, subsection (c)6 was deleted since so many readers had failed to study the wording of the proposal and erroneously believed that breast examinations were being permitted when in fact such examinations were prohibited.

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 7. CHIROPRACTIC PRACTICE

13:35-7.1 Standards and scope

(a) The practice of chiropractic is that discipline whose methodology is the adjustment and manipulation of the articulations of the spine and related structures and whose purpose is the relief of certain abnormal clinical conditions of the human body causing discomfort resulting from the impingement upon associated nerves. During the initial consultation and before commencing chiropractic care, the chiropractic physician shall identify a clinical condition warranting chiropractic treatment. That clinical condition shall include a subjective complaint of patient discomfort ***[and]* *or*** related objective ***[findings]* *finding(s)***. An objective finding includes subluxation which, for the purpose of this section, means alteration of normal dynamics of the anatomical or physiological relationships of contiguous articular structures. However, a finding of subluxation alone or subluxation unrelated to the subjective complaint ***or objective finding(s)*** shall not warrant chiropractic treatment.

[(b) The chiropractic physician shall take an adequate history which, in conjunction with the pertinent physical examination, will enable the chiropractic physician to determine either that chiropractic care is appropriate or that it is not appropriate. Should the evaluation indicate abnormality not generally recognized as treatable by chiropractic methods, the chiropractic physician shall immediately refer the patient to a physician holding a plenary license or to another appropriate health care provider.]

***[(c) The chiropractic physician shall conduct an adequate and appropriate physical examination, which shall be addressed to the area of complaint and body structures and systems pertinent thereto. The physical examination shall be addressed also to determining whether there are any obvious contraindications to the commencement of chiropractic care or whether referral should be made to a physician holding a**

plenary license or another appropriate health care provider.]*

(b) The chiropractic diagnosis or analysis shall be based upon a pertinent chiropractic examination limited to the spine and contiguous musculoskeletal structures and the vital signs which include pulse, respiration, blood pressure, height and weight and temperature, and an adequate history which will enable the chiropractic physician to determine either that chiropractic care is appropriate or that it is not appropriate. Should the evaluation indicate abnormality not generally recognized as treatable by chiropractic methods, the chiropractic physician shall refer the patient to a physician holding a plenary license, preferably a physician of the patient's choice.

1. The chiropractic physician may take or order x-rays limited to the osseous system.

[2. The chiropractic physician may order or perform a urinalysis for his or her own patients.]

[3.]* *2.* The chiropractic physician may order, but may not perform, bioanalytical laboratory tests ***[specific to the patient's subjective complaint or the objective findings. These tests may be ordered for the purpose of determining whether there are any obvious contraindications to the commencements of chiropractic care or whether referral should be made to a physician holding a plenary license or another appropriate health care provider]* *that are consistent with chiropractic practice. In the event that such test results are beyond the laboratory reference range and the condition is not amenable to chiropractic care, the patient shall be referred to a plenary licensed physician*.*

[4. The chiropractic physician may penetrate the skin of his or her own patients with a needle solely for the purpose of drawing a blood sample.]

[5. The chiropractic physician shall not perform a rectal or vaginal examination.]

[6. The chiropractic physician shall not perform breast examinations except insofar as the breast constitutes a structure which is adjacent to the area of chief complaint and the examination of which is pertinent thereto.]

***[(d)]* *(c)* The chiropractic physician shall prepare and maintain a proper patient record, including progress notes.**

1. The patient record shall contain all relevant information drawn from the patient's history, including the patient's subjective complaint and other subjective statements, and all relevant findings derived from the physical examination. If laboratory tests or x-rays are ordered, their results shall be recorded. If the chiropractic physician identifies a subluxation by means of the physical examination, its location shall be noted.

2. The record shall contain a working evaluation enabling the chiropractic physician either to establish a regimen of chiropractic treatment or to determine that the patient should be referred to a physician holding a plenary license or to another appropriate health care provider.

***[(e)]* *(d)* If the chiropractic physician determines that chiropractic treatment of the patient is appropriate, the chiropractic physician shall render that treatment in accordance with the appropriate standard of care.**

1. The chiropractic physician shall render chiropractic treatment only after identifying during the initial consultation and examination a clinical condition which can appropriately be addressed through chiropractic as that discipline is defined in (a) above.

2. The chiropractic physician may recommend that the patient return on subsequent occasions for additional chiropractic evaluation or treatment if such additional care is warranted

as a means by which the patient's acute clinical condition might be resolved.

3. The chiropractic physician may recommend that the patient return on subsequent occasions for additional chiropractic evaluation or treatment if such additional care is warranted as a means by which a chronic clinical condition might be resolved or ameliorated.

4. The chiropractic physician may recommend, in addition or as an alternative, that the patient return on occasion for chiropractic evaluation in the interest of the patient's health.

5. The chiropractic physician may offer to the patient nutritional advice when such advice is incidental to the chiropractic care being provided. Nevertheless, the chiropractor shall not offer nutritional advice as treatment for specific disease, and the chiropractic physician shall not sell or dispense vitamins, food products or nutritional supplements. The chiropractic physician shall not represent himself or herself as a nutritional consultant.

6. The chiropractic physician may order and administer, as preparation for an adjustment, the application of heat, light, electric, hydrotherapy, soft tissue massage and traction, when these additional services are deemed necessary. The billing statement for chiropractic care shall *[itemize]* *[specify]* the services rendered *[and the fees charged for each]*.

(a)

BOARD OF MORTUARY SCIENCE

Rules of the Board of Mortuary Science Prevention of Unfair or Deceptive Acts and Practices

Adopted New Rules: N.J.A.C. 13:36-9

Proposed: June 4, 1984 at 16 N.J.R. 1315(a).

Adopted: October 2, 1984 by Board of Mortuary Science, Paul Ippolito, President.

Filed: October 24, 1984 as R.1984 d.525, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 45:7-38.

Effective Date: November 19, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): November 19, 1989.

Summary of Public Comments and Agency Responses and Reason for Changes:

Written comments on the Board's proposed new subchapter, N.J.A.C. 13:36-9 were received from the Executive Director of the New Jersey State Funeral Directors Association and from a licensed practitioner of mortuary science who is also

an attorney practicing in New Jersey. These comments and the Board responses are summarized below:

1. Comment: The Executive Director of the New Jersey State Funeral Directors Association pointed out that the definition of "crematory" in proposed N.J.A.C. 13:36-9.1, which incorporated verbatim the definition contained in the Federal Trade Commission rule governing funeral practices, was inapt in New Jersey. The definition as originally proposed defined crematories to include those performing cremations and selling funeral goods. In New Jersey crematories are not permitted to sell funeral goods.

Response: The Board accepted this Comment and determined that the proposed definition should be amended to delete "and sell funeral goods" from the definition of crematory.

2. Comment: The Executive Director of the Association questioned the use of the term "funeral provider" as a departure from present usage in New Jersey where "licensed practitioner" is the more commonly used term.

Response: The Board determined that the term "funeral provider" should be retained. "Funeral provider" can be used to accurately and concisely describe both individual licensed practitioners and the owners of registered funeral homes. The new rules apply to both, and the Board voted to amend the proposed definition to make this clear, by adding "or the holder of a certificate of registration to operate a mortuary in the State of New Jersey" to the definition.

3. Comment: The licensee who commented questioned the legal authority of the Board to regulate the making of funeral arrangements.

Response: The Board rejected this comment on the advice of the Attorney General. The new rules are designed to avoid unfair or deceptive practices in the making of funeral arrangements. The Board has always considered the making of funeral arrangements to be part of "funeral directing" as defined in the Mortuary Science Act. Under the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq., the Board is empowered to penalize licensees for conduct involving fraud, misrepresentation or deception. Therefore regulation in this area is appropriate.

4. Comment: The licensee who commented questioned the power of the Board to regulate in this area because of the possibility that the Federal government had preempted such power.

Response: The Board rejected this comment on the advice of the Attorney General. The Federal Trade Commission has clearly stated its intention that state rules which do not conflict with its rules not be preempted (47 Fed. Reg. 42287) and has further provided that states which have rules which provide an overall level of consumer protection which is equal to or greater than that provided by the Federal rules may seek exemption from the Federal rules (16 CFR 453.9).

5. Comment: The licensee who commented stated that the enforcement of the rules would be a wasteful and costly duplication of the Federal government's enforcement of the FTC rules on funeral industry practices.

Response: The Board rejected this comment also. It is the present intention of the Board to seek a state exemption from the FTC rules pursuant to 16 CFR 453.9. The Board has since 1978 had the power and the duty to police licensees for unfair or deceptive acts and practices, and such power has always been implicit in the Mortuary Science Act. Thus the adoption of these rules places no new enforcement burden on the Board in the practical order. Moreover the Board believes that the availability of a single forum in which consumers can air all

complaints against licensees will be of benefit to both consumers and licensees.

In addition to the changes in the definition section described in the responses to comments 1 and 2 the Board also determined that proposed N.J.A.C. 13:36-9.15(a) should be amended to reflect the fact that the Board has no jurisdiction over crematories which are regulated by the Cemetery Board.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions from the proposal shown in brackets with asterisks *[thus]*).

SUBCHAPTER 9. PREVENTION OF UNFAIR OR DECEPTIVE ACTS AND PRACTICES

13:36-9.1 Definitions

The following words and terms when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. "Accounting year" refers to the particular calendar year or other one year period used by a funeral provider in keeping financial records for tax or accounting purposes.

"Alternative container" means a non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of cardboard, pressed-wood, composition materials (with or without an outside covering) or pouches of canvas or other materials.

"Board" refers to the New Jersey State Board of Mortuary Science.

"Cash advance item" means any item of service or merchandise described to a purchaser as a "cash disbursement," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to, the following items: Cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

"Casket" means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, or like material, and ornamented and lined with fabric.

"Cremation" means heating process which incinerates human remains.

"Crematory" means any person, partnership or corporation that performs cremation *[and sells funeral goods]*.

"Direct cremation" means a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

"Funeral goods" means goods which are sold or offered for sale directly to the public for use in connection with funeral services.

"Funeral provider" means any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public and is a licensed practitioner of mortuary science ***or the holder of a certificate of registration to operate a mortuary*** in the State of New Jersey.

"Funeral services" means any services which may be used to care for and prepare deceased human bodies for burial, cremation or other final disposition; and arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

"Immediate burial" means a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

"Outer burial container" means any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

"Person" means any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

"Services of funeral director and staff" means the services, not included in prices of other categories in N.J.A.C. 13:36-9.7 which may be furnished by a funeral provider in arranging and supervising a funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices.

"Unfinished wood box" means an unornamented casket made of wood which does not have a fixed interior lining.

13:36-9.2 Violations

It shall be a violation of the rules of this subchapter to engage in unfair or deceptive acts or practices as defined herein or to fail to comply with the preventive requirements specified herein and failure to comply with such preventive requirements may be deemed to be professional misconduct.

13:36-9.3 Failure to disclose required price information: An unfair or deceptive practice

(a) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in (b) below is not engaged in the unfair or deceptive acts or practices defined here.

(b) To prevent the unfair or deceptive acts and practices mentioned in (a) above as well as those defined in N.J.A.C. 13:35-9.15(a), funeral providers must comply with the provisions of N.J.A.C. 13:35-9.4, 9.5, 9.6, 9.7 and 9.8.

13:36-9.4 Telephone price disclosures

(a) Funeral providers tell persons who call the funeral provider's place of business and ask about the terms, conditions, or prices at which funeral goods or funeral services are offered, that price information is available over the telephone.

(b) Funeral providers shall tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in N.J.A.C. 13:36-9.5, 9.6 and 9.7 which reasonably answers the question and any other information which reasonably answers the question and which is readily available.

13:36-9.5 Casket price list

(a) Funeral providers shall give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider shall offer the list upon beginning discussion of, but in any event before showing caskets. The list shall contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough infor-

mation to identify each, and the effective date for the price list.

1. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, displayed in a clear and conspicuous manner. Provided however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in N.J.A.C. 13:36-9.7, the information which is required by this section.

(b) Funeral providers shall place on the list, whether a printed or typewritten list, or on any other format is used, the name of the funeral provider's place of business and a caption describing the list as a "casket price list".

13:36-9.6 Outer burial container price list

(a) Funeral providers shall give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider shall offer the list upon beginning discussion of, but in any event before showing the containers. The list shall contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the price listed.

1. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, displayed in a clear and conspicuous manner. Provided however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in N.J.A.C. 13:36-9.7, the information which is required by this section.

(b) Funeral providers shall place on the list, whether a printed or typewritten list or on any other format is used, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

13:36-9.7 General price list

(a) Funeral providers shall give a printed or typewritten price list for retention to persons who inquire in person about funeral arrangements or the prices of funeral goods or funeral services. When people inquire in person about funeral arrangements or the prices of funeral goods or funeral services, the funeral provider shall offer them the list upon beginning discussion either of funeral arrangements or of the selection of any funeral goods or funeral services. This list shall contain at least the following information:

1. The name, address, and telephone number of the funeral provider's place of business;
2. A caption describing the list as a "general price list";
3. The effective date for the price list; and

4. In immediate conjunction with the price disclosures required by (b) below, the statement: "This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your bill or the statement describing the funeral goods and services you selected."

(b) Funeral providers shall include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

1. Forwarding the remains to another funeral home, together with a list of the services provided for any quoted price;

2. Receiving remains from another funeral home, together with a list of the services provided for any quoted price;

3. The price range for the direct cremations offered by the funeral provider, together with a separate price for a direct cremation where the purchaser provides the container; separate prices for each direct cremation offered including an unfinished wood box or alternative container; and a description of the services and container (where applicable), included in each price;

4. The price range for the immediate burials offered by the funeral provider, together with a separate price for an immediate burial where the purchaser provides the casket; separate prices for each immediate burial offered including a casket or alternative container; and a description of the services and container (where applicable) included in that price:

5. Transfer of remains to funeral home;
6. Embalming;
7. Other preparation of the body;
8. Use of facilities for viewing;
9. Use of facilities for funeral ceremony;
10. Other use of facilities, together with a list of facilities provided by any quoted price;
11. Hearse;
12. Limousine;
13. Other automotive equipment, together with a description of the automotive equipment provided for any quoted price; and

14. Acknowledgement cards.

(c) Funeral providers shall include on the price list in any order, the following information:

1. Either of the following:
 - i. The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or
 - ii. The prices of individual caskets disclosed in the manner specified by N.J.A.C. 13:3609.5; and
2. Either of the following:
 - i. The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or
 - ii. The prices of individual outer burial containers, disclosed in the manner specified by N.J.A.C. 13:36-9.6; and
3. The price for the services of funeral director and staff, together with a list of the principal services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)";

13:36-9.8 Statement of funeral goods and services selected

(a) Funeral providers shall give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. This statement shall conform to the requirements of N.J.A.C. 13:36-1.9.

(b) The itemized cash advance prices shall be given to the extent known or reasonably ascertainable. If the cash advance prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.

(c) Funeral providers may give persons any other price information in any other format, in addition to that required by N.J.A.C. 13:36-9.5, 9.6 and 9.7 so long as the statement required by this section is given when required.

13:36-9.9 Embalming provisions

(a) In seeking or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

1. Represent that State or local law requires that a deceased person be embalmed when such is not the case;
2. Fail to disclose that embalming is not required by law except in certain special cases.

(b) To prevent deceptive acts or practices mentioned in (a) above, as well as the unfair or deceptive acts or practices defined in N.J.A.C. 13:36-9.16 and 9.17(a), funeral providers shall:

1. Not represent that a deceased person is required to be embalmed for direct cremation, immediate burial, a funeral using a sealed casket, or if refrigeration is available and the funeral is without viewing or visitation and with a closed casket when State or local law does not require embalming; and

2. Place the following disclosure on the general price list, required by N.J.A.C. 13:36-9.7, in immediate conjunction with the price shown for embalming; "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as direct cremation or immediate burial."

13:36-9.10 Casket for cremation provisions

(a) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

1. Represent that State or local law requires a casket for direct cremations;
2. Represent that a casket (other than an unfinished wood box) is required for direct cremations.

(b) To prevent the deceptive acts or practices mentioned in (a) above, as well as the unfair or deceptive acts or practices defined in N.J.A.C. 13:36-9.15(a), funeral providers shall place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without an outside covering), or pouches of canvas." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

13:36-9.11 Outer burial container provisions

(a) In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

1. Represent that State or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;
2. Fail to disclose to persons arranging funerals that State does not require the purchase of an outer burial container.

(b) To prevent the deceptive acts or practices mentioned in (a) above, funeral providers must place the following disclosure on the outer burial container price list, required by N.J.A.C. 13:36-9.7, in immediate conjunction with those prices: "In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements."

13:36-9.12 General provisions on legal and cemetery requirements

(a) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that Federal, State or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(b) To prevent the deceptive acts or practices mentioned in (a) above, as well as the deceptive acts or practices identified in N.J.A.C. 13:36-9.9, 9.10 and 9.11, funeral providers shall identify and briefly describe in writing on the statement of funeral goods and services selected (required by N.J.A.C. 13:36-9.8) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

13:36-9.13 Provisions on preservative and protective value claims

(a) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

2. Represent that funeral goods have protective features or will protect the body from gravesite substances when such is not the case.

13:36-9.14 Cash advance provisions

In selling or offering to sell funeral goods and funeral services to the public any cash advance items shall reflect the actual cost to the funeral provider.

13:36-9.15 Required purchase of caskets for direct cremations

(a) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, *[or a crematory,]* to require that a casket other than an unfinished wood box be purchased for direct cremation.

(b) To prevent the unfair or deceptive act or practice mentioned in (a) above, funeral providers must make an unfinished wood box or alternative container available for direct cremations, if they arrange direct cremations.

13:36-9.16 Other required purchases

(a) In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this section.

(b) To prevent the unfair or deceptive act or practice mentioned in (a) above, funeral providers shall:

1. Place the following disclosure in the general price list, immediately above the price required by N.J.A.C. 13:36-9.7(b) and (c): "the goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our serv-

ices" between the second and third sentences of the statement specified above herein; and

2. Place the following disclosure on the statement of funeral goods and services selected, required by N.J.A.C. 13:36-9.8: "Charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing below."

(c) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

13:36-9.17 Services provided without prior approval

(a) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

1. State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

2. Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

3. The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider shall disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with a viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) To prevent the unfair or deceptive acts or practices mentioned in (a) above, funeral providers shall include on the contract, final bill, or other written evidence of the agreement or obligation given to the customer, the statement: "If you selected a funeral which requires embalming, such as a funeral with viewing you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as direct cremation or immediate burial. If we charged for embalming, we will explain why below."

13:36-9.18 Retention of documents

To prevent the unfair or deceptive acts or practices specified in this subchapter, funeral providers shall retain and make available for inspection by Board officials true and accurate copies of the price lists specified in N.J.A.C. 13:36-9.5, 9.6 and 9.7, as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by N.J.A.C. 13:36-9.8 for at least six years from the date on which the statement was signed, in conformity with N.J.A.C. 13:36-1.9.

13:36-9.19 Comprehension of disclosures

To prevent the unfair or deceptive acts or practices specified in this subchapter, funeral providers shall make all disclosures required in a clear and conspicuous manner.

(a)

DIVISION OF CONSUMER AFFAIRS

Deceptive Practices Concerning Automotive Sales Practices

Readoption: N.J.A.C. 13:45A-6

Proposed: September 4, 1984 at 16 N.J.R. 2349(a).

Adopted: October 22, 1984 by James J. Barry, Director, Division of Consumer Affairs.

Filed: October 24, 1984 as R.1984 d.526, **without change.**

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

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. 13:45A-6.

(b)

DIVISION OF CONSUMER AFFAIRS

Deceptive Practices Concerning Automotive Repairs and Advertising

Readoption: N.J.A.C. 13:45A-7

Proposed: September 4, 1984 at 16 N.J.R. 2350(a).

Adopted: October 22, 1984 by James J. Barry, Jr., Director, Division of Consumer Affairs.

Filed: October 24, 1984 as R.1984 d.527, **without change.**

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

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. 13:45A-7.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rule: Claimed Horse

Adopted Amendment: N.J.A.C. 13:70-12.4

Proposed: September 4, 1984 at 16 N.J.R. 2348(a).
Adopted: October 22, 1984 by New Jersey Racing Commission, Harold G. Handel, Executive Director.
Filed: October 24, 1984 as R.1984 d.524, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: November 19, 1984.
Operative Date: January 1, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): February 27, 1985.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:70-12.4 Claimed horse

(a) A claimed horse shall not start for 30 days after the date upon which it was claimed in any race wherein the determining eligibility price is not less than 25 percent more than the price for which it was claimed.

(b) This provision shall not apply to starter handicaps.

EMERGENCY ENVIRONMENTAL PROTECTION

ADOPTIONS

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Bureau of Marine Fisheries Crab Dredging in the Atlantic Coast Section

Adopted Emergency New Rule and Concurrent Proposal: N.J.A.C. 7:25-7.13

Emergency New Rule Adopted: October 31, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): October 27, 1984.

Emergency New Rule Filed: October 31, 1984 as R.1984 d.537.

Authority: N.J.S.A. 23:2B-6, 50:1-5, and 50:4-2.

Emergency New Rule Effective Date: October 31, 1984.

Emergency New Rule Operative Date: November 1, 1984.

Emergency New Rule Expiration Date: December 31, 1984.

DEP Docket No. 062-84-08.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Paul E. Hamer, Chief
Bureau of Marine Fisheries
Division of Fish, Game and Wildlife
CN 400
Trenton, New Jersey 08625

This new rule was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see: N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency new rule are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see: N.J.A.C. 1:30-4.4(d)).

The concurrent proposal is known as PRN 1984-701.

The agency emergency adoption and concurrent proposal follows:

Summary

N.J.A.C. 7:25-7.13 expired on March 13, 1984 pursuant to Executive Order No. 66(1978). Since the rule expired, the expired text is being proposed as a new rule with amendments to that text.

Previous proposed changes to the Crab Dredging Rules (N.J.A.C. 7:25-7.13) were published in the September 6, 1983 Register at 15 N.J.R. 1413(a) and adopted on November 2, 1983, effective with publication of the November 21, 1983 Register at 15 N.J.R. 1943(a). At their December 1983 meeting, the Marine Fisheries Council exercised their veto power rendering the adoption null and void. The reason for this action was their finding that the crab dredges could not operate efficiently while using only two dredges. This action reinstated the previous crab dredging rule. However, as mentioned above, the previous rule expired on March 13, 1984.

The changes between this proposal and the expired rule are based on comments made at a hearing held April 20, 1983 and subsequent meetings with representatives of the dredge industry and the Marine Fisheries Council held December 6, 1983 and January 25, 1984. This proposal is virtually identical to and supersedes that appearing in the October 5, 1984 Register at 16 N.J.R. 2476(b). The amendments change the number of dredges a vessel may use, and establish a "buffer zone" around leased grounds for the greater protection of such grounds. The amendments narrowly define the legal use of a crab dredge thereby closing a loophole in the existing rule whereby dredgers effectively doubled or tripled the size of the dredge they used. The proposal further provides for three distinct harvest areas on the Atlantic Coast where the dredging season will open on different dates to allow the dredging industry to meet their market demands. With the exception of these changes, which address certain problems, the expired rule worked very well for the past five years and should be continued.

Social Impact

It is anticipated that the definition of gear and oyster beds, and the adjustment of the opening date of the dredge season, will benefit the crab dredging industry and have little or no effect on other segments of the public. Addition of a "buffer zone" should serve to minimize conflict between crab dredging and activities on leased clam and oyster grounds.

Economic Impact

The major economic impact of the proposed amendments will be to allow dredges in the coastal bays to operate more efficiently using four dredges instead of two as previously proposed. The addition of a "buffer zone" will reduce the possibility of dredges accidentally infringing upon leased clam and oyster grounds thereby reducing economic loss on these grounds.

Environmental Impact

Benefit to the crab resource is expected from the limitation on crab dredge size. Protection of oyster and clam grounds is expected to result from specific prohibition of crab dredge harvest in the buffer zone. The season opening set in this proposal will not cause any damage to the resource or habitat because, until the crabs have "bedded down," dredging is clearly a waste of time.

Full text of the emergency new rule and concurrent proposal follows.

7:25-7.13 Crab dredging in the Atlantic Coast section

(a) No crabs may be caught or taken in the Atlantic Coast section by dredges unless a valid crab dredge license is aboard the vessel. The crab dredges shall conform to the following specifications:

1. The maximum length of the tooth bar shall be 75 inches in Raritan and Sandy Hook Bays and 38 inches in all other waters.

2. The maximum weight of the dredge shall be 110 pounds in Raritan and Sandy Hook Bays and 60 pounds in all other waters.

3. The maximum length of the teeth shall be six inches in Raritan and Sandy Hook Bays and three inches in all other waters.

4. The minimum space between teeth shall be three inches, measured at the base.

5. The collecting bag of a dredge, if material, shall have mesh not less than two inches bar measure or four inches stretched measure; if wire, shall not be less than two inches bar mesh (inside measurement) or two and one-half inches inside diameter if circular; if metal, the O-rings shall not be less than two and one-half inches diameter and be connected with no more than five "S" hooks that measure not less than two and one-half inches in length as measured to the inside of the "S" configuration.

6. Each dredge shall be independently and separately attached to the vessel by a single cable or tow line.

7. South of Route 36 (Highlands Bridge), no boat shall have more than four dredges working at the same time.

(b) No person shall catch, take, or attempt to take crabs by crab pot or crab dredge from any of the marked leased grounds except the lessee or his employee; no person shall dredge or attempt to dredge crabs on any State oyster beds or grounds as defined in N.J.A.C. 7:25-19.1; and no person shall dredge or attempt to dredge crabs within 50 yards of any marked leased shellfish grounds, except the lessee or his employee.

(c) Any clams, oysters, scallops, mussels, other bivalve mollusks, or finfish, which may be caught incidentally to the catching of the crabs by dredge, shall be redeposited immediately in the water from which such clams, oysters, scallops, mussels, other bivalve mollusks, or finfish are caught; nor shall any person, while engaged in the catching and taking of crabs by dredge, have in his boat or possession any clams, oysters, scallops, mussels, other bivalve mollusks, or finfish obtained from any source.

1. The possession of clams, oysters, scallops, mussels, other bivalve mollusks, or finfish and dredges simultaneously in the boat of any person shall constitute prima facie evidence of the violation of this rule.

2. Harvesting of oysters by dredging from leased shellfish grounds by the lessee thereof shall be exempt from this section.

(d) No person shall catch, take, or attempt to catch or take crabs from any of the lands of the Atlantic Coast Section except from one-half hour after sunrise to one-half hour before sunset between November 1 and March 31 north of Route 36 (Highlands Bridge), November 15 and March 31 south of Route 40 (Black Horse Pike), and December 1 and March 31 between Route 36 and Route 40, nor at any time on Sunday except in Raritan and Sandy Hook Bays.

(e) The license fee for New Jersey residents for the catching and taking of crabs by means of crab dredge shall be \$1.00 per gross vessel ton. The minimum license fee for New Jersey residents shall be \$15.00 and the maximum shall be \$50.00. The license fee for non-residents will be the same as that for a resident if a New Jersey fisherman can obtain a license to harvest crabs by dredge in the state of residence of the non-resident applicant for the same fee as a resident of that state. Otherwise, the non-resident license fee shall be \$5.00 per gross vessel ton, with a minimum license fee of \$75.00 and a maximum fee of \$250.00.

(f) Any person who violates any of the provisions of this regulation shall be subject to the penalties set forth in N.J.S.A. 23:2B-14.

(g) All persons commercially licensed to take crabs by means of dredges in this State shall keep, on forms furnished by the Division of Fish, Game and Wildlife, accurate records which shall include the number of bushels of crabs and the areas fished. These records will be filed monthly with the Division of Fish, Game and Wildlife. Failure to file on or before the tenth of the month following the month of record may lead to suspension of license by the Division of Fish, Game and Wildlife. Prior to such suspension, a hearing shall be scheduled by the division and the violator notified of the date. Failure to appear at a scheduled hearing may result in suspension of license.

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

Home Energy Assistance

Cost of Living Increases, Fair Hearings, Automatic Payments, Increase in Benefits Issued to Renters, Payment Schedules, and Overpayments

Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:89-1.1, 2.2, 2.3, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 4.1, and 5.3

Emergency Amendment Adopted: October 19, 1984 by George J. Albanese, Commissioner, Department of Human Services.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): October 31, 1984.

Emergency Amendment Filed: November 1, 1984 as R.1984 d.538.

Authority: N.J.S.A. 30:4B-2.

Emergency Amendment Effective Date: November 1, 1984.

HUMAN SERVICES

Emergency Amendment Operative Date: November 1, 1984.

Emergency Amendment Expiration Date: December 31, 1984.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Audrey Harris, Director
Division of Public Welfare
CN 716

Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The concurrent proposal is known as PRN 1984-702.

The agency emergency adoption and concurrent proposal follows.

Summary

N.J.A.C. 10:89-2.3, 3.1 and 3.6 revise income eligibility guidelines, which have been increased in line with new poverty guidelines and will remain set at 125 percent of the Federal poverty level, and extends the issuance of automatic benefit payments through February of 1985. Benefits to users of natural gas as a home heating fuel are increased and included in a new payment schedule. Benefits to renters who are eligible for the Home Energy Assistance Program are also being increased. Additionally, N.J.A.C. 10:89-3.4 increases the ceiling on emergency assistance payments to households which heat with electricity or natural gas from \$100.00 to \$150.00. The balance of program changes proposed herewith are intended to clarify existing policy. They will neither affect the number of clients served nor the amount of benefit payments issued.

Social Impact

Approximately 203,000 households were assisted during the fiscal year (FY)1984 Home Energy Assistance (HEA) program, and projections are that 215,000 households will be served in FY1985. This low income population will receive the most direct benefit since they are the households which will receive a supplement to assist them in meeting their heating costs. These revised regulations should ensure that this low income population will receive aid promptly and efficiently.

Economic Impact

There will be no direct economic impact upon New Jersey taxpayers since the entire cost of assistance and administration 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 program's allocation for Federal Fiscal Year (FFY) 1985 is expected to be approximately \$83 million which is an increase above the \$80.5 million received by New Jersey in FFY 1984.)

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The direct beneficiaries of the program will be the approximately 215,000 households anticipated to receive assistance in FY 1985. 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 will receive their benefit in the form of a two-party check, payable to both the head of household and the fuel supplier.

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

10:89-1.1 Fair hearings

(a) Any household is entitled to, and upon request will receive **an administrative review or a fair hearing** if any of the following occurs:

1.-4. (No change.)

(b) The fair hearings process (with the exception of the time frames delineated below) will be in accordance with established Aid to Families with Dependent Children (AFDC) program procedures.

(c) A fair hearing must be requested within:

1. Sixty days after mailing a notice of benefit or denial; and

2. Ten days after mailing a notice of decreased benefit or duration.

(d) If a household requests a hearing within the above time limits, the hearing must be held, a decision issued, and action to carry out the decision taken:

1. Within 30 days of the request if denial, delay, or benefit amount is the issue; or

2. Before decreasing or stopping benefits, if that is the issue.]

(b) Each household requesting a hearing will receive an initial review on the papers available to DPW. The results of this administrative review will be conveyed to the household in writing, whereupon the household may either accept the findings of the DPW as the final decision or indicate its desire to proceed with a fair hearing.

(c) The fair hearings process will be in accordance with established Aid to Families with Dependent Children (AFDC) program fair hearings procedures contained in N.J.A.C. 10:81-6.

10:89-2.2 Eligibility requirements

(a) The household members shall be residents to New Jersey.

1. Household defined: The term "household" means any individual or group of individuals who are living together as one economic unit for whom home energy is customarily provided in common or who make undesignated payments for energy in the form of rent.

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

3. Illegal aliens are ineligible for Home Energy Assistance benefits.

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

10:89-2.3 Income eligibility

(a) (No change.)

(b) Regardless of income eligibility, the following households are not eligible for program benefits:

1. (No change.)

2. Persons receiving a rent subsidy which includes all heating costs; Renumber 2.-4. as 3.-5. (No change in text.)

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

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(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 with an 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, any income to the household in excess of \$96.00 per month shall be considered in determining the household's gross monthly income.

i. The only exception to (f)4 above will occur if the roomer-boarder is a spouse, parent, [or] child, **brother or sister** of a household member. In such instances, the roomer-boarder shall be included in the household size and [his/her] **his or her** gross monthly income considered as part of the household's income in determination of eligibility.

5. (No change.)

(g) Gross Income Eligibility Limits for Home Energy Assistance:

Household Size	Monthly Allowable Gross Income Limit
1	\$ 519
2	700
3	881
4	1062
5	1243
6	1424
7	1605
8	1786
9	1967
10	2148
Each Additional Member	+ 181

10:89-3.1 Automatic payments to certain households

(a) Recipient households:

1. Certain households eligible for and receiving AFDC or non-public assistance (NPA) Food Stamps (FS) will receive automatic payments based on the information regarding income, household size, heating arrangement and fuel type contained in computer records maintained by the Division of Public Welfare. Where the household receives FS as a public assistance (PA) household and the PA FS household is greater than the AFDC eligible unit, the automatic payment shall be based on the PA FS household size. This information will be collected from the head of the household at each application, reapplication or recertification for AFDC or FS and will be updated whenever the household reports a change. However, once a household becomes eligible for automatic payments, the entitlement cannot be adjusted.

i. (No change.)

ii. **The entitlement will be paid in two installments to households found eligible for automatic payments prior to December 31. New cases found eligible after December 31 shall receive the entitlement in a single payment through February.**

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

2. Eligible households which heat by electricity or natural gas will receive the automatic payment(s) in the form of a two party check, payable to the head of household and the generic copayee "your heating utility".

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

10:89-3.2 Special energy assistance

(a)-(e) (No change.)

(f) Households responsible for heating costs:

1. Households which are [directly] responsible for primary fuel costs associated with residential heat shall receive a benefit based on the appropriate benefit level in Schedule A, B, [or] C or D of this chapter for the household's size, income, fuel type, and heating region.

2. For program purposes a household's benefit will be determined as follows:

i. If the household is directly responsible to the fuel vendor for payment the benefit will be based on Schedule A, [or] B or C of this chapter, as appropriate;

ii. If the household is otherwise directly responsible for payment of the fuel charge (e.g., the landlord bills the household as a separate charge from rent for fuel use although the landlord remains responsible to the fuel vendor) the benefit will be based on Schedule [B] C of this chapter; or

iii. If heat is included in a single monthly rental charge the benefit will be based on Schedule [C] D.

3. (No change.)

4. A household directly responsible to a public utility or participating fuel supplier for payment of heating costs will receive the special energy benefit in the form of a two party check. [in the name of the head of household and the utility or supplier. The check will be mailed to the household which will be responsible for endorsing and forwarding to the utility or supplier.] **The check will be payable to the head of household and the name of the fuel supplier or, if the heating fuel is electricity or natural gas, the copayee shall be designated "your heating utility".**

5. (No change.)

10:89-3.3 Cooling assistance

(a) (No change.)

1.-2. (No change.)

3. The following households are not eligible for cooling assistance payments:

i.-iv. (No change.)

[v. Residents of residential health care facilities.]

10:89-3.4 Emergency energy assistance

(a) Emergency energy assistance is available to income eligible households and is subject to the following conditions:

1.-2. (No change.)

3. The amount of any emergency assistance shall be the lowest amount charged for the service performed by the household's energy supplier or for the [emergency] purchase of fuel, but shall not exceed \$200.00 for the purchase of fuel oil, **\$150.00 for the purchase of electricity or natural gas**, \$100.00 for the purchase of bottled gas, kerosene, wood or coal, or \$50.00 for the restoration of utility service.

4.-6. (No change.)

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

10:89-3.5 Maximum program benefit

(a) (No change in text.)

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(b) Cooling assistance payments in accordance with N.J.A.C. 10:89-3.3 and emergency temporary rehousing payments in accordance with N.J.A.C. 10:89-3.4(e) are not counted toward the maximum program benefit.

10:89-3.6 Payment schedule

(a) (No change.)

(b) Schedule B: Natural Gas:

HOUSEHOLD SIZE Region Designation Monthly Income	1 or 2		3 to 5		6 or more	
	Blue	Red	Blue	Red	Blue	Red
\$0 - \$417.00	408	356	546	474	654	570
\$417.01 - \$667.00	340	298	454	396	546	474
\$667.01 - \$917.00	274	238	364	318	436	380
\$917.01 - \$1167.00			272	238	328	284
\$1167.01 - \$1583.00			182	158	218	190
Over \$1583.00					110	94

"Blue" means Sussex and Warren counties.
"Red" means all other counties.

[(b)] (c) Schedule [B] 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 - \$417.00	322	280	430	[374]372	516	448
\$417.01 - \$667.00	268	234	358	312	430	374
\$667.01 - \$917.00	216	188	286	250	344	298
\$917.01 - \$1167.00			214	186	258	224
\$1167.01 - \$1583.00			144	124	172	150
Over \$1583.00					86	74

"Blue" means Sussex and Warren counties.
"Red" means all other counties.

[(c)] (d) Schedule [C] D: Renters:

HOUSEHOLD SIZE Region Designation Monthly Income	1 or 2		3 to 5		6 or more	
	Blue	Red	Blue	Red	Blue	Red
\$0 - \$417.00	[236]266	[204]232	[314]354	[272]308	[376]426	[328]370
\$417.01 - \$667.00	[196]220	[170]194	[262]296	[228]258	[313]354	[272]308
\$667.01 - \$917.00	[158]178	[136]154	[210]236	[182]206	[250]284	[218]246
\$917.01 - \$1167.00			[156]176	[136]154	[188]214	[164]184
\$1167.01 - \$1583.00			[104]118	[90]102	[126]142	[110]124
Over \$1583.00					[62] 72	[54] 62

"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/she] **he or she** or [his/her] **his or her** household is eligible for HEA must be given the opportunity to apply without delay. 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 [form] shall be [forwarded] **transmitted** to DPW in accordance with (e) below.

1. (No change.)

(b) (No change.)

(c) Households desiring HEA assistance must complete a separate Form EP-1, Home Energy Assistance Application. The application must be completed and signed at sites designated by the CWA of the county in which the household resides. The application shall be signed by the household member responsible for payment of heating or cooling costs or [his/her] **by his or her** authorized representative **and by the CWA worker and supervisor.**

1.-5. (No change.)

[(d)] At the time of application, the CWA shall advise the household of all program eligibility requirements and the method by which assistance will be provided. Additionally, the CWA shall assist the household in completing the application and explain what elements of eligibility must be verified. The CWA must advise the household what verification is required and explain that the case will be denied if verification is not provided.]

[(e)] (d) At the time of application, the CWA shall advise the household of all program eligibility requirements and the method by which assistance will be provided. Additionally, the CWA shall assist the household in completing the application and explain what elements of eligibility must be verified. The CWA must advise the household what verification is required and explain that the case will be denied if verification is not provided.

1. Verification requirements: The CWA shall assist the household in obtaining the required verification.

i. Required documentation: The following must be verified, [and] documented **and retained in the case record** by the CWA prior to [forwarding] **transmitting** the application to DPW:

(1)-(3) (No change.)

(4) Heating [/cooling] fuel type and supplier. The client shall present a bill or contract from the fuel supplier (the CWA may, with the consent of the household, contact the supplier for verification);

(5)-(10) (No change.)

ii. (No change.)

[(f)] The CWA shall forward the original of Form EP-1 (Home Energy Assistance Application) to DPW within four working days of receipt of the completed application and retain a copy in the case record.

1. Form EP-1, is completed by all applicants for the Home Energy Assistance (HEA) program. It is the application for both heating and cooling assistance. The form is also completed by SSI eligibles who have received an automatic payment but who pay for their heating costs directly and are therefore entitled to a supplemental payment. Some of the information which the client will be asked to provide will be name, address, heating/living arrangement, income and resources of all household members.

2. Form EP-1 will be screened at DPW prior to data entry. In the event that the Form EP-1 is incomplete or incorrectly coded, the form will be returned to the CWA for completion or correction.

3. Each CWA will receive a listing of its cases which were rejected upon data entry. The CWA must review the listed cases for the reason for rejection and submit a corrected page one of Form EP-1 for each listed case.

4. After data entry, all accepted Form EP-1 will be retained by DPW.]

(e) **The CWA shall transmit application data to DPW via computer terminal for each Form EP-1 within four working days of receipt of the completed application and retain a copy in the case record.**

1. **Form EP-1 shall be screened by the CWA prior to data entry to ensure that it is complete and coded correctly.**

2. **Each CWA will receive a listing of its cases which were rejected upon data entry. All cases on this report must be corrected and retransmitted to DPW.**

[(g)] (f) In certain instances, the CWA may not be able to submit Form EP-1 for data entry because the household has not completed the application or it has not provided or refuses to provide verification which the CWA cannot other-

wise obtain. In such instances, the CWA shall advise the household of the consequences of its noncooperation and hold the application, including mail applications, until the last working day before the expiration of the 30 day limit for action on the application to give the household an opportunity to cooperate. Form EP-1 shall then be appropriately coded and [forwarded] **transmitted** to DPW. The CWA must record the specifics of the situation requiring this action.

1. Once the CWA has clearly established either that the household will not cooperate further or that the household believes it has provided sufficient verification, the application should be [approximately] **appropriately** coded and [forwarded] **transmitted** to DPW. The household must receive a notice of denial and may contest this denial at a fair hearing. Renumber (h)-(k) as (g)-(j) (No change in text.)

10:89-5.3 Recoupment of overpayments

[(a) Households which receive more than \$750.00 in HEA benefits during any program year, prior to October 1, 1982, or \$900.00 thereafter shall be considered to have been overpaid. Similarly, households which receive benefits that are duplicative, i.e., households receiving more than one full automatic and/or special energy entitlement, shall also be considered to have been overpaid, and will be required to repay the excess benefit. Upon discovery of an overpayment, the CWA shall take action in accordance with the procedures in this subsection. The CWA shall seek recovery of all overpayments regardless of fault including overpayments caused by administrative error.

1. The amount of the overpayment shall be the difference between the total HEA benefit paid to the household and \$750.00 or \$900.00 as appropriate, of the amount determined by the CWA to be duplicative.

2. Immediately upon discovery of an overpayment, the CWA shall inform the household in writing of amount overpaid, how the overpayment was calculated and request repayment.

3. If the household makes repayment the amount recovered shall be treated in accordance with procedures established by DPW's Bureau of Business Services.

4. If the household refuses to repay, does not respond to the repayment request or fails to make scheduled repayments it shall be advised that the amount will be recovered from any future HEA benefits to which the household may be entitled.

5. The CWA shall institute action to recover the full amount of the overpayment by reducing the household's HEA entitlement in the succeeding program year.

6. Recoupment of overpayments from future HEA benefits is subject to adequate notice in accordance with N.J.A.C. 10:89-5.2.]

(a) "Overpayments" shall include the following:

1. Households which received more than \$750.00 in HEA benefits during any program year prior to October 1, 1982, or \$900.00 during any program year thereafter shall be considered to have been overpaid.

2. Households which receive benefits which are duplicative, i.e., households receiving more than one full automatic and/or special energy entitlement during any program year, shall be considered to have been overpaid.

3. Households which receive any amount of HEA benefits that the CWA determines to have been issued inappropriately by virtue of fraud, misrepresentation of fact or administrative error, shall be considered to have been overpaid.

(b) All households determined to have been overpaid shall be required to repay the excess benefit. Upon discovery of the overpayment, the CWA shall take action in accordance with the procedures in this subsection.

1. The amount of the overpayment shall be the difference between the total HEA benefit paid to the household and \$750.00 or \$900.00 as appropriate, or the amount determined by the CWA to have constituted the overpayment.

2. Immediately upon discovery of an overpayment, the CWA shall inform the household in writing of amount overpaid, how the overpayment was calculated and request repayment.

3. If the household makes repayment the amount recovered shall be treated in accordance with procedures established by DPW's Bureau of Business Services.

4. If the household refuses to repay, does not respond to the repayment request or fails to make scheduled repayments it shall be advised that the amount will be recovered from any future HEA benefits to which the household may be entitled.

5. The CWA shall institute action to recover the full amount of the overpayment by reducing the household's HEA entitlement in the succeeding program year.

6. Recoupment of overpayments from future HEA benefits is subject to adequate notice in accordance with N.J.A.C. 10:89-5.2.

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WASTE MANAGEMENT DIVISION OF WATER RESOURCES

Hazardous Waste Management Response to Comments on Final RCRA Authorization

Take notice that on June 22, 1984 the Department of Environmental Protection held a public hearing at Room "C" of the Court Cube, Richard J. Hughes Justice Complex, Warren and Market Streets, Trenton, New Jersey, regarding the Department's draft application to the United States Environmental Protection Agency for Final Authorization to administer the hazardous waste management program in lieu of the Federal program under the Federal Resource Conservation and Recovery Act of 1976 ("RCRA").

No one testified at the public hearing, but written comments were received before the close of the comment period on June 29, 1984 from:

Chemical Industry Council of New Jersey
New Jersey Petroleum Council
Mobil Oil Corporation
Jersey Central Power and Light Company

These comments and the Department's responses are summarized below.

Comment: One commenter urged the State to be more flexible in its approach to site specific operations and conditions.

Response: The Department will continue to review its hazardous waste regulations and will amend them when it believes there are environmentally sound reasons for doing so.

Comment: Three of the commenters stated that New Jersey's program did not incorporate many recent changes made in the Federal regulations and so did not qualify as "... substantially equivalent to and consistent with the Federal program" as required by 40 CFR 271 Subpart A. They recommended that EPA deny final authorization until the changes which were proposed by the Hazardous Waste Rule Review Task Force are adopted by the Department.

Response: The Federal regulation at 40 CFR 271 Subpart A states that in order to receive Final Authorization a State's program must be fully equivalent to and consistent with the Federal program. However, State programs may be more stringent than the Federal program and still meet the criteria of equivalency and consistency. According to the Final Authorization Guidance Manual issued by EPA in June, 1983, in order to be judged equivalent to the Federal program:

"States must demonstrate that their requirements are equivalent to and at least as stringent as the Federal requirements. This does not mean that States have to implement their program in exactly the same way that EPA does. State provisions can differ as long as they address all of the Federal

program requirements and include requirements which are equivalent to and at least as stringent as the comparable Federal program requirements."

EPA's Final Authorization Guidance Manual also states, in reference to the criterion of program consistency that "Section 3009 does allow States to impose requirements which are more stringent than those imposed by (RCRA) regulations." Therefore, States may add requirements which provide more rigorous control of hazardous waste activities than EPA's regulations or which are broader in scope. In addition, State programs need not adopt those Federal regulations that serve to exempt persons from certain requirements or that allow increased flexibility.

New Jersey's regulations have already been reviewed by EPA Region II in light of these criteria and have been judged to be both equivalent to and consistent with the Federal regulations. As to the status of the recommendations made by the Hazardous Waste Rule Review Task Force, the Department currently has them under advisement and expects to begin taking action on them within the next few months.

INSURANCE

(b)

THE COMMISSIONER

Public Hearing

Take notice that Kenneth D. Merin, Commissioner of Insurance announces that the Department will hold a hearing to determine classes of insurance for which no reasonable or adequate market exists among authorized insurers on December 17, 1984 at 10:30 A.M. at:

Department of Insurance
Hearing Room
201 East State Street
Trenton, New Jersey 08625

Consideration will be given to the 48 classes of coverage declared eligible to export on November 30, 1983. In addition, interested persons are invited to submit other proposed classes of coverage for listing.

Interested persons may submit in writing, data, views or arguments relevant to the Exportable List on or before December 12, 1984. These submissions should be addressed to:

Department of Insurance
Financial Examinations Division
Surplus Lines Examining Office
CN 325
Trenton, NJ 08625

The 48 classes of coverage declared eligible to export on November 30, 1983 follows:

MISCELLANEOUS NOTICES

LAW AND PUBLIC SAFETY

1. Amusement Devices for Adults and Kiddies.
2. Amusement Parks and Carnivals Liability.
3. Animal Mortality, Horses Only.
4. Armored Cars.
5. Automobile—Race Tracks Liability.
6. Auto Physical Damage (value over \$30,000).
7. Auto Races.
8. Aviation, Crop Dusters.
9. Bowling Alleys.
10. Burglary and Robbery, Check Cashing, Money Exchange, and Installment Sales Houses Only.
11. Business Interruption—Valued Per Diem Form Only.
12. Cleaners' and Dyers' Bailee Coverage in Municipalities over 100,000 Population.
13. Commercial Excess Liability Insurance.
14. Differences in Condition (parasol).
15. Environmental Impairment Liability Insurance.
16. Excess of First Loss Insurance.
17. Excess Loss and Excess Aggregate for Self-Insurers' Public Liability and Workers' Compensation.
18. Excess Property Insurance.
19. False Arrest and Other Personal Injury Liability Classes.
20. Fine Arts Dealers.
21. Fire and Allied Lines on Buildings Occupied as Auction Markets, Farmers' Markets and Contents of Such Buildings.
22. Fireworks Display.
23. Fire Loss Insurance.
24. Golf Driving Range.
25. Hole-in-One.
26. House Movers and Building Demolition.
27. International Movers' Insurance Plan.
28. Kidnapping Insurance.
29. Liquor Law Liability.
30. Manufacturers' and Contractors' Liability for Floor Waxers, Building Maintenance People, Window Washers and Exterminators.
31. Miscellaneous Errors and Omissions Coverage for Agents and Brokers Who Write Coverage for Management Consultants, Franchisers, Associations, Seedmen, Trustees, Collection Agencies, Insurance Audit and Engineering Firms, Testing Laboratories and Freight Forwarders.
32. Personal Articles Floaters Only.
33. Picnics/Excursions.
34. Police Professional Errors and Omissions.
35. Pony Rides/Riding Academies.
36. Products Liability and Products Recall Coverage.
37. Professional Liability (Malpractice) policies for Chiropractors, Clinical Laboratories, Psychologists, Veterinarians, Massage and Reducing Salons, Divorce Mediation, Associated Persons (licensed by the Commodity Futures Trading Commissions), Hospices, Medical Personnel Pools, Medical Health Care Agencies, Stress Testing Centers, Real Estate Appraisers, Title Abstractors and Salon Sun Tan Beds.
38. Rain Insurance.
39. Retrospective Penalty Indemnity.
40. Short-term (not over 30 days) Drive-away Auto Insurance with \$15,000/\$30,000 Bodily Injury and \$15,000 Property Damage Limits on Vehicles Owned and Operated by Military Personnel Except for Vehicles Registered in New Jersey.

41. Short-term Entertainment Events, Rock Festivals.
42. Short-term Association Meetings and Conventions.
43. Skating Rinks, Roller and Ice; Skateboard Parks.
44. Sporting Events (Casual).
45. Swin Clubs/Swim Pools.
46. Truck Physical Damage Coverage and Non-fleet (one to five) Trucks over 7,800 pounds, Including Trailers and/or Trailer Interchange.
47. Vacant Buildings—Fire, Extended Coverage and Vandalism.
48. Warehouseman's Legal Liability.

LAW AND PUBLIC SAFETY

(a)

BOARD OF MEDICAL EXAMINERS

Petition for Rulemaking Termination of Pregnancy

N.J.A.C. 13:35-4.2

Petitioner: Commissioner, New Jersey State Department of Health.

Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6.

Take notice that on September 26, 1984 the Commissioner of the New Jersey State Department of Health petitioned the State Board of Medical Examiners to amend the rule regarding termination of pregnancy to consider imposing a requirement for pathology analysis and reports, and to consider matters of appropriate disposal of fetuses.

Take further notice that the Board of Medical Examiners, in accordance with N.J.S.A. 52:14B-4(f), has determined to act on this petition by referring the matter to a study committee of the Board which will report to the Board with recommendations for consideration of the petition.

For further information concerning this petition for rulemaking, you may contact:

Edward W. Luka, M.D., President
Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08608

This is a notice of petition for a rule filed pursuant to N.J.S.A. 52:14B-4(f) as implemented by N.J.A.C. 1:30-3.6.

(a)

BOARD OF MEDICAL EXAMINERS

**Petition for Rulemaking
Prohibition of Kickbacks, Rebates or
Receiving Payment For Services Not
Rendered**

N.J.A.C. 13:35-6.4

Petitioner: Commissioner, New Jersey State Department of Health.
Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6.

Take notice that on September 10, 1984 the Commissioner of the New Jersey State Department of Health petitioned the State Board of Medical Examiners to amend the rule prohibiting kickbacks and other unlawful remuneration to Board licensees, by prohibiting physicians from deriving a financial benefit from a corporation to which they refer patients but in which the physicians themselves do not practice and further, from having a financial interest in a corporation that provides health care services in a specialty which the investing physician does not routinely practice.

Take further notice that the Board of Medical Examiners, in accordance with N.J.S.A. 52:14B-4(f), has determined to act on this petition by referring the matter to a study committee of the Board which will report to the Board with recommendations for consideration of the petition.

For further information concerning this petition for rule-making, you may contact:

Edward W. Luka, M.D., President
Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08608

This is a notice of petition for a rule filed pursuant to N.J.S.A. 52:14B-4(f) as implemented by N.J.A.C. 1:30-3.6.

TREASURY-GENERAL

(b)

**DIVISION OF BUILDING AND
CONSTRUCTION**

**New Project
Solicitation of Design Services**

Applications (DBC Form 48B) for the project described below are due in DBC no later than 5:00 P.M., November 16, 1984 and shall be submitted to the attention of Ron Wengerd, Secretary of the A/E Selection Board. Submissions received

after this time and date will not be considered. If not currently prequalified by DBC, applicants must have submitted a completed DBC Form 48A by the closing date of November 9, 1984.

DBC No.: T165
CCE: \$3,500,000
Title: New Region III Headquarters Complex
Office Building and Repair Garage
Freehold, New Jersey

DBC is seeking to engage the services of an architectural firm to prepare program and design documents and to administer construction contracts for the referenced project, which consists of a one-story 30,000 sf office building and a one-story 12,000 sf repair garage. The office building will house approximately 175 people and will include administrative offices, a small testing laboratory, and a small dispensary. The repair garage will house approximately 20 people and will include drive-thru mechanic bays, work areas, a small office area, a tool room, a stock room, and support areas. Both buildings must be designed for expansion and will be located on an 18+ acre site with an existing maintenance facility. The scope of work calls for 175 parking spaces and limited site-work.

Only architectural firms with a DBC Prequalification Rating of at least \$5,000,000 and relevant experience will be considered. At least one firm of a Joint Venture must have a DBC Rating of \$5,000,000 or more. Applicants must identify their pertinent consultants on the 48B submittal.

(c)

**DIVISION OF BUILDING AND
CONSTRUCTION**

**Architect-Engineer Selection
Notice of Assignments**

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
M576	New Metering System Hunterdon Development Center Hunterdon, NJ	M. Benton & Assoc.	\$40,000
C257	Renovation of Pistol Range Rahway State Prison Rahway, NJ	Bickford & Spaeth Assoc.	\$58,000
P452	Infrared Gas Heating Systems Allaire State Park & Region II Headquarters Franklin, NJ	O'Connor, Jeffrey & Kallaur	\$30,000

MISCELLANEOUS NOTICES

OTHER AGENCIES

M585	Replacement of Condensate Receiver Unit North Jersey Development Center Totowa, NJ	A.D. Jilajian	\$14,000
M580	Reroofing of Storeroom Building New Lisbon Development Center New Lisbon, NJ	Lamme & Giorgio	\$30,000
H753	Ext. Facade Repair & Window Replacement Bunce Hall, Glassboro State College Glassboro, NJ	Harry DiFazio, RA, PA	\$45,000
N105-06	Investigation Water Infiltration through Walls Residential Cottages Greystone Park Psychiatric Hospital Greystone Park, NJ	Louis Berger Assoc., Inc.	\$5,000 Services
A196	Building Study Beneficial Insect Rearing Lab West Trenton, NJ	Haines Lundberg & Waehler	\$2,500 Services
A467	Data Processing Equipment Improvements Taxation Building Trenton, NJ	CUH2A	\$600,000
M566	Electrical Service Coordination Study Greystone Park Psychiatric Hospital Greystone Park, NJ	Frank R. Holtaway & Son	\$40,000 Services
H756	Waterproofing of College Hall Montclair State College Upper Montclair, NJ	Dennis A. Mylan, AIA	\$30,000
H749	Exterior Repairs to Hepburn Hall Jersey City State College Jersey City, NJ	Pedro E. Campos, AIA	\$85,000
S181	Space and Structural Analysis Bakers Basin/Rahway Inspection Station Division of Motor Vehicles	Armstrong, Jordan & Pease	\$3,758 Services

S172	Interior/Exterior Painting & Waterproofing Various Motor Vehicle Inspection Stations	Leslie M. Dennis & Son	\$175,000
Competitive Proposals			
		Leslie M. Dennis & Son	15.00%
		Eugene F. O'Connor	17.40%
		Richard M. Horowitz	20.81%
M569	Repair of Rock Brook Dam North Princeton Development Center Skillman, NJ	Lippincott Engineering	\$250,000
Competitive Proposals			
		Lippincott Engineering	8.95%
		Storch Engineers	11.95%
		Goodkind & O'Dea, Inc.	17.76%
M565	New Rehabilitation Center NJ Commission for the Blind & Visually Impaired New Brunswick, NJ	Eckert, Morton, Russo & Maggio	\$2,360,000
Competitive Proposals			
		Eckert, Morton, Russo & Maggio	5.75%
		Bertone-Pineles	6.23%
		Armstrong, Jordan & Pease	6.30%

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

**Petition for Rulemaking
Floor Density for Slot Machines**

N.J.A.C. 19:46-1.27(e)

Petitioner: IGT (International Game Technology).
Authority: N.J.S.A. 5:12-69(c) and N.J.A.C. 19:42-8.1.

Take notice that on October 23, 1984, the Casino Control Commission received a petition for rulemaking from IGT, pursuant to N.J.S.A. 5:12-69(c).

OTHER AGENCIES

IGT has requested the promulgation of an amendment to N.J.A.C. 19:46-1.27(e) concerning casino floor density and slot machines. IGT wishes to amend the rule as follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

“Unless otherwise approved by the Commission, no casino licensee shall be permitted to use in the conduct of gaming any [number of] slot machines which [creates a density of greater than one machine for every 10 square feet of the floor space of its casino authorized by the Commission to be occupied by slot machines] **do not allow aisle space in front of them of at**

MISCELLANEOUS NOTICES

least two feet in width, or the actual width of the machine, whichever is greater, and at least three feet in length.”

In support of its request, petitioner contends that the regulation at issue, in addressing the issues of patron comfort and safety and the diversity of games, should direct itself away from the space occupied by the machine and toward the space occupied by the patron.

After due notice the Casino Control Commission will consider this petition in accordance with the provisions of N.J.S.A. 5:12-69(c) and N.J.A.C. 19:42-8.1.

Statement of Ownership, Management and Circulation (Act of August 12, 1970: Section 3685, Title 39, United States Code.) 1A. Title of publication: NEW JERSEY REGISTER. 1B. Publication number 03006069. 2. Date of filing: October 9, 1984. 3. Frequency of issue: twice each month. A. Number of issues published annually: 24. B. Annual subscription price. \$50 controlled circulation; \$120 first class. 4. Location of known office of publication. 88 East State Street, CN 301, Trenton, NJ 08625. 5. Location of general business offices of the publisher: 88 East State Street, CN 301, Trenton, NJ 08625. 6. Names and addresses of publisher, editor, managing editor: Publisher: New Jersey Office of Administrative Law, 88 East State Street, CN 301, Trenton, NJ 08625. Editor: Norman Olsson. Managing Editor: Karen Garfing. 88 East State Street, CN 301, Trenton, NJ 08625. 7. Owner Name: Office of Administrative Law, State of New Jersey, Administrative Publications, 88 East State Street, CN 301, Trenton, NJ 08625. 8. Known bondholders, mortgages, and other security holders owning or holding one percent or more of total amount of bonds, mortgages or other securities: none. 9. Purpose, function, and nonprofit status of this publication and the exempt status for Federal income tax purposes: has not changed during preceding 12 months. 10. Average no.

copies each issue during preceding 12 months: A. Total no. copies printed: 2,170. B. Paid circulation: 1. Sales through dealers and carriers, street vendors and counter sales: none. 2. Mail subscription: 1,920. C. Total paid circulation: 1,920. D. Free distribution by mail, carrier, or other means, samples, complimentary, and other free copies: none. E. Total distribution (sum of C and D): 1,920. F. Copies not distributed: 1. Office use, leftover, unaccounted, spoiled after printing: 250. 2. Returns from news agents: none. G: Total (sum of E and F should equal net press run shown in A): 2,170. Actual number of copies of a single issue published nearest to filing date: A. Total no. copies printed: 2,249. B. Paid circulation: 1. Sales through dealers and carriers, street vendors and counter sales: none. 2. Mail subscription: 2,048. C. Total paid circulation: 2,048. D. Free distribution by mail, carrier, or other means, samples, complimentary, and other free copies: none. E. Total distribution (sum of C and D): 2,048. F. Copies not distributed: 1. Office use, leftover, unaccounted, spoiled after printing: 201. 2. Returns from news agents: none. G. Total (sum of E and F should equal net press run shown in A): 2,249. 11. The statements made by me above are correct and complete: Karen Garfing, Managing Editor.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

(The research supplement to the New Jersey Administrative Code)

The new Register Index of Rule Proposals and Adoptions combines the original Index of Proposed Rules and Index of Adopted Rules into a single listing published in every Register. In addition to simplifying research of State agency rulemaking, this important step refines the index in substance and form. *Rule adoptions promulgated in this issue already appear in the Index, and all adoptions in subsequent Registers will appear in the Index of the Register of promulgation.* Formerly, adoptions were not entered in the index listing until the month following adoption. This new feature will facilitate rule research by showing you at a glance all adopted rule changes in any rulemaking area since the most recent update to the Administrative Code.

Further improvements in the Index include the definition of key terms and abbreviations and the addition of an N.J.R. Citation Locator. The locator quickly leads you to the text of a proposal or adoption by converting an N.J.R. citation into the date of the Register in which the rule was published.

HOW THE INDEX WORKS

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 changes proposed in this issue will be entered in the Index of the next 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 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 to a given rule, scan the citations above and below that rule to find any entries which might contain related rule adoptions, including the one you are researching.

At the bottom of the index listing for each Administrative Code Title is the date of the latest 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 1, 1984 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 timely adopt a proposed rule requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

Terms and abbreviations:

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.1984 d.300 means the three hundredth rule adopted in 1984.

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 verifying 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

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
15 N.J.R. 1909 and 1972	November 21, 1983	16 N.J.R. 1295 and 1406	June 4, 1984
15 N.J.R. 1973 and 2084	December 5, 1983	16 N.J.R. 1407 and 1634	June 18, 1984
15 N.J.R. 2085 and 2184	December 19, 1983	16 N.J.R. 1635 and 1832	July 2, 1984
16 N.J.R. 1 and 92	January 3, 1984	16 N.J.R. 1833 and 2026	July 16, 1984
16 N.J.R. 93 and 172	January 17, 1984	16 N.J.R. 2027 and 2184	August 6, 1984
16 N.J.R. 173 and 292	February 6, 1984	16 N.J.R. 2185 and 2318	August 20, 1984
16 N.J.R. 293 and 404	February 21, 1984	16 N.J.R. 2319 and 2390	September 4, 1984
16 N.J.R. 405 and 470	March 5, 1984	16 N.J.R. 2391 and 2474	September 17, 1984
16 N.J.R. 471 and 576	March 19, 1984	16 N.J.R. 2475 and 2708	October 1, 1984
16 N.J.R. 577 and 778	April 2, 1984	16 N.J.R. 2709 and 2864	October 15, 1984
16 N.J.R. 779 and 904	April 16, 1984	16 N.J.R. 2865 and 3066	November 5, 1984
16 N.J.R. 941 and 1130	May 7, 1984	16 N.J.R. 3067 and 3240	November 19, 1984
16 N.J.R. 1131 and 1294	May 21, 1984		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-2.2	Jurisdiction of OAL	16 N.J.R. 1636(a)	R.1984 d.445	16 N.J.R. 2518(a)
1:1-3.3	Transcripts at public expense for use on appeal	16 N.J.R. 1834(a)	R.1984 d.446	16 N.J.R. 2518(b)
1:1-3.7, 3.12, 3.13	Lay representation in contested cases	16 N.J.R. 1408(a)	R.1984 d.476	16 N.J.R. 2777(a)
1:1-3.12	Non-lawyer representation in contested cases	16 N.J.R. 2710(a)		
1:1-5.2	Notification of second jurisdictional claims	16 N.J.R. 2320(a)	R.1984 d.490	16 N.J.R. 3004(a)
1:1-12.6	Correction: Standards for participation			16 N.J.R. 2518(c)
1:11-1.1, 15.1	Insurance filing cases	16 N.J.R. 2866(a)		
1:2-2.10	Lay representation in contested cases	16 N.J.R. 1408(a)	R.1984 d.476	16 N.J.R. 2777(a)
1:2-3	Motor Vehicle cases: readopt Hearings on the Papers	16 N.J.R. 2711(a)		
1:2-3.4	Motor vehicle surcharge cases: failure to appear at in-person hearing	16 N.J.R. 2186(a)	R.1984 d.462	16 N.J.R. 2780(a)
1:6A-4.2	Lay representation in contested cases	16 N.J.R. 1408(a)	R.1984 d.476	16 N.J.R. 2777(a)
1:10-17.1	Division of Public Welfare cases	16 N.J.R. 945(a)		

(TRANSMITTAL 7, dated September 17, 1984)

AGRICULTURE—TITLE 2				
2:5-4	Area quarantine for avian influenza (with Emergency Adoption)	15 N.J.R. 2176(a)		
2:52-2.1, 2.2, 3.1, 3.2	Changes in milk suppliers: notice requirements	16 N.J.R. 2028(a)	R.1984 d.488	16 N.J.R. 3004(b)
2:52-6.1, 6.2, 6.3	Determining the cost of milk and milk products	16 N.J.R. 2030(a)	R.1984 d.487	16 N.J.R. 3005(a)
2:53-3.2	Determining the cost of milk and milk products	16 N.J.R. 2030(a)	R.1984 d.487	16 N.J.R. 3005(a)
2:53-4.1, 4.2	Changes in milk suppliers: notice requirements	16 N.J.R. 2028(a)	R.1984 d.488	16 N.J.R. 3004(b)
2:76-3.12	Farmland preservation: deed restrictions	16 N.J.R. 2867(a)		
2:76-4.11	Municipally-approved farmland preservation	16 N.J.R. 2869(a)		
2:76-6.15	Acquisition of development easements	16 N.J.R. 2871(a)		
2:90-2	Eligible projects for soil and water conservation cost sharing	16 N.J.R. 1416(a)	R.1984 d.452	16 N.J.R. 2781(a)

(TRANSMITTAL 24, dated September 17, 1984)

BANKING—TITLE 3				
3:1-9.2-9.5	Home mortgage disclosure	16 N.J.R. 2872(a)		
3:6-7.1-7.8	Loss deferral accounting for mutual savings banks	16 N.J.R. 2712(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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3:28-5.1-5.8	Loss deferral accounting for mutual savings and loan associations	16 N.J.R. 2713(a)		
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(TRANSMITTAL 24, dated September 17, 1984)

CIVIL SERVICE—TITLE 4

4:1-1.1-1.10	Purpose and application of rules	16 N.J.R. 1132(a)		
4:1-2.1	Words and phrases defined	16 N.J.R. 2187(a)		
4:1-5.5	Awarding back pay	16 N.J.R. 97(a)	R.1984 d.435	16 N.J.R. 2519(a)
4:1-9	Readopt Examination Scoring	16 N.J.R. 2873(a)		
4:1-10.2, 13.9, 13.10	Working test period; seniority and promotions	16 N.J.R. 1296(a)	R.1984 d.433	16 N.J.R. 2520(a)
4:1-14.6	Interim appointments and return to permanent titles	16 N.J.R. 1134(a)		
4:1-14.7	Emergency appointments	16 N.J.R. 2191(a)		
4:1-18.3	Compensation for holidays	16 N.J.R. 1421(a)		
4:1-20	Readopt Performance Evaluation and Employee Training	16 N.J.R. 2877(a)		
4:2-8.1	Seniority and promotions	16 N.J.R. 1296(a)	R.1984 d.433	16 N.J.R. 2520(a)
4:2-9	Readopt Examination Scoring	16 N.J.R. 2873(a)		
4:2-14.1	Interim appointments and return to permanent titles	16 N.J.R. 1134(a)		
4:2-18.1, 18.2, 18.3	Compensation for holidays	16 N.J.R. 1421(a)		
4:2-20	Readopt Performance Evaluation and Employee Training	16 N.J.R. 2877(a)		
4:3-8.3	Seniority and promotions	16 N.J.R. 1296(a)	R.1984 d.433	16 N.J.R. 2520(a)
4:3-9	Readopt Examination Scoring	16 N.J.R. 2873(a)		
4:3-14.2	Interim appointments and return to permanent titles	16 N.J.R. 1134(a)		
4:3-20	Readopt Performance Evaluation and Employee Training	16 N.J.R. 2877(a)		

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COMMUNITY AFFAIRS—TITLE 5

5:22	Readopt tax exemption rules for improvements to residential dwellings	16 N.J.R. 2191(b)		
5:23-4.12	Uniform Construction Code: private enforcing agencies	16 N.J.R. 2321(a)	R.1984 d.523	16 N.J.R. 3197(a)
5:23-4.12, 4.22, 4.25	UCC: private enforcing agencies; premanufactured construction	16 N.J.R. 2031(a)	R.1984 d.481	16 N.J.R. 3006(a)
5:23-5.4	Uniform Construction Code: inspector trainees	16 N.J.R. 1643(a)	R.1984 d.494	16 N.J.R. 3007(a)
5:23-5.5	Uniform Construction Code: engineer and architect licensure; fire service experience	16 N.J.R. 1644(a)	R.1984 d.425	16 N.J.R. 2520(b)
5:26-1.1, 1.3, 1.4, 3.1, 4.3, 9.3, 11.3	Planned real estate full disclosure	16 N.J.R. 2032(a)	R.1984 d.434	16 N.J.R. 2522(a)
5:27-5.3	Fire safety in rooming and boarding houses	16 N.J.R. 299(a)		
5:31	Local Finance Board: local authorities	16 N.J.R. 1835(a)		
5:80-6	Housing and Mortgage Finance Agency projects: Tenant Selection Standards	16 N.J.R. 954(a)		
5:80-7	Housing and Mortgage Finance Agency: housing sponsor's role	16 N.J.R. 2178(a)		

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EDUCATION—TITLE 6

6:11-1-8	Teacher Preparation and Certification	16 N.J.R. 1646(a)	R.1984 d.469	16 N.J.R. 2788(a)
6:11-12	Readopt Supplement to Standards for State Approval of Teacher Education	16 N.J.R. 1841(a)	R.1984 d.432	16 N.J.R. 2523(a)
6:20-4.4	Correction: Tuition for private schools for handicapped	_____	_____	16 N.J.R. 2530(a)
6:20-5	Business services: readopt State Aid rules	16 N.J.R. 2392(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:20-7	Business services: readopt Contracting Qualification and Debarment rules	16 N.J.R. 2394(a)		
6:22-1.8	School districts: long-range facilities plans	16 N.J.R. 1850(a)	R.1984 d.504	16 N.J.R. 3008(a)
6:26-3	Readopt rules on Elementary School Summer Sessions	16 N.J.R. 2715(a)		
6:27-3	Readopt rules on Secondary School Summer Sessions	16 N.J.R. 2717(a)		
6:30-2.5	Adult high school graduation requirements	16 N.J.R. 2719(a)		
6:31	Readopt Bilingual Education rules	16 N.J.R. 2721(a)		
6:39-1	Evaluation: readopt Statewide Assessment rules	16 N.J.R. 1852(a)	R.1984 d.505	16 N.J.R. 3009(a)

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ENVIRONMENTAL PROTECTION—TITLE 7

7:1G-1.2, 6	Worker and Community Right to Know: Trade Secrets (see also 8:59-3)	16 N.J.R. 1854(a)	R.1984 d.437	16 N.J.R. 2530(b)
7:7F-1, 3	Shore Protection Program; local government grants	16 N.J.R. 2881(a)		
7:10-14.7	Interim safe drinking water periodic testing requirements	16 N.J.R. 2396(a)		
7:13-1.4, 4.7, 5.2, 5.4	Flood hazard area control	16 N.J.R. 2193(a)		
7:13-1.4, 4.7, 5.2, 5.4	Flood hazard area control: public hearing	16 N.J.R. 2476(a)		
7:13-1.11(c)27	Floodways along Pequest River in Sussex and Warren counties	16 N.J.R. 1306(a)		
7:13-1.11(d)49	Floodway delineations in Union County	16 N.J.R. 1146(a)		
7:13-1.11(d)51	Floodways along North Branch Raritan (Project U)	16 N.J.R. 1307(a)		
7:13-7.1(c)30	Floodway delineation along Paulins Kill	16 N.J.R. 2397(a)		
7:13-7.1	Paulins kill floodway delineation: public hearing	16 N.J.R. 2885(a)		
7:13-7.1(c)31	Project MR floodway delineations in Warren, Hunterdon, Sussex and Morris counties	16 N.J.R. 1863(a)		
7:13-7.1(d)42	Floodway delineation along Green Brook in Somerset and Union counties	16 N.J.R. 1864(a)	R.1984 d.438	16 N.J.R. 2543(a)
7:13-7.1(d)50	Floodway delineation along North Branch Foulerton's Brook	16 N.J.R. 2398(a)		
7:13-7.1(d)52	Supplemental Project I floodway delineations in the Passaic River Basin	16 N.J.R. 1865(b)		
7:19-5	Small water company takeover	16 N.J.R. 563(a)		
7:19-6	Water Supply Management Act Rules	16 N.J.R. 2399(a)		
7:19A	Emergency Water Supply Allocation Plan rules	16 N.J.R. 308(a)		
7:19B	Emergency Water Surcharge Schedule	16 N.J.R. 314(a)		
7:20	Dam Safety Standards	16 N.J.R. 790(a)		
7:25-2	Readopt rules on Use of Land and Water Areas under DEP control	16 N.J.R. 1309(a)		
7:25-4.19	Endangered and Nongame Species Advisory Committee	16 N.J.R. 2033(a)	R.1984 d.509	16 N.J.R. 3010(a)
7:25-5.29	1984 shotgun deer season permit quotas	16 N.J.R. 2195(a)	R.1984 d.471	16 N.J.R. 2804(a)
7:25-6	1985-86 Fish Code	16 N.J.R. 2034(a)	R.1984 d.498	16 N.J.R. 3011(a)
7:25-7.13	Crab dredging in Atlantic Coast section	16 N.J.R. 2476(b)		
7:25-7.13	Crab dredging in Atlantic Coast section	Emergency	R.1984 d.537	16 N.J.R. 3216(a)
7:25-12.1	Preservation of sea clams	16 N.J.R. 2885(b)		
7:25-16.1	Readopt freshwater fishing license lines	16 N.J.R. 2044(a)		
7:25-18.2	Ocean and bay pound nets	16 N.J.R. 1866(a)	R.1984 d.439	16 N.J.R. 2543(b)
7:25-18.4	Spearfishing in Atlantic	16 N.J.R. 2478(a)		
7:25-22.2	Purse seine fishing of menhaden	16 N.J.R. 1668(a)		
7:25-22.2	Purse seine fishing of menhaden	16 N.J.R. 2171(a)	R.1984 d.473	16 N.J.R. 2805(a)
7:26	Solid and hazardous waste collector-haulers: Disclosure Statement Forms	16 N.J.R. 1425(a)		
7:26-1.4, 2.6, 2.10, 2.13, 3.5	Disposal of asbestos waste	16 N.J.R. 440(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-6.5	Interdistrict and intradistrict solid waste flow	16 N.J.R. 1000(a)	R.1984 d.474	16 N.J.R. 2806(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow	16 N.J.R. 1149(a)	R.1984 d.475	16 N.J.R. 2808(a)
7:26-7.3-7.6	Hazardous waste: national uniform manifest system	16 N.J.R. 2044(b)	R.1984 d.472	16 N.J.R. 2811(a)
7:26-10.7	Hazardous waste incinerators	16 N.J.R. 2046(a)		
7:26-12.2	Hazardous waste rules: permit application	16 N.J.R. 2478(b)		
7:26-16.3, 16.6, 16.13	Solid and hazardous waste industry licensing	16 N.J.R. 2480(a)		
7:27	Air quality standards: State Implementation Plan for lead	16 N.J.R. 1669(a)		
7:27-8	Air pollution control: permits and Certificates	16 N.J.R. 1671(a)		
7:27-13.1, 13.2, 13.5-13.8	Ambient air quality standards	16 N.J.R. 1676(a)		
7:27-14	Diesel-powered motor vehicles: air pollution control	16 N.J.R. 2887		
7:27-15	Gas-fueled motor vehicles: air pollution control	16 N.J.R. 2889		
7:27-18.1, 18.2, 18.3, 18.4, 18.7	Air pollution control: emission offset rules	16 N.J.R. 1679(a)		
7:27B-4	Air Test Method 4 for motor vehicles	16 N.J.R. 2894		
7:29-1.1-1.5	Noise control	16 N.J.R. 1682(a)		
7:29-1.1-1.5	Noise control: extension of comment period	16 N.J.R. 2405(a)		
7:36	Green Acres Program	16 N.J.R. 2405(b)		

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HEALTH—TITLE 8

8:21-2.40	Baby foods and ethylene dibromide level	16 N.J.R. 2897(a)		
8:21A-2.55	Drug manufacturing: medical gas lot or control numbers	16 N.J.R. 1685(a)		
8:23-5	Animal control officer certification	16 N.J.R. 2725(a)		
8:31-30.1	Health care facilities: computing plan review fee	16 N.J.R. 2047(a)	R.1984 d.499	16 N.J.R. 3019(a)
8:31A	Readopt SHARE Guidelines	16 N.J.R. 2898(a)		
8:31A-7	SHARE: Rate Review Guidelines	16 N.J.R. 1002(a)	R.1984 d.440	16 N.J.R. 2545(a)
8:31A-7.3, 7.4	SHARE: 1985 Rate Review Guidelines	16 N.J.R. 2727(a)		
8:31B-2	1985 uniform bill-patient summary	16 N.J.R. 2728(a)		
8:31B-2, 3, 4	Hospital Rate Setting rules: temporary waiver of expiration	16 N.J.R. 2733(a)		
8:31B-3	Hospital reimbursement: procedure and methodology	16 N.J.R. 2321(b)	R.1984 d.531	16 N.J.R. 3197(b)
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	16 N.J.R. 2848(b)		
8:31B-3.23	Correction: Hospital reimbursement	16 N.J.R. 2733(b)		
8:31B-3.23, 3.24, 3.43, 3.75	Hospital rate setting; outpatient dialysis reimbursement hospital-based physician costs	16 N.J.R. 669(a)		
8:31B-3.45	Hospital rate setting	16 N.J.R. 2733(c)		
8:31B-4.6, 4.65	Hospital reimbursement: financial elements and reporting	16 N.J.R. 2326(a)	R.1984 d.500	16 N.J.R. 3019(b)
8:33A-1.1	New and expanded surgical services: deferral of need applications	16 N.J.R. 2734(a)		
8:33E-2.1-2.5, 2.10, 2.12, 2.13	Cardiac surgical centers: need review	16 N.J.R. 2196(a)		
8:33H-2.1, 3.1-3.6	Long term care facilities and services: need review	16 N.J.R. 2200(a)	R.1984 d.501	16 N.J.R. 3020(a)
8:33I	Megavoltage oncology services: 1984 batching cycle deadline	_____	_____	16 N.J.R. 2310(b)
8:33I-1	Megavoltage radiation oncology services: need review	16 N.J.R. 2205(a)	R.1984 d.502	16 N.J.R. 3027(a)
8:35	Repeal (see 8:43B-8)	16 N.J.R. 188(a)		
8:43A	Ambulatory Care Facilities: readopt standards for licensure	16 N.J.R. 2208(a)	R.1984 d.497	16 N.J.R. 3031(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:43B-8	Hospital licensure: obstetric and newborn services	16 N.J.R. 188(a)		
8:59	Worker and Community Right to Know Act	16 N.J.R. 1869(a)	R.1984 d.441	16 N.J.R. 2555(a)
8:59-1.3, 4.1, 5.1, 5.5, 6.1, 6.2, 6.3, 7.2, 7.5, 8.5	Worker and Community Right to Know Act	16 N.J.R. 2735(a)		
8:59-3	Worker and Community Right to Know: Trade Secrets (see also 7:1G-6)	16 N.J.R. 1924(a)	R.1984 d.441	16 N.J.R. 2555(a)
8:65-2	Readopt Security Requirements over Controlled Dangerous Substances	16 N.J.R. 1311(a)	R.1984 d.529	16 N.J.R. 3203(a)
8:65-7	Prescription requirements for controlled dangerous substances	16 N.J.R. 2327(a)		
8:65-10.1	Controlled dangerous substances, Schedule I: Alfentanil	16 N.J.R. 2332(a)	R.1984 d.532	16 N.J.R. 3204(a)
8:65-10.1, 10.2	Controlled dangerous substances: rescheduling of Sufentanil	16 N.J.R. 2900(a)		
8:65-10.4	Controlled dangerous substances: add Triazolam to Schedule IV	16 N.J.R. 2901(a)		
8:71	Generic drug list additions (see 16 N.J.R. 142(b), 1093(a))	15 N.J.R. 1819(a)	R.1984 d.427	16 N.J.R. 2672(a)
8:71	Additions to generic drug list (see 16 N.J.R. 1092(a), 1595(a), 1994(a))	16 N.J.R. 202(a)	R.1984 d.430	16 N.J.R. 2673(a)
8:71	Generic drug list additions	16 N.J.R. 1436(a)	R.1984 d.429	16 N.J.R. 2672(b)
8:71	Generic drug list additions	16 N.J.R. 2483(a)		

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HIGHER EDUCATION—TITLE 9

9:2-1, 2, 3, 8, 9	Repeal (See 9:6)	16 N.J.R. 2209(a)		
9:2-4, 5, 6, 7, 12, 13	Readopt Administrative Policies for colleges and universities	16 N.J.R. 2216(a)		
9:2-11	Recodify as 9:7-7	16 N.J.R. 2218(a)		
9:2-14	Monitoring of violence and hazing on campus	16 N.J.R. 1930(a)		
9:5-2	Tuition-free job training courses	16 N.J.R. 1931(a)	R.1984 d.536	16 N.J.R. 3205(a)
9:6	State College: policies and standards	16 N.J.R. 2209(a)		
9:7-3.1	Tuition Aid Grant Award Table, 1984-85	16 N.J.R. 2308(a)	R.1984 d.535	16 N.J.R. 3206(a)
9:7-7	Readopt Veteran's Tuition Credit Program	16 N.J.R. 2218(a)		
9:9-1.16	Defaulted student loans: interest liability	16 N.J.R. 1012(a)		
9:9-9.2	PLUS Program: direct loan prerequisites	16 N.J.R. 1012(b)		
9:11-1.7	Educational Opportunity Fund: undergraduate grants	16 N.J.R. 1932(a)		

(TRANSMITTAL 22, dated August 20, 1984)

HUMAN SERVICES—TITLE 10

10:44A-1.1-1.5, 2.2, 2.4, 3.1, 3.3, 4.3, 5.2, 9	Community residences for developmentally disabled: Supportive Living Programs	16 N.J.R. 1438(a)		
10:47	Private Licensed Facilities for Developmentally Disabled	16 N.J.R. 2902(a)		
10:49-1.1	Medicaid eligibility	16 N.J.R. 2219(a)		
10:49-1.7	Administration Manual: utilization of insurance benefits	16 N.J.R. 1933(a)		
10:49-1.27	Long-term care facilities: completion of field audit	16 N.J.R. 2413(a)		
10:51-1, App.B, C, D, E	Pharmaceutical Services: appendix changes	16 N.J.R. 2739(a)		
10:51-1.17	Pharmacy Manual: legend drug dispensing fee add-ons	16 N.J.R. 2738(a)		
10:52-1.2, 1.3	Covered and non-covered inpatient hospital services	16 N.J.R. 483(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:53-1.2, 1.3	Covered and non-covered inpatient hospital services	16 N.J.R. 483(a)		
10:54-1.3	Progress notes for mental health providers	16 N.J.R. 2333(a)		
10:54-3	Preproposal: radioimmunoassay laboratory fees	16 N.J.R. 677(a)		
10:54-3	Procedure Code Manual revisions	16 N.J.R. 1685(b)	R.1984 d.457	16 N.J.R. 2813(a)
10:56-1.11	Dental Services: utilization of insurance benefits	16 N.J.R. 1933(a)		
10:59-1.2, 1.4, 1.9, 1.12	Medical Supplier Manual: recycling of durable medical equipment	16 N.J.R. 2048(a)		
10:63-1.6	Changes in level of long-term care	16 N.J.R. 2049(a)		
10:63-1.22	Long-term care facilities: completion of field audit	16 N.J.R. 2413(a)		
10:63-1.23	Long-term care: final audited rate calculation	16 N.J.R. 2335(a)		
10:63-3	Long-term care: readopt Cost and Rate Guideline rules	16 N.J.R. 2484(a)		
10:65-2	Medical Day Care Manual: readopt Billing Procedures	16 N.J.R. 2336(a)	R.1984 d.508	16 N.J.R. 3031(b)
10:66-1.9	Progress notes for mental health providers	16 N.J.R. 2333(a)		
10:67-1.6	Progress notes for mental health providers	16 N.J.R. 2333(a)		
10:69A-6.9	PAAD: authorization to release prescription information	16 N.J.R. 2050(a)		
10:69A-7.1	Pharmaceutical assistance: recovery of benefits correctly made	16 N.J.R. 2051(a)		
10:81-1.6, -3, 4.10, 7.30, 7.32, 8.22	PAM: Federally-required AFDC revisions	Emergency	R.1984 d.464	16 N.J.R. 2813(a)
10:81-3.34	PAM: Temporary absence of children from home	15 N.J.R. 2134(a)		
10:81-6	PAM: complaints, hearings and administrative reviews	16 N.J.R. 2051(b)	R.1984 d.468	16 N.J.R. 2816(a)
10:81-8.22	PAM: eligibility for medical assistance	16 N.J.R. 2740(a)		
10:82-1.2, 1.3, -2, -3, -4	ASH: Federally-required AFDC revisions	Emergency	R.1984 d.463	16 N.J.R. 2837(a)
10:82-2.19	ASH: recovery of overpayments	16 N.J.R. 2055(a)		
10:82-3.1-3.7	ASH: resource eligibility in AFDC	16 N.J.R. 486(a)		
10:82-4	ASH: readopt Income rules	16 N.J.R. 2336(b)	R.1984 d.528	16 N.J.R. 3206(b)
10:85-3.2, 4.6	GAM: nonresident eligibility; travel grants	16 N.J.R. 2219(b)	R.1984 d.506	16 N.J.R. 3031(c)
10:85-3.2, 10.6	GAM: willingness to work and penalty period	16 N.J.R. 2741(a)		
10:85-3.3	GAM: unearned income	16 N.J.R. 2056(a)	R.1984 d.507	16 N.J.R. 3032(a)
10:85-3.3	GAM: monthly assistance payment for residential health care	16 N.J.R. 2742(a)		
10:85-5.3	GAM: outpatient facility services	16 N.J.R. 2488(a)		
10:85-7	GAM: readopt Notices and Hearings rules	16 N.J.R. 2221(a)		
10:87-12.1, 12.2	Food Stamps: income deductions; coupon allotments	Emergency	R.1984 d.465	16 N.J.R. 2844(a)
10:89	Home Energy Assistance	Emergency	R.1984 d.538	16 N.J.R. 3217(a)
10:94-5.5, 5.6	Medicaid Only: eligibility computation amounts	Emergency	R.1984 d.467	16 N.J.R. 2845(a)
10:99	Commodities and Services Council: Rehabilitation Facilities	16 N.J.R. 2338(a)		
10:100-App. A	Supplemental Security Income payment levels	Emergency	R.1984 d.466	16 N.J.R. 2846(a)
10:122B	Readopt Family Day Care Standards	16 N.J.R. 1936(a)	R.1984 d.428	16 N.J.R. 2674(a)
10:128	Residential Child Care rules	16 N.J.R. 10(b)		
10:129	Readopt rules on Child Abuse and Neglect Cases	16 N.J.R. 2224(a)	R.1984 d.489	16 N.J.R. 3033(a)

(TRANSMITTAL 21, dated September 17, 1984)

CORRECTIONS—TITLE 10A

(TRANSMITTAL 8, dated July 16, 1984)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
INSURANCE—TITLE 11				
11:1-2.5	Public Advocate, Division of Rate Counsel: address change	_____	_____	16 N.J.R. 1813(b)
11:1-2.5-2.8	Property-liability: rate counsel participation	16 N.J.R. 2918(a)		
11:1-5	90-day waiver of expiration of N.J.A.C. 11:1-5—FAIR Plan, fire and casualty policy cancellation, other declarations	16 N.J.R. 1451(a)	_____	_____
11:1-5	Readopt Administrative Orders and Declarations (FAIR Plan, cancellation of fire-casualty coverage, fire insurance premium tax)	16 N.J.R. 1689(a)	R.1984 d.426	16 N.J.R. 2677(a)
11:1-5.5	Recertification to Legislature of Notice Requirement for Cancellation and Nonrenewal of fire and casualty coverage	_____	_____	16 N.J.R. 2018(a)
11:1-10	Repeal rules on Licensing of Financial Institutions, Subsidiaries and Affiliates	16 N.J.R. 2919(a)		
11:1-15	Petitions for rulemaking	16 N.J.R. 2224(b)	R.1984 d.511	16 N.J.R. 3033(b)
11:2-1.1	Required courses for licensees in property and casualty field	16 N.J.R. 1940(a)	R.1984 d.515	16 N.J.R. 3034(a)
11:2-1.3	Required courses for licensees in life and health field	16 N.J.R. 1943(a)	R.1984 d.477	16 N.J.R. 3036(a)
11:2-10.1	Repeal Personal Lines Insurance rule	16 N.J.R. 2920(a)		
11:2-18, Exh. B	Readable policies: Affidavit of Compliance	16 N.J.R. 1945(a)	R.1984 d.514	16 N.J.R. 3037(a)
11:2-19	Approval of insurance schools and company training programs	16 N.J.R. 2920(b)		
11:2-20	License renewal: continuing education requirement	16 N.J.R. 2922(a)		
11:2-21	Property and casualty coverage: underwriting guidelines	16 N.J.R. 2924(a)		
11:2-23	Advertisement of life insurance and annuities	16 N.J.R. 2926(a)		
11:3-7	Automobile Reparation Reform Act rules: 90-day waiver of expiration	16 N.J.R. 2414(a)		
11:3-7.8, 7.9	PIP premium on additional automobiles	16 N.J.R. 488(a)		
11:3-8	Nonrenewal of auto insurance policies	16 N.J.R. 120(a)		
11:3-8	Nonrenewal of auto insurance policies	16 N.J.R. 2930(a)		
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(TRANSMITTAL 13, dated September 17, 1984)

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