

# NEW JERSEY REGISTER



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**VOLUME 18 NUMBER 13**  
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 (Includes rules filed through June 16, 1986)

**\*MOST RECENT UPDATE TO ADMINISTRATIVE CODE: APRIL 21, 1986.**  
 See the Register Index for Subsequent Rulemaking Activity.  
**NEXT UPDATE WILL BE DATED MAY 19, 1986.**

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(Continued on Inside Back Cover)

# RULE PROPOSALS

**Interested persons** may submit, in writing, information or arguments concerning any of the following proposals until **August 6, 1986**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice.

## AGRICULTURE

### (a)

#### DIVISION OF RURAL RESOURCES

#### State Agriculture Development Committee Acquisition of Development Easements

#### Proposed Amendments: N.J.A.C. 2:76-6.2 and 6.15

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

Authority: N.J.S.A. 4:1Cj-5F.

Proposal Number: PRN 1986-261.

Submit comments by August 6, 1986 to:

Donald D. Applegate, Executive Secretary  
State Agriculture Development Committee  
CN 330  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The acquisition of development easements as provided for in the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, is an effort to encourage the preservation of agricultural lands to protect the State's diminishing farmland resources. Landowners that satisfy the eligibility requirements, as provided in N.J.A.C. 2:76-6, may voluntarily apply to a county agriculture development board to sell a development easement.

Once a development easement has been purchased, a deed restriction is recorded which permanently prohibits any nonagricultural development on those lands. The restriction runs with the land and is binding upon every successor.

The proposed amendments were previously published in the New Jersey Register at 18 N.J.R. 513, on March 17, 1986. As a result of public comment, the State Agriculture Development Committee has made substantive changes to the proposal which require republication to provide additional public comment.

The Monmouth County Agriculture Development Board suggested that all exceptions permitted in the deed restrictions be approved by the board and the Committee.

The only exception which did not require board and Committee approval was the ability to construct a residential unit on the premises only if a residential unit did not exist at the time of acquiring the development

easement. This point raised other concerns by the Committee regarding the long term impact of allowing the construction of a residential unit on lands where no unit exists at time of acquisition.

After extensive review of all impacts, the Committee decided to delete the provision of N.J.A.C. 2:76-6.15(a)12ii, as originally proposed, which allowed for the construction of a residential unit on the vacant premises.

The New Jersey Builders Association commented that the provisions of N.J.A.C. 2:76-6.15(a)13ii, as originally proposed, unfairly singled out residential development by requiring a restriction to be placed on the subdivided tracts which prohibited future construction of a residential unit if one did not exist on the premises. Since the provision to allow the construction of the residential unit on a vacant tract was removed, N.J.A.C. 2:76-6.15(a)13 was also amended to delete this requirement.

Other concerns were raised about the definition of the word "sub-division" as it pertains to N.J.A.C. 2:76-6.15(a)13, and the word "Premises" as used throughout the deed restrictions. The Committee amended N.J.A.C. 2:76-6.2 to clarify the meaning of these words.

#### Social Impact

The proposed amendments will have a positive social impact. Due to the limited source of funds for acquiring development easements, the Committee has determined that it should not encourage further residential development on the premises for the purpose of providing a residence for someone who may or may not be operating the farm.

Landowners interested in selling a development easement who want to construct a residential unit can exempt a tract before applying to sell the development easement. As with all applications, the Committee and the board will review the exception on the basis of its potential impact on the continued use of the land for agricultural purposes.

The provision which allows for the ability to construct agricultural labor housing on the premises with board and Committee approval has been retained to address situations where the agricultural operation requires close monitoring. In addition, landowners will still be able to construct a single family residential building anywhere on the premises to replace any existing single family residential unit provided they are granted board and Committee approval.

#### Economic Impact

The proposed amendments will have a positive economic impact on the agricultural industry by providing a land base for future agricultural production. Although the lands will remain in private ownership, the premises will be deed restricted to prohibit any future nonagricultural development.

The previous proposal published on March 17, 1986, at 18 N.J.R. 513 contained a provision which allowed for the construction of a residential

## NEW JERSEY REGISTER

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unit on the premises where one did not already exist. Experience gained from other states with similar farmland preservation programs has shown that the ability to construct a residential unit on a vacant tract had a significant influence on the value of a tract when it later sold as deed restricted land.

The Committee's decision to delete this provision will have a long term economic benefit by ensuring that the value of the restricted land will be directly related to the productive capability of the land and not influenced by the ability to construct a residential unit on the premises. In addition, individuals will be able to purchase the restricted property based upon the anticipated return from the agricultural enterprise.

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

#### 2:76-6.2 Definitions

...  
**"Premises" means the property under easement which is defined by the legal metes and bounds description contained in the deed of easement.**  
 ...

#### 2:76-6.15 Deed restrictions

(a) The following statement shall be attached to and recorded with the deed of the land and shall run with the land:

["Whereas the Grantors are the present owners of lands, hereinafter referred to as Premises, more particularly described in Schedule "A" which is attached hereto and made a part hereof;]

["The Grantors covenant for themselves, their heirs, executors, administrators, personal or legal representatives, successors and assigns,] **Grantor promises** that the Premises shall be [held,] **owned**, used and conveyed subject to:

"1. Any development of the Premises for non-agricultural purposes is expressly prohibited.

"2. The Premises shall be retained for agricultural use and production in compliance with N.J.S.A. 4:1C-11 et seq., P.L. 1983, [C.32] **c.32**, and all other rules promulgated by the State Agriculture Development Committee, (**hereinafter committee**). Agricultural use shall mean the use of land for common farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, grazing and conservation.

"3. (Current text recodified as 13.)

["4.] **"3.** No sand, gravel, loam, rock, or other minerals shall be deposited on or removed from the Premises excepting only those materials required for the agricultural purpose for which the land is being used. [The Grantors hereby retain and reserve unto themselves, their heirs, executors, administrators, personal or legal representatives, successors and assigns,] **Grantor retains and reserves for himself** all oil, gas, and other mineral rights in the land underlying the Premises, provided [only] that any prospective drilling and/or mining will be done by slant from adjacent property or in any other manner which will not materially affect the agricultural operation.

["5.] **"4.** No dumping or placing of trash or waste material shall be permitted on the Premises unless expressly [permitted] **recommended by the Committee** as an agricultural management practice.

["6.] **"5.** No activity shall be permitted on the [land] **Premises** which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor **shall** any other activity **be permitted** which would be detrimental to the continued agricultural use of the land.

["7.] **"6.** Grantee[, its heirs, executors, administrators, personal or legal representatives, successors, assigns] and its agents shall be permitted access to, and to enter upon, the Premises at all reasonable times, but solely for the purpose of inspection in order to enforce and assure compliance with the terms and conditions [herein contained] **of this easement**. Grantee[, its heirs, executors, administrators, personal or legal representatives, successors and assigns agree] **agrees** to give **Grantor at least** [Grantors, their heirs, executors, administrators, personal or legal representatives, successors and assigns] 24 hours advance notice of its intention to enter the Premises, and further, to limit such times of entry to the daylight hours on regular business days of the week. The interior of buildings shall not be inspected.

["8.] **"7.** [The Grantors, their heirs, executors, administrators, personal or legal representatives, successors and assigns,] **Grantor** may use [such

lands] **the Premises** to derive income from recreational activities [which generally utilize the land in its existing state], so long as such activities do not interfere with the actual use of the land for agricultural production.

["9.] **"8.** Nothing [herein] shall be construed to convey a right to the public of access to or use of the Premises except as [herein provided] **stated in this easement** or as otherwise provided by law.

["10.] **"9.** Nothing [herein] shall impose upon the [Grantors, their heirs, executors, administrators, personal or legal representatives, successors and assigns] **Grantor** any duty to maintain [or require that] the Premises [be maintained] in any particular state, or condition, **except as provided for in this easement**. [notwithstanding the Grantors', their heirs', executors', administrators', personal or legal representatives', successors' and assigns' acceptance hereof. Nothing herein shall be construed as diminishing the application of the other provisions of this statement.]

["11.] **"10.** Nothing [herein contained] **in this easement** shall be deemed to restrict the right of [Grantors, their heirs, executors, administrators, personal or legal representatives, successors and assigns,] **Grantor** to maintain all roads and trails existing upon the Premises [on] **as of the date of this easement** [hereof]. [Grantors, their heirs, executors, administrators, personal or legal representatives, successors and assigns,] **Grantor** shall be permitted to construct, improve or reconstruct any roadway necessary to service crops, bogs, buildings, or reservoirs as may be necessary.

["12.] **"11.** [The Grantors, their heirs, executors, administrators, personal or legal representatives, successors, and assigns] **Grantor** may use, maintain, and improve [the] existing buildings [and said lands] **on the Premises** for [personal and family] **agricultural**, residential and [recreation use] **recreational uses** subject to the following conditions: [No new residential units or buildings or recreation buildings or improvements to existing buildings for purposes other than agricultural production shall be allowed except for such new residential structure or structures or improvements or converted residential structures as will provide housing for agricultural labor for the subject farm or such new residential unit or structures or converted residential unit or structures as will serve as a farm house for a household which will derive its primary source of income from agricultural production. Such exceptions are subject to prior joint approval in writing by the board and the committee.]

i. Improvements to agricultural buildings shall be consistent with agricultural uses;

ii. Improvements to residential buildings shall be consistent with agricultural or single and extended family residential uses. Improvements to residential buildings for the purpose of housing agricultural labor are permitted only if the housed agricultural labor is employed on the Premises; and

iii. Improvements to recreational buildings shall be consistent with agricultural or recreational uses.

**"12. Grantor may construct any new buildings for agricultural purposes. The construction of any new building which will serve as a residential use, regardless of its purpose, shall be prohibited except as follows:**

i. To provide structures for housing of agricultural labor employed on the Premises but only with the approval of the Grantee and the Committee; and

ii. To construct a single family residential building anywhere on the Premises in order to replace any single family residential building in existence at the time of this easement but only with the approval of the Grantee and Committee.

["13.] **"13.** The land and its buildings may be sold collectively or individually for continued agricultural uses defined in Section 2 [hereof] **of this easement**. However, no subdivision of the land shall be permitted without the joint approval in writing of the [board] **Grantee** and the [committee] **Committee**. [Such approval is in addition to necessary local approvals.] **The subdivision shall be consistent with agricultural management practices recommended by the Committee. Subdivision means any division of the Premises, for any purpose, subsequent to the effective date of this easement.**

["13.] **"14.** In the event [a] **of any violation of [these restrictions or] the terms and conditions [thereof] of this easement**, [is found to exist, the] **Grantee**[, or its heirs, executors, administrators, personal or legal representatives, successors and assigns, or any citizen of the State of New Jersey, acting by and through the State Agriculture Development Committee, may, after notice to the Grantors, their heirs, executors, administrators, personal or legal representatives, successors, and assigns, institute a suit to enjoin by ex parte, temporary and/or permanent injunction, such violation, to require the restoration of the Premises to its prior condition, or to recover damages.] **or the Committee may institute, in the name of the State of New Jersey, any proceedings to enforce these terms and**

conditions including the institution of suit to enjoin such violations and to require the restoration of the Premises to its prior condition. [The] Grant-ee[, or its heirs, executors, administrators, personal or legal representatives, successors and assigns,] or the Committee [does] do not waive or forfeit the right to take any other legal action [as may be] necessary to insure compliance with the terms, conditions, and purposes of this [deed restriction] easement by a prior failure to act.

["14.] "15. [It is understood that this instrument] This easement imposes no obligation [and restrictions] or restriction on the [Grantors', their heirs', executors', administrators', personal or legal representatives', and assigns'] Grantor's use of the Premises except as specifically set forth [herein] in this easement. [Nothing herein contained shall be construed to interfere with the right of the Grantors, their heirs, executors, administrators, personal or legal representatives, successors and assigns to utilize the Premises in such manner as they may deem desirable, subject to the terms and conditions hereof.]

["15.] "16. This [instrument] easement shall be binding upon the Grant-or [Grantors, their heirs, executors, administrators, personal or legal representatives, successors and assigns,] and upon the grantee. [, its heirs, executors, administrators, personal or legal representatives, successors and assigns."]

"17. Throughout this easement, the singular shall include the plural, and the masculine shall include the feminine, unless the text indicates otherwise.

"18. The word 'Grantor' shall mean any and all persons who lawfully succeed to the rights and responsibilities of the Grantor, including but not limited to his heirs, executors, administrators, personal or legal representatives, successors and assigns.

"19. Wherever in this easement any party shall be designated or referred to by name or general reference, such designation shall have the same effect as if the words 'heirs, executors, administrator, personal or legal representatives, successors and assigns' have been inserted after each and every designation."

(b) The Committee or landowner may require more stringent deed restrictions consistent with the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32.

(c) The deed restrictions contained in (a) above shall be liberally construed to effectuate the purpose and intent of the Farmland Preservation Bond Act, P.L. 1981, c.276, and the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32.

Rocco D. Ricci, Executive Director  
New Jersey Water Supply Authority  
Post Office Box 5196  
Clinton, New Jersey 08809

**Summary**

The proposed amendments and new rules by the New Jersey Water Supply Authority ("Authority") will amend the rules governing the Use of Water from the Delaware and Raritan Canal, N.J.A.C. 7:11-3, and to update and integrate the former requirements for the use of water from the Spruce Run/Round Valley Reservoir Complex, 7:11-5, which expired on December 31, 1983 pursuant to Executive Order No. 66(1978). The proposed amendments and new rules will provide consistent water management requirements for both the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir System as administered by the Authority. The proposed amendments and new rules are a consolidation of the current and expired rules and regulations governing the use of water from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs which became effective January 1, 1975 and January 18, 1979, respectively. The Authority tentatively plans on a January 1, 1987 effective date for the proposed amendments and new rules. The proposal maintains the established practices for the Authority's management of water from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir System in a more concise and integrated manner.

A brief summary of the text of each section of the proposal follows:

7:11-3.1, Application for water supply, informs interested parties about where potential users may obtain, and subsequently submit, an "Application for Water Supply".

7:11-3.2, Public hearing, details the procedure for the public hearing required to be held on each application, except that the Authority may waive the public hearing requirement for proposed diversion of less than 500,000 gallons per day.

7:11-3.3, Water use agreement, discusses the general requirements for the formal water use agreement for any water withdrawn from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System.

7:11-3.4, Rates, charges and debt service assessment, cross-references that the most current rates, charges and debt service, assessments as set forth in N.J.A.C. 7:11-2 shall apply to all water diverted from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir System.

7:11-3.5, Payments, describes the payment procedures for water purchased from the Authority.

7:11-3.6, Equivalent sustained supply for Spruce Run/Round Valley Reservoir System (Raritan Basin), establishes factors for consideration of each application for the diversion, withdrawal or allocation of water from the Raritan River downstream of the Spruce Run/Round Valley Reservoir System.

7:11-3.7, Peak demand, explains that contract allocation will be in terms of million gallons per day and that the maximum permitted withdrawal rate shall be specified in the water use agreement by the Authority.

7:11-3.8, Productoin factor: Spruce Run/Round Valley Reservoir System (Raritan Basin), details the calculations of the production factor for the purpose of determining the prevailing charge for an allocation.

7:11-3.9, Period of agreement, discusses the effective and expiration date for a water use agreement.

7:11-3.10, Renewal, details the procedures for a user to review its water use agreement.

7:11-3.11, Revocation by Authority, allows the Authority to revoke a water use agreement and require submission of a new application for a user withdrawing less than 50 percent of their allotted diversion for a period of six consecutive months.

7:11-3.12, Termination, establishes the Authority's right to terminate a water use agreement under certain circumstances.

7:11-3.13, Strikes, natural disasters, acts of God, establishes that the Authority shall not be considered in default of any of its obligations for failure to perform due to strikes, natural disasters or acts of God.

7:11-3.14, Assignment, requires that the agreement to withdraw water from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir System may not be assigned without the Authority's prior written approval.

7:11-3.15, Diversion scheduling, details the procedures and requirements for diversion scheduling established by the Authority.

7:11-3.16, Withdrawal limitation: Raritan Basin, prohibits a user from withdrawing in excess of its advance notice of daily demand given pursuant to 7:11-3.15.

## ENVIRONMENTAL PROTECTION

### (a)

#### NEW JERSEY WATER SUPPLY AUTHORITY

#### Use of Water from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System Proposed Amendments: N.J.A.C. 7:11-3.1, 3.2, 3.3 and 3.4

#### Proposed Repeal: N.J.A.C. 7:11-3.5 through 3.22

#### Proposed New Rules: N.J.A.C. 7:11-3.6 through 3.28

Authorized By: Richard T. Dewling, Chairman, New Jersey Water Supply Authority, and Commissioner, New Jersey Department of Environmental Protection.

Authority: N.J.S.A. 58:1B-7.

DEP Docket No. 029-86-06.

Proposal Number: PRN 1986-268.

A public hearing concerning this proposal will be held at the following time and location:

July 25, 1986 at 9:30 A.M.  
Labor Education Center  
Rutgers University  
Ryders Lane and Clifton Avenue  
New Brunswick, New Jersey 08903

Interested persons should submit any questions relevant to the proposal before or at the public hearing. The New Jersey Water Supply Authority ("Authority") staff will make every reasonable effort to answer questions received before July 25, 1986 at the time of the public hearing. The Authority shall hold the public hearing record open to receive comments on the proposal until August 29, 1986. These submissions, and any inquiries about submissions and responses, should be addressed to:

7:11-3.17, Excess withdrawal, establishes a rate of \$1,000 for each million gallons in excess of advance notice of daily demand from the Raritan Basin Streams and the Delaware and Raritan Canal.

7:11-3.18, Withdrawal system, details the requirements for installing and constructing withdrawal apparatus, equipment, structures and facilities from the Delaware and Raritan Canal.

7:11-3.19, Meter, establishes requirements for the use of meters by users.

7:11-3.20, Meter failure, describes the requirements and Authority's response in the case of meter failure.

7:11-3.21, Meter readings, details the procedures involved in meter reading and appropriate record keeping requirements.

7:11-3.22, Assistance to be furnished by user, establishes the general requirement that the user must furnish such assistance as required by the Authority to monitor the implementation of the water use agreement.

7:11-3.23, Indemnity, requires that users shall at all times save and hold harmless or indemnify the Authority.

7:11-3.24, Insurance: Use of Delaware and Raritan Canal Supply, requires all users of water from the Delaware and Raritan Canal to maintain public liability and property damage insurance on property and facilities constituting the user's withdraw system operated and maintained or canal property.

7:11-3.25, Water quality, stipulates that water withdrawn from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir System is raw water, the Authority does not guarantee the quality of the water supplied, and no claims regarding quality variation will be recognized by the Authority.

7:11-3.26, Discharge into Delaware and Raritan Canal, requires prior approval for any water discharges into the Delaware and Raritan Canal and water may only be returned to the Delaware and Raritan Canal if the quality of the Delaware and Raritan Canal water will not be impaired as determined by the Authority.

7:11-3.27, Discharge structures, describes the requirements for structure for discharges of water into the Delaware and Raritan Canal.

7:11-3.28, Disposition of facilities: Delaware and Raritan Canal, details the procedures for disposition of all facilities installed by the user for the Delaware and Raritan Canal after expiration of a water use agreement.

#### Social Impact

The proposal essentially updates and consolidates the current and established rules governing the use of water from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir System and should have a minimum social impact.

#### Economic Impact

No additional economic impact will result from the continuation of established policies by the Authority as set forth in a more integrated manner in the proposal.

#### Environmental Impact

The proposal will have a positive environmental impact by providing the Authority with the ability to more effectively and efficiently coordinate its integrated water supply operations involving the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir System.

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

### SUBCHAPTER 3. RULES FOR THE USE OF WATER FROM THE DELAWARE AND RARITAN CANAL AND SPRUCE RUN/ROUND VALLEY RESERVOIR SYSTEM

#### 7:11-3.1 Application for water supply

Application for withdrawal of water from the Delaware and Raritan Canal, or from the flow of the Raritan River or its tributaries as maintained or replaced by releases from the Spruce Run Reservoir or the Round Valley Reservoir, or application for withdrawal of water directly from either or both reservoirs shall be submitted to the [Division of Water Resources] New Jersey Water Supply Authority on an "Application for Water Supply" form, copies of which will be furnished by the [Division of Water Resources] New Jersey Water Supply Authority upon request.

#### 7:11-3.2 Public hearing

(a) In accordance with [Chapter 168, P.L. 1949] N.J.S.A. 58:1B-5, 58:22-9 and 13:13-12.9, a public hearing [will] shall be held on each application before the New Jersey Water Supply Authority, except that the [Division] New Jersey Water Supply Authority may waive this requirement in the case of an application for a quantity less than 500,000 gallons

per day.

(b) The applicant shall present testimony and respond to objectors and other interested parties at the public hearing required by (a) above relevant to the application for water supply including, but not limited to:

1. Justification by the applicant of the public interest and necessity involved in the proposed diversion;

2. Identification of the applicant's water supply facilities which are planned to use the surface water diverted from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System;

3. Certification of the proper and safe construction of all of applicant's water supply facilities and equipment; and

4. Description of the applicant's ability to maintain the sanitary conditions of the source of water diverted from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System.

[(b)] (c) All costs and expense in connection with public hearing, including the cost of legal advertising and stenographic transcripts, shall be paid by the applicant.

#### 7:11-3.3 Water use agreement

(a) Water shall be withdrawn from the [Canal] Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System only in accordance with the terms of a formal agreement, to which these rules and regulations shall be attached and made a part thereof, between the [Division of Water Resources] New Jersey Water Supply Authority[, acting for the State of New Jersey,] and the user.

(b) The agreement shall be executed by the user within 60 days after transmittal by the [Division] New Jersey Water Supply Authority, otherwise the application and approval shall be null and void.

#### 7:11-3.4 Rates, charges and debt service assessments

The rates, charges and debt service assessments to be applied to water supplied from the Delaware and Raritan Canal or to water sustained or replaced by releases from the Spruce Run/Round Valley Reservoir, or to withdraw directly from either or both of the reservoirs, shall be the most current rates, charges and debt service assessments established in the "Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir System", N.J.A.C. 7:11-2.

#### 7:11-[3.4]3.5 Payments

(a) The user shall pay the [Division] New Jersey Water Supply Authority for all raw water withdrawn from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System in accordance with the rates and provisions set forth in the Rate Schedule in effect on date of execution of the water use agreement and as modified from time to time in accordance with the provisions of N.J.A.C. 7:11-2.10.

(b) The user shall pay to the New Jersey Water Supply Authority a total annual demand charge computed by multiplying the quantity specified in the water use agreement for 24-hour withdrawal, known as the daily allotment by 365.

(c) A user shall pay the New Jersey Water Supply Authority only for the cost of operation and maintenance on an annual demand charge basis provided that the water withdrawn downstream of the Spruce Run/Round Valley Reservoir System is returned to the stream channel substantially undiminished in quantity and quality at a point considered by the New Jersey Water Supply Authority to be in the near vicinity of the point of withdraw.

(d) Until the total water supply capacity of the Spruce Run/Round Valley Reservoir System is allocated by contract, the New Jersey Water Supply Authority may allow interim, short-term use of the uncommitted capacity of the Raritan River and its tributaries downstream of the Spruce Run/Round Valley Reservoir System on a nonguaranteed, annual interruptible basis to support the growing of agricultural and horticultural products provided that short-term users shall pay the cost of operations and maintenance for the actual amount of water diverted by the short-term user during any month.

[(b)] (e) Payments shall be made monthly as billed, at [the Office of the Division of Water Resources, of the Department of Environmental Protection, Trenton, New Jersey] such place as the New Jersey Water Supply Authority may designate.

AGENCY NOTE: The current text of N.J.A.C. 7:11-3.5 through 7:11-3.22, as found in the New Jersey Administrative Code, is proposed for repeal.

#### 7:11-3.6 Equivalent sustained supply for Spruce Run/Round Valley Reservoir System (Raritan Basin)

(a) In operating the Spruce Run/Round Valley Reservoir System to augment the Raritan Basin natural stream flow during periods of low runoff, optimum dependable supply is attained at the confluence of the Millstone and Raritan Rivers where the combined flow from the tributaries of the

Raritan River above that point becomes effective. Therefore, each application for the diversion, withdrawal or allocation of water from the Raritan River downstream of the Spruce Run/Round Valley Reservoir System is to be evaluated, and differentiation in rates and charges may be made, on the following basis:

1. Quantities of water to be supplied;
2. Distance between the water supply facility and the point of diversion;
3. Cost to the New Jersey Water Supply Authority of making the water available;
4. Actual location where the water will be used;
5. Character of the use of the water; and
6. Other factors related to the optimum dependable water supply from the Spruce Run/Round Valley Reservoir System as deemed appropriate by the New Jersey Water Supply Authority.

**7:11-3.7 Peak demand**

- (a) Contract allocation will be made in terms of million gallons per day.
- (b) The maximum permitted withdrawal rate, shall be specified by the New Jersey Water Supply Authority in the water use agreement.

**7:11-3.8 Production factor: Spruce Run/Round Valley Reservoir System (Raritan Basin)**

(a) The inverse ratio between each daily allocation and its equivalent in sustained supply at the confluence of the Millstone and Raritan Rivers is expressed as the Production Factor for such allocation. The annual Demand Charge for water to be withdrawn at or below the confluence of the Raritan and Millstone Rivers (Basic Confluence Charge), multiplied by the Production Factor for such given allocation, will determine the prevailing charge for such allocation.

(b) Where the water withdrawn within the Raritan River Basin, as supported by releases from Spruce Run/Round Valley Reservoir System, is returned by the user to the stream channel substantially undiminished in quantity and quality at a point considered to be in the near vicinity of the point of withdrawal, all as determined by the New Jersey Water Supply Authority, the Production Factor shall be considered to be unity (1.0).

**7:11-3.9 Period of agreement**

(a) The effective date, period of agreement, and date of commencement of charges shall be set forth in the water use agreement to be executed in accordance with N.J.A.C. 7:11-3.3 and be consistent with terms and conditions for diversion set forth by the New Jersey Water Supply Authority.

(b) Unless otherwise specified in the water use agreement, the date of commencement of charges shall be the first day following completion of construction of the withdrawal system, but in no case later than nine months after the date of approval of the water agreement by the New Jersey Water Supply Authority.

(c) At the end of the agreed upon period the agreement shall expire, except as to those matters set forth at N.J.A.C. 7:11-3.10, 3.12 and 3.23.

**7:11-3.10 Renewal**

(a) If the user desires to continue withdrawal of water from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System beyond the expiration date specified in the current water use agreement, the user shall submit to the New Jersey Water Supply Authority notification of intent to renew not less than 90 days in advance of the expiration date of the agreement then in force.

(b) The New Jersey Water Supply Authority has the right to reject any users request to continue withdrawal of water from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System beyond the termination date specified in the current water use agreements.

(c) If the user continues said withdrawal after the expiration date of the contract without submitting an application for renewal pursuant to this section, the charge for such withdrawal will be twice the rate per million gallons as specified in the New Jersey Water Supply Authority's Rate Schedule in effect at that time.

**7:11-3.11 Revocation by authority**

In event that for a period of six consecutive months the daily average withdrawal shall not equal at least 50 percent of the quantity specified in the agreement for 24 hour withdrawal, the New Jersey Water Supply Authority reserves the right to revoke the water use agreement and require that the user submit a new application for revised lower quantity of water withdrawn from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System.

**7:11-3.12 Termination**

(a) In case of an emergency, natural or otherwise, or where after public hearing and for good cause shown the New Jersey Water Supply Authority determines that such circumstances exist that the State's best interests are served, the New Jersey Water Supply Authority reserves the right to curtail, suspend or terminate the user's withdrawal of water from the Delaware and

Raritan Canal and Spruce Run/Round Valley Reservoir System.

(b) Violation of the rules and regulations as set forth in this Subchapter shall be just cause to terminate the user's right to withdraw water from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System as determined by the New Jersey Water Supply Authority.

(c) Upon termination of the water use agreement for any reason, the privileges granted to the user shall terminate absolutely and be extinguished.

**7:11-3.13 Strikes, natural disasters, acts of God**

The New Jersey Water Supply Authority shall not be considered in default in the performance of any of its obligations to the extent the performance of any such obligations is prevented or delayed because or by reason of war, hostilities, revolution, civil commotion, strike, epidemic, accident, fire, wind, flood, explosion or embargo; or because or by reason of any law, order, proclamation, or regulation of the Government of the United States of America, or of any state of the United States of America, including the State of New Jersey, or of any authority or representative of any such Governments; or because or by reason of any act of God, whether of the same or a different nature.

**7:11-3.14 Assignment**

Agreement to withdraw water from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System as set forth in this subchapter shall not be assigned nor set over to any other corporation, firm or person without the prior written approval of the New Jersey Water Supply Authority.

**7:11-3.15 Diversion scheduling**

(a) The time required for transmission of waters into the Raritan Basin and/or from the Delaware Basin to reach the user will depend on location of the purchaser's point of diversion or use, antecedent hydraulic/hydrologic conditions and magnitude of composite scheduled diversions.

(b) For the purpose of estimating such travel time the user shall by telephone, notify the New Jersey Water Supply Authority on every Monday at a time mutually agreed upon of the user's preliminary estimated daily demands for the week starting on the following Monday.

(c) When required by the New Jersey Water Supply Authority, the user shall submit in writing to the New Jersey Water Supply Authority a schedule of normal withdrawals for its point(s) of diversion.

(d) The user shall notify the New Jersey Water Supply Authority by telephone at a time mutually agreed upon and a minimum of 48 hours in advance of pending departures from a set schedule as set forth in (b) and (c) above due to plant shutdown or other causes, and in the event of emergency departure from said schedule the user shall immediately notify the New Jersey Water Supply Authority or its designated representative at such place and in such manner as the New Jersey Water Supply Authority or its designated representative may from time to time designate with confirming notices of any departures in writing.

(e) The user shall similarly notify the New Jersey Water Supply Authority or its representative indicating resumption of a normal schedule with confirming notices in writing.

(f) In the event the user fails to notify the New Jersey Water Supply Authority or its designated representative of the departure from or a return to normal schedule, and the facilities and appurtenances of the New Jersey Water Supply Authority's systems are physically or financially stressed, (for example, an embankment damaged or an unnecessary pumping demand incurred), the costs of such stress, in whole or in part, shall be borne by the user as determined and billed by the New Jersey Water Supply Authority.

**7:11-3.16 Withdrawal limitation: Raritan Basin**

During any period when water is being released from the New Jersey Water Supply Authority owned reservoir facilities for any Raritan Basin stream flow augmentation, the user shall not on any day during that period withdraw any quantity of water in excess of his advance notice of daily demand given under the procedure set forth in N.J.A.C. 7:11-3.15 (Diversion scheduling).

**7:11-3.17 Excess withdrawal**

(a) During the period of reservoir releases, any water withdrawn from the Raritan Basin Streams over five percent in excess of the advance notice of daily demand given by the user as required at N.J.A.C. 7:11-3.15 (Diversion scheduling) shall be paid for at the rate of \$1,000.00 for each million gallons of such excess, provided however that prevailing rates shall apply in the case of overdraft for fire suppression or other catastrophe.

Note: This provision has been temporarily waived by the Authority until such time as the future Confluence Force Main and Confluence Reservoir are constructed and are operational.

(b) Any water withdrawn from the Delaware and Raritan Canal over five percent in excess of the advance notice of daily demand given by the user

as required at N.J.A.C. 7:11-3.15 (Diversion scheduling), shall be paid for at the rate of \$1,000.00 for each million gallons of such excess, provided however that prevailing rates shall apply in the case of overdraft for fire suppression or other catastrophe.

#### 7:11-3.18 Withdrawal systems

(a) Withdrawal of raw water from any Raritan Basin streams or directly from the Spruce Run/Round Valley Reservoir System or the Delaware and Raritan Canal by the user shall be at his own cost and expense.

(b) The New Jersey Water Supply Authority grants to the user of water from the Delaware and Raritan Canal the right to install and construct in the Canal and on adjoining Canal property at or near the point of withdrawal, and to replace, repair, operate and maintain, such apparatus, equipment, structures and facilities, all at the user's sole cost and expense, as may be necessary for withdrawal from the Canal of the raw water sold by the New Jersey Water Supply Authority, for the measurement thereof, and for the transportation thereof to the plant or plants of the user, provided that plans for the construction of such facilities have received the prior written approval of the Division of Parks and Forestry and the Delaware and Raritan Canal Commission.

(c) Prior to the installation or construction of any apparatus, equipment, structures or facilities therefor, the user shall furnish to the New Jersey Water Supply Authority for its prior written approval, a plan showing in such detail as may be required by the New Jersey Water Supply Authority the proposed system for withdrawal, measurement, transportation and ultimate disposition of the water, and shall not install or construct the same until said system shall have been approved in writing by the New Jersey Water Supply Authority, the Division of Parks and Forestry and the Delaware and Raritan Canal Commission.

(d) The New Jersey Water Supply Authority also grants to the user of water from the Delaware and Raritan Canal the right of ingress over, upon and under any and all other Canal lands as may be necessary for the construction, operation, repair and maintenance of such system, after the user has received the written approval of the Division of Parks and Forestry and the Delaware and Raritan Canal Commission.

(e) The New Jersey Water Supply Authority or its designated representative shall have the right at any time to examine all facilities constituting the withdrawal system.

(f) The user of water from the Delaware and Raritan Canal shall, within ten days after receipt of written demand from the New Jersey Water Supply Authority, make such repairs to its structures and facilities as, in the opinion of the New Jersey Water Supply Authority, may be required to eliminate leakage of water from, or potential damage to the Delaware and Raritan Canal.

(g) Failure of any user of water from the Delaware and Raritan Canal to make any repairs required by the New Jersey Water Supply Authority pursuant to (f) above shall allow the New Jersey Water Supply Authority to make any necessary repairs at the cost and expense of the user and the user shall pay any such repair costs to the New Jersey Water Supply Authority upon demand.

(h) The user shall make such changes in its withdrawal system as may from time to time be ordered in writing by the New Jersey Water Supply Authority.

(i) The user shall make no alterations in the approved withdrawal system without securing the prior written approval of the New Jersey Water Supply Authority.

#### 7:11-3.19 Meter

(a) The user shall purchase or construct, install, maintain and operate, at his own sole cost and expense, in a manner satisfactory to the New Jersey Water Supply Authority, a flow meter or measuring device of a type and in a location approved by the New Jersey Water Supply Authority.

(b) The user shall have the flow meter tested for accuracy at his own sole cost and expense before installation, by a laboratory approved by the New Jersey Water Supply Authority, and shall furnish a report of such test to the New Jersey Water Supply Authority. The user further shall have such laboratory test repeated and furnish a report of said test to the New Jersey Water Supply Authority at intervals of not less than one year or following meter repairs.

(c) Meter tests other than those set forth in (b) above may be required by the New Jersey Water Supply Authority, and payment therefor shall be at the cost and expense of the user except when report of such tests shall disclose the meter to be registered within five percent of true accuracy, in which case the cost of such test shall be paid by the New Jersey Water Supply Authority.

(d) In the case of a joint allocation to be operated through a single agent designated as the user, there shall be provided by the user, in addition to

the meter at the point of withdrawal, meters to measure the distribution to each of the several parties to the allocation.

#### 7:11-3.20 Meter failure

(a) The user shall use reasonable care that the installed flow meter or measuring device required at N.J.A.C. 7:11-3.19 is properly operating at all times.

(b) If the installed flow meter or measuring device is broken or improperly operating during any period of time, the New Jersey Water Supply Authority shall make necessary adjustments or estimates to determine the amounts of water withdrawn and to be charged for during any period of meter or measuring device failure, provided that said adjustments or estimates shall be based on the daily quantity contracted for by the user, with due consideration of the scale of plant operation before and during the breakdown period, or on such other method as the New Jersey Water Supply Authority shall determine in its discretion.

(c) In the event of repeated or prolonged failure of any meter or measuring device to operate properly, the Authority may order repair or replacement of the meter or other measuring device at the cost and expense of the user.

(d) In the event of failure of the user to comply with the order set forth in (c) above within a reasonable period, the New Jersey Water Supply Authority may order suspension of withdrawal until the faulty meter or other measuring device has been repaired or replaced provided that such suspension shall not excuse the purchaser from payment of charges set forth in the New Jersey Water Supply Authority's most current Rate Schedule.

#### 7:11-3.21 Meter readings

(a) The user shall keep a daily record of flow rates and cumulative daily water withdrawal totals and shall submit to the New Jersey Water Supply Authority each month, not later than the third day of the month unless otherwise approved by the New Jersey Water Supply Authority, copies of such records for the preceding month.

(b) The monthly meter readings to determine total withdrawal shall be taken by the user on the last day of each month, unless otherwise approved by the New Jersey Water Supply Authority, or if that day falls on Sunday or legal holiday, on the first working day thereafter.

(c) The New Jersey Water Supply Authority or its designated representative shall have the right at any time to examine any flow meter or other measuring device and the daily records maintained pursuant to (a) above, as well as to order meter tests, repair or replacement.

#### 7:11-3.22 Assistance to be furnished by user

The user, at his own expense, shall furnish the designated representative of the New Jersey Water Supply Authority such assistance as it may require for the purpose of examining the user's withdrawal system, making meter tests, taking samples, or performing other duties in connection with the agreement.

#### 7:11-3.23 Indemnity

The user shall at all times save and hold harmless or indemnify the New Jersey Water Supply Authority and any of its officers, agents and employees against claims for damages of whatsoever kind or nature arising in any manner or under any circumstances by reason of the action or inaction of the user, his officers, agents, representatives or employees in installing, constructing, replacing, repairing, maintaining or operating the withdrawal system, and the furnishing of water to others, whether such damage be sustained by the purchaser or by other persons or corporations which seek to hold the Authority liable.

#### 7:11-3.24 Insurance: Use of Delaware and Raritan Canal supply

(a) All users of the Delaware and Raritan Canal water shall maintain public liability and property damage insurance on the property and facilities which constitute the user's withdrawal system operated and maintained on canal property, with an insurance company authorized to do business in the State of New Jersey, in the following minimum amounts or as otherwise required:

1. \$100,000/\$300,000 bodily injury; and
2. \$50,000 property damage, and naming the New Jersey Water Supply Authority as an "Additional insured".

(b) Certificates of such coverage shall be delivered to the New Jersey Water Supply Authority with evidence of payment of premiums thereof upon delivery to the New Jersey Water Supply Authority of the water use agreement executed by the user pursuant to this Subchapter.

#### 7:11-3.25 Water quality

(a) The water supplied from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir System is raw water subject to all quality variations and hazard inherent in natural streams and that the New Jersey Water Supply Authority does not guarantee the quality of the water

supplied under this Subchapter and no claims regarding quality variations shall be made against the New Jersey Water Supply Authority and, therefore, no claims regarding quality variations will be recognized by the New Jersey Water Supply Authority.

(b) Water withdrawn for potable use shall be treated by the purchaser, in accordance with the provisions of N.J.S.A. 58:22-9 and N.J.S.A. 13:13-12.9, in a manner satisfactory to the New Jersey Department of Environmental Protection.

**7:11-3.26 Discharge into Delaware and Raritan Canal**

(a) The return of water to the Delaware and Raritan Canal may be allowed only if the quality of the Delaware and Raritan Canal waters is not impaired as determined by the New Jersey Water Supply Authority.

(b) Water shall not be discharged into the Delaware and Raritan Canal except upon prior application and only in accordance with the terms and conditions of a formal written approval granted by the New Jersey Water Supply Authority.

(c) The application for discharge into the Delaware and Raritan Canal shall include all information required by the New Jersey Water Supply Authority for determination of conditions governing discharge.

**7:11-3.27 Discharge structures**

(a) Structures for the discharge of water into the Delaware and Raritan Canal shall be installed and maintained by the user thereof at its own sole cost and expense.

(b) Prior to the installation of discharge structures or facilities, the user shall furnish to the New Jersey Water Supply Authority a plan showing in such detail as may be required by the New Jersey Water Supply Authority the proposed discharge system, and shall not install or construct the same until said system shall have been approved in writing by the New Jersey Water Supply Authority.

(c) The user shall, within ten days after receipt of written demand from the New Jersey Water Supply Authority, make such repair to the user's discharge system as may be required to eliminate leakage of water from, or potential damage to the Delaware and Raritan Canal, or on his failure to do so, the New Jersey Water Supply Authority may make such repairs at the cost and expense of the user, which cost and expense the user shall pay on demand.

(d) The user shall make such changes in the user's discharge system as may from time to time be required by the New Jersey Water Supply Authority but shall not alter the approved installation of the system without the prior written approval of the New Jersey Water Supply Authority.

**7:11-3.28 Disposition of facilities: Delaware and Raritan Canal**

(a) Within 90 days after an agreement expires, any user of Delaware and Raritan Canal water shall remove from the property under the jurisdiction of the New Jersey Water Supply Authority all facilities installed by the user, and restore the property to its former condition in a manner satisfactory to the New Jersey Water Supply Authority, Division of Parks and Forestry and the Delaware and Raritan Canal Commission. On the user's failure to remove the facilities, the New Jersey Water Supply Authority may make such removal and restoration at the cost and expense of the user, which cost and expense the user shall pay on demand and/or the New Jersey Water Supply Authority reserves the option to sell any facilities to help defray the cost of removal and restoration.

(b) Within 30 days after an agreement expires, the user may formally tender any or all withdrawal and related water supply facilities on the Delaware and Raritan Canal property to the New Jersey Water Supply Authority and the New Jersey Water Supply Authority may, at the Authority's discretion, accept the tendered facilities in writing within 60 days. Tender of the facilities shall stay the 90 day period for removal of the facilities pending the New Jersey Water Supply Authority's acceptance or rejection of the tender.

(a)

**DIVISION OF WATER RESOURCES**

**Flood Hazard Area Delineation**

**Delineation of Rock Brook, Pike Run and Crusier**

**Brook and Redelineation of Beden Brook and Van Horn Brook in the Raritan River Basin**

**Proposed Amendment: N.J.A.C. 7:13-7.1**

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

Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.

DEP Docket No. 028-86-06.

Proposal Number: PRN 1986-270.

A public hearing concerning this proposal will be held on:

August 21, 1986 at 1:00 P.M.

Montgomery Twp. Municipal Building

2261 Route 206

Belle Mead, NJ

Submit comments by August 21, 1986 to:

Robert L. Vincent

Hearing Officer

Department of Environmental Protection

Division of Water Resources

P.O. Box CN 29

Trenton, NJ 08625

The agency proposal follows:

**Summary**

Pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., the Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by the addition of three new delineated flood hazard areas and the revision of two existing delineated flood hazard areas in the Raritan River Basin.

The proposed delineations and redelineations are based upon the Montgomery Township Flood Insurance Study and were prepared by Elson T. Killam Associates under direct contract by Montgomery Township. Portions of the previous 1972 delineation of Beden Brook and 1985 delineation of Van Horn Brook are superseded by the proposed redelineation. As a result of having received more detailed data and analysis, the Department is obliged to update the present delineations to reflect this new information.

The following existing delineations are proposed to be revised: Beden Brook from 850 feet upstream from its mouth upstream to Province Line Road, and Van Horn Brook from 400 feet upstream from its confluence upstream to U.S. Route 206. These proposed redelineations will require no change in the text of N.J.A.C. 7:13-7.1(d), since only a revision of the flood hazard area delineation map is required.

This proposal will also add three new floodway and flood hazard delineations to N.J.A.C. 7:13-7.1(d). These proposed new delineations are also based upon the Montgomery Township Flood Insurance Study and were prepared by Elson T. Killam Associates.

The following new delineations are proposed: Rock Brook from its mouth upstream to Camp Meeting Road; Pike Run from its mouth upstream to Township Line Road, and Crusier Brook from its mouth upstream to Belle Mead-Blawenburg Road. These proposed delineations, if adopted, will result in the addition of paragraph 54. to N.J.A.C. 7:13-7.1(d).

The proposed delineations and redelineations will affect Montgomery Township and Rocky Hill Borough in Somerset County.

The rules governing development activities within delineated flood hazard areas are designed to preserve the flood carrying capacity of New Jersey's water ways and to minimize the threat to the public health, safety and general welfare caused by flooding. New delineations establish flood fringe areas in which added flood protection measures may be applied pursuant to the Flood Hazard Area Control Act regulations at N.J.A.C. 7:13-1 et seq. Revisions to existing delineations further clarify the bounds of such flood fringe areas.

**Social Impact**

The proposal applies added flood protection to flood hazard areas of certain water ways and more accurately defines the flood hazard areas of others. The flood hazard area protection program provides for increased protection from damages associated with flooding and, when applied, lessens the requirements for flood insurance. By delineating streams and rivers, the Department sets the approximate area (the flood fringe) which is regulated under the Flood Hazard Area Control Act regulations.

As to the revisions of existing delineations contemplated by this proposal, because the delineated floodway and flood fringe lines will simply be more accurately described, no additional social impact will result beyond that intended and foreseeable from the original delineations to Beden Brook and Van Horn Brook.

**Economic Impact**

Application of the flood hazard area rules to the flood plains of the State's waterways restricts the scope of permissible development by, among other things, limiting the amount of fill which may be placed within the flood hazard area. Delineations and revisions of delineations can expand the scope of regulated areas and thereby increase the area to which development controls apply.

Delineation of a stream or river by the Department increases the area regulated from the area flooded by the 100 year flood to the area flooded by 125 percent of the 100 year flood. The economic impact of the restrictions applicable to the flood fringe areas of water ways is offset to a degree by decreased insurance costs and by savings to governmental bodies and private homeowners due to lessening of future rehabilitation and rescue expenditures from flood damage in the delineated area.

**Environmental Impact**

No adverse environmental impact is anticipated as a result of this proposed delineation and redelineation of the aforementioned bodies of water. To the extent that this proposal causes any environmental impact, such impact will be a positive one. The delineation program provides a framework within which area subject to the various Flood Hazard Area Control Act regulations are determined. These regulations systematically restrict the scope of permissible development within the delineated area as a means of preventing and minimizing damage to the area as a result of flooding. To the extent that flood damage causes an adverse effect on the environment, this proposal minimizes its potential impact.

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

7:13-7.1 Delineated floodways

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

(d) A list of streams in the Passaic-Hackensack Basin and a list of delineated streams in the Raritan Basin follows:

1.-53. (No change.)

<p><b>54. Rock Brook, Pike Run and Cruser Brook.</b></p>	<p><b>Rock Brook from its mouth upstream to Camp Meeting Road; Pike Run from its mouth upstream to Township Line Road; Cruser Brook from its mouth upstream to Belle Mead-Blawenburg Road.</b></p>	<p><b>1</b></p>
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(e)-(i) (No change.)

AGENCY NOTE: Maps of the approximate location of the delineated flood hazard areas and associated flood profiles are available for inspection during normal office hours at the offices of The Bureau of Flood Plain Management, 1911 Princeton Avenue, Trenton, New Jersey and at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

In addition maps of the proposed delineations have been sent to the town clerks of Montgomery Township and Rocky Hill Borough as well as to the Somerset County Planning Board.

**(a)**

**DIVISION OF WASTE MANAGEMENT  
Hazardous Waste Criteria,  
Identification and Listing  
Delisting Procedure**

**Proposed Amendment: N.J.A.C. 7:26-8.17**

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

Authority: N.J.S.A. 13:1E-6(a)2 et seq.

DEP Docket No. 027-86-06.

Proposal Number: PRN 1986-267.

Submit comments by August 6, 1986 to:

Ann Zeloof  
New Jersey Department of Environmental Protection  
Office of Regulatory Services  
CN 402  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

Certain wastes generated by manufacturing processes are designated as listed process wastes. These various process wastes are described at N.J.A.C. 7:26-8.13 and 8.14. Each one of the listed process wastes is considered hazardous due to constituent(s) of concern usually found therein. The basis for listing hazardous wastes from non-specific and

specific sources can be found in 40 CFR 261 Appendix VII. If a manufacturer believes that the listed process waste it generates either does not contain the constituent(s) of concern or contains them in insignificant amounts, it may file a delisting petition. In the delisting petition the manufacturer (or generator) would present evidence as required by N.J.A.C. 7:26-8.17(h) to justify delisting the listed process waste. Approval of the delisting petition by the Department would allow disposal of the waste as nonhazardous.

Under N.J.A.C. 7:26-8.17 delisting petitions for listed process wastes are only required to present analytical data for the listed constituent(s) of concern. Generators do not have to present information about other hazardous constituents which may be in the process wastestream. Moreover, generators do not have to state whether the wastestream exhibits hazardous characteristics. This regulatory situation allows hazardous wastes to be declared "nonhazardous." The usual disposal method for delisted process wastes is landfilling or incineration, thereby presenting a threat to human health and the environment if the wastestream in question is not truly "nonhazardous."

By means of the proposed amendment, the New Jersey Department of Environmental Protection ("Department"), will remedy this situation. The proposed amendment will require the generator to make a complete disclosure of hazardous constituents and hazardous characteristics regarding a listed process waste. This will enable the Department to avoid delisting a wastestream that is hazardous due to factors other than the listed constituents of concern.

The Department is also proposing to delete that language in the regulation which permits temporary delisting at N.J.A.C. 7:26-8.17(1). The proposed deletion will prevent the delisting of wastestreams before public notice is given. If a delisting petition is granted under the proposed amendment, a proposed delisting notice followed by a final notice would have to be published in the New Jersey Register. An approved delisting would become effective 30 days after publication of the final notice. Thus, a wastestream would not be temporarily disposed of as nonhazardous prior to public notice and the receipt of public comments.

The Department first received full authorization to review and approve delisting petitions on February 2, 1983, when the United States Environmental Protection Agency ("USEPA") granted Phase I Interim Authorization to New Jersey. Departmentally approved delistings were subject to EPA review. When the RCRA Reauthorization Act of 1984 was signed on November 8, 1984, the State of New Jersey lost this full authorization. At the present time, a delisting petition must be submitted to USEPA and to the Department for review and approval. The Department cannot approve a delisting petition until USEPA has given its approval. A delisting petition can be denied by the Department after USEPA approval provided valid reasons can be demonstrated for such denial.

The approval of the proposed amendment will bring New Jersey hazardous waste regulations into equivalency with the Federal regulations as per the Resource Conservation and Recovery Act ("RCRA") Reauthorization Act of 1984, 42 U.S.C. 6901. This proposal is based upon regulations published in the Federal Register at 50 FR 28742-3 on July 15, 1985.

**Social Impact**

The proposed amendment will enable the State to regain full authorization to approve delisting petitions. Thus, industry in New Jersey will have to deal with the Department alone rather than with both the Department and the USEPA. Further, temporary delistings pending publication in the New Jersey Register will no longer be granted. The public right to comment on regulatory changes before they are enacted will be expanded to the area of delistings.

The generator will be required to present more information about its listed process waste than is now required. The proposed amendment will require the generator to make a complete disclosure of hazardous constituents and hazardous characteristics regarding a listed process waste. The Department will have a better basis for determining whether a listed process waste should be delisted. Further, the public may contribute information which is not available to the Department when a delisting is published as a proposal for comment.

**Economic Impact**

The proposed amendment requires generators filing delisting petitions to provide a more comprehensive analysis and description of the waste. The sampling and analytical procedures are complex and may require, in most cases, outside help from consultants and commercial laboratories. Clearly, the delisting process is costly not only monetarily but in terms

of time. However, the increased cost of compliance is justified by the seriousness of environmental damage that could result if wastes that are truly hazardous are delisted and allowed to escape into the environment. The proposed amendment will negate the possibility of expensive remedial action at a later date. When hazardous wastes are inadvertently allowed into landfills, the removal operations are costly.

A positive economic impact will result for petitioners if it is demonstrated that a specific waste is non-hazardous. There will also be some savings in the cost of obtaining a delisting. When the State is accorded full authorization to grant delistings, generators will need to apply only to the Department, and will not have to file delisting petitions with both USEPA and the Department. Thus, the petitioner's economic burden will be eased through the minimization of filing duplicative petitions.

**Environmental Impact**

Approval of the proposed amendment will have a positive environmental impact. Listed process wastes must be shown to be free of other hazardous constituents and hazardous characteristics in addition to the listed constituents of concern. A source of potential hazardous waste will be kept out of landfills.

Deleting the allowance for temporary delistings also serves to protect the environment. Public notice will be required and an opportunity will be afforded for public comment. This procedure may elicit information indicating that the proposed delisted waste is hazardous. This will prevent the landfilling or mismanagement of potentially hazardous waste on a temporary basis.

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

**7:26-8.17 Delisting procedure**

[(a) Scope: The procedure set out in this section applies only to solid wastes listed by the Department pursuant to N.J.A.C. 7:26-8.8. It does not apply to solid wastes also listed at 40 CFR 261, Subpart D or to solid wastes incorporated into N.J.A.C. 7:26-8.13, 8.14 or 8.15 by reference to Federal action amending 40 CFR 261, Subpart D.]

[(b)] (a) Any person seeking to exclude a waste at a particular generating facility from the lists in N.J.A.C. 7:26-8.13, 8.14 or 8.15 may petition for a regulatory amendment under this section [provided the waste is within the scope of this section as set out in (a) above], **and shall satisfy the following requirements:** [To be successful,]

1. [t]The petitioner [must] shall demonstrate to the satisfaction of the Department that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous waste and, in the case of an acutely hazardous waste listed under N.J.A.C. 7:26-8.8(a)2, that it also does not meet the criterion of N.J.A.C. 7:26-8.8(a)3; **and**

**2. Based on a complete application, the Department shall determine, where there is a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.** A waste which is so excluded may still, however, be a hazardous waste by operation of N.J.A.C. 7:26-8.9, 8.10, 8.11 or 8.12.

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

[(d)] (c) If the waste is listed with codes "I", "C", "R", or "E" [,]:

1. The [the] petitioner [must] shall show that [demonstration samples of] the waste [do] does not exhibit the relevant characteristic for which the waste was listed as defined in N.J.A.C. 7:26-8.9, 8.10, 8.11, or 8.12 using any applicable test methods prescribed therein. **The petitioner also shall show that the waste does not exhibit any of the other characteristics defined in N.J.A.C. 7:26-8.9, 8.10, 8.11 or 8.12 using any applicable test methods prescribed therein.**

**2. Based on a complete application, the Department shall determine, where there is a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.** A waste which is so excluded, however, still may be a hazardous waste by operation of N.J.A.C. 7:26-8.9 through N.J.A.C. 7:26-8.12.

[(e)] (d) If the waste is listed with code "T":

1. The petitioner must demonstrate that:

[1.]i. **The [Demonstration samples of the] waste [do] does not contain the constituent or constituents as defined in 40 CFR Appendix VII that caused the Department to list the waste [; or], using the appropriate test methods prescribed in 40 CFR 261 Appendix III; or**

[2.]ii. [The] **Although containing one or more of the hazardous constituents (as defined in 40 CFR 261 Appendix VII) that caused the waste to be listed, the waste does not meet the criterion of N.J.A.C. 7:26-8.8(a)3 when considering the factors referenced therein.**

**2. Based on a complete application, the Department shall determine, where there is a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and**

**3. The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in N.J.A.C. 7:26-8.9, 8.10, 8.11, or 8.12 using any applicable test methods prescribed therein;**

**4. A waste which is so excluded, however, still may be a hazardous waste by operation of N.J.A.C. 7:26-8.9 through 8.12.**

[(f)] (e) If the waste is listed with the code "H":[,]

1. [t]The petitioner [must] shall demonstrate that the waste does not meet both of the following criteria:

[1.]i. The criterion of N.J.A.C. 7:26-8.8(a)2; **and**

[2.]ii. The criterion of N.J.A.C. 7:26-8.8(a)3 when considering the factors referenced therein.

**2. Based on a complete application, the Department shall determine, where there is a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and**

**3. The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in N.J.A.C. 7:26-8.9, 8.10, 8.11, or 8.12 using any applicable test methods prescribed therein;**

**4. A waste which is so excluded, however, still may be a hazardous waste by operation of N.J.A.C. 7:26-8.9 through 8.12.**

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

[(h)](g) Each petition shall [must] include:

1.-16. (No change.)

**17. Petitions shall be submitted in duplicate to:**

**Director  
Division of Waste Management  
New Jersey Department of Environmental Protection  
CN 028  
Trenton, NJ 08625**

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

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

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

[(l) The Department may (but shall not be required to) grant a temporary exclusion before making a final decision under this section whenever it finds that there is a substantial likelihood that an exclusion will be finally granted. The Department will publish notice of any such temporary exclusion in the New Jersey Register.]

(k) **To the maximum extent practicable, the Department shall, within 12 months after receiving a complete application to exclude a waste generated at a particular facility from being regulated as a hazardous waste, publish in the New Jersey Register a proposal to grant or deny a petition. The Department shall grant or deny such a petition within 24 months after receiving a complete application.**

(l) **The Department shall give public notice of proposed delistings by publication in the New Jersey Register. A period of at least 30 days shall be allowed for public comment. Public hearings will be scheduled, if in the discretion of the Department, the public comment has raised issues affecting the public health and safety, and/or the environment. Public comments will be reviewed and answered in the final notice. A proposed delisting will become effective upon publication of the final notice in the New Jersey Register.**

**HUMAN SERVICES****(a)****DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES****Manual for Dental Services****General Provisions, Instructions for Payment, Procedure Codes and Descriptions****Proposed Readoption: N.J.A.C. 10:56-1.2 through 1.5, 1.7, 1.9, 1.10, 1.13, 1.16, 1.18, 1.23; 2.1; 3****Proposed Readoption with Amendments: N.J.A.C. 10:56-1.1, 1.6, 1.8, 1.11, 1.12, 1.14, 1.15, 1.17, 1.19 through 1.22; 2.2**

Authorized By: Geoffrey S. Perselay, Acting Commissioner,  
Department of Human Services.

Authority: N.J.S.A. 30:4D-6b(4), 7, 7a, 7b, 7c.

Proposal Number: PRN 1986-260.

Submit comments by August 6, 1986 to:  
Henry W. Hardy, Esq.  
Administrative Practice Officer  
Division of Medical Assistance and Health Services  
CN-712  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:56-1, 2, 3, entitled the Manual for Dental Services, expires on September 10, 1986. The Division proposes to readopt all three subchapters.

The rules define the scope of dental services that are available to Medicaid patients under the New Jersey Medicaid Program. The rules also inform the providers of dental services which treatment requires prior authorization, the correct method of claim submittal, and the procedure codes, narrative descriptions, and maximum allowances.

Subchapter One, entitled General Provisions, covers dental treatment plan, prior authorization, non-covered services, standards of services, special dental services, utilization review, quality control and peer review, patient records, basis of payment, place of service, and specific provisions governing diagnostic services, preventive dental care, restorative services, endodontia, periodontal treatment, prosthodontic treatment, exodontia and oral surgery, orthodontic treatment, adjunctive general services, and consultations.

Subchapter Two covers patient eligibility and explains the proper completion and submission of the dental services claim form (MC-10).

Subchapter Three is divided into sections describing treatment procedures such as examination, radiography, prophylaxis, restorations, endodontics, periodontics, and prosthodontics. The applicable procedure codes, descriptions and maximum allowances for specialist and non-specialist practitioners are contained in these sections. Providers must use the appropriate procedure code(s) when submitting a claim for service on behalf of a New Jersey Medicaid patient. Recently there was a comprehensive revision which revised procedure codes and increased maximum allowances for selected procedures (R.1984 d.270, effective June 15, 1984). There is no change being made upon readoption.

An administrative review has been conducted, and a determination made that the rules should be continued because they are necessary, adequate, reasonable, efficient, understandable and responsive for the purpose for which they were originally promulgated. Providers of dental services need to be informed of the services covered by the New Jersey Medicaid Program and the proper code to enter on the claim form in order to be reimbursed.

The rules have been amended to allow all dentists who participate in the New Jersey Medicaid Program to provide orthodontic treatment to Medicaid patients (R.1983 d.584 effective January 1, 1984).

Subchapters One and Two are being amended upon readoption. Some changes, such as address corrections, recodification, etc., are technical in nature. N.J.A.C. 10:56-1.8 is amended to make the time frame for duplicative prosthetic services seven and one-half years. This will make the time frame consistent with N.J.A.C. 10:56-1.19 regarding replacement dentures. The amendment to N.J.A.C. 10:56-1.12 deletes the reference to hospital outpatient dental clinics being reimbursed on a "cost" basis

and adds language indicating clinic services are reimbursed on the same basis as a dentist in "private" practice. The change is being made to make the Manual for Dental Services consistent with the Manual for Hospital Services (N.J.A.C. 10:52-2.8A). The rule standardizing reimbursement for dental services reflects existing Medicaid policy.

N.J.A.C. 10:56-1.14 is amended to delete paragraphs 4 through 9 because they were not part of the adopted text of the rule (the proposal appeared at 13 N.J.R. 875(a) and was partially adopted at 14 N.J.R. 1301(a)). The language in paragraph 4 below now appears as proposed text, and is in boldface. The remaining paragraphs have been renumbered with some minor corrections inserted. Section 1.15 contains some recodification.

N.J.A.C. 10:56-1.20 is amended by deleting the phrase "treating orthodontist". The Division's current policy allows general practitioners as well as specialists to provide orthodontic treatment to Medicaid patients. N.J.A.C. 10:56-2.2 is amended to make the references consistent with the existing claim form (MC-10). Items 9 and 10 had to be reversed and some new language was added for items 14A, B, C, on the claim form.

**Social Impact**

The proposed readoption and amendments impact on all New Jersey Medicaid patients who need dental services and treatment. Providers affected by this rule are dentists, some hospitals that provide outpatient dental services, and independent dental clinics.

The rules are designed to promote good dental health for both children and adults by covering a wide range of dental services that are needed by the general public. The New Jersey Medicaid program provides dental services that are appropriate to eligible Medicaid patients. The rules are designed to further the intent of the New Jersey Legislature by allowing "medical assistance" to be provided on behalf of persons whose resources are determined to be inadequate to enable them to secure quality medical care at their own expense. (Reference is made to N.J.S.A. 30:4D-2).

The rules also inform providers about the services that are covered by the New Jersey Medicaid Program, including those that require prior authorization. In addition, Subchapter three sets forth the schedule of maximum allowances which indicates to the providers that amount they will be paid for providing covered Medicaid services.

The rules should be continued because Medicaid patients will continue to need dental services and providers need to be reimbursed for rendering them.

**Economic Impact**

The Division of Medical Assistance and Health Services spent approximately 21 million dollars (federal-state share combined) in Fiscal Year 1984 and about the same amount in Fiscal Year 1985.

Providers of dental services are reimbursed in accordance with the schedule of maximum allowances contained in N.J.A.C. 10:56-3. There are two schedules; one for specialists, the other for non-specialists.

There is no cost to the Medicaid patient for dental services and treatment.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:56-1, 2, 3.

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

## 10:56-1.1 Definitions

...

"Specialist" means one who is licensed to practice dentistry in the state where treatment is rendered, who limits his practice solely to his specialty, which is recognized by the American Dental Association.

**NOTE: Further conditions regarding the qualifications for a dental specialist for the New Jersey Medicaid Program may be found at N.J.A.C. 10:56-1.13.**

[(a) In addition, a specialist must meet one of the following conditions:

i. In New Jersey, and where required in other states, has obtained specialty certification from the appropriate agency of the state where dental services are to be rendered; or

ii. In those states not requiring specialty certification:

(1) Is a diplomate of the appropriate American Dental Association recognized board; or

(2) Meets the minimum requirements for that specialty as stipulated by the American Dental Association.

(b) Any provider who meets the above-cited qualifications and desires specialist reimbursement is required to submit written documentation to the Prudential Insurance Company, Medical Administration Division, P.O. Box 1900, Millville, New Jersey 08332. This documentation must

be as follows:

i. In New Jersey, and where required in other states, a copy of the specialty certificate/permit issued by the appropriate agency of the state where dental services are to be rendered; or

ii. In those states not requiring specialty certification and when the practitioner is not listed in the Directory of the American Dental Association under "Character of Practice" as a specialist:

(1) From his specialty board indicating his status as a diplomate; or  
(2) From the American Dental Association stipulating that he meets the minimum requirements for his specialty.

(c) Specialist reimbursement where appropriate will be limited to the following specialties:

- i. Oral surgery;
- ii. Endodontics;
- iii. Pedodontics;
- iv. Orthodontics;
- v. Periodontics;
- vi. Prosthodontics.]

#### 10:56-1.6 Special dental services

Dental services for which no specific provisions are made, or which are limited or prohibited in these policies and procedures may be considered on an individual basis. Such a request should be forwarded to the [regional dental consultant in the appropriate dental field office, and must be accompanied by all supporting evidence.] **Dental Claims Review Unit, CN-713, Trenton, New Jersey 08625. The request must be accompanied by all supporting documentation.**

#### 10:56-1.8 Patient records

(a) (No change.)

1. The record shall consist of the following:

i-vii. (No change.)

viii. Explanation of any duplication of services within one year (prosthetic service within [five] seven and one-half years).

ix-x. (No change.)

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

#### 10:56-1.11 Basis of payment

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

[Note] I. The stage of completion of the service should be detailed on the dental form (MC-10), or in the case of an appliance, denture or crown, and so forth, the case to the point of completion should be forwarded to the [regional] dental consultant for proration as determined by the [office of the dental director of the program] **Chief, Bureau of Dental Services**. The case will be returned to the provider and should be retained for at least one year.

(d) Partial reimbursement for an appliance completed but not delivered to the recipient because of circumstances beyond the control of the provider will be authorized by the New Jersey Medicaid Program. An amount equivalent to the professional component for inserting and adjusting the appliance will be deducted [for] from the total reimbursement for such appliance. In the event the patient returns and the service is completed, the provider may request reimbursement for the deducted amount. Procedures as outlined in (c) above will apply.

(e) Reimbursement is not made for, and recipients may not be asked to pay for broken appointments. [However, after repeated instances, the dentist should report these occurrences to the appropriate dental field office (refer to N.J.A.C. 10:56-3).]

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

#### 10:56-1.12 Place of service

(a) In addition to the private office, dental services may be provided in the home, a hospital, approved independent clinic, long term care facility, and elsewhere.

(b) Services should be provided in any appropriate setting, governed by medical/dental necessity and not by the convenience or desires of the patient or the providers of services.

1. Policies specific for dental services rendered in the outpatient departments of approved licensed hospitals and services rendered in approved independent clinics are described in their respective manuals.

[i. All services rendered to a patient in the hospital outpatient department as a registered clinic patient are considered hospital costs, including costs of a dentists' services. Any arrangement, contractual or otherwise, for payment of the dentist(s) providing a service(s) to such a clinic patient is, therefore, between the hospital and the dentist(s).]

**i. Outpatient dental clinics are subject to the same New Jersey Medicaid Program policies, procedures and reimbursement schedule as outlined in this**

**manual that apply to the dentist in "private" practice (reference is made to N.J.A.C. 10:52-2.8A).**

2. Dental services performed on an [impatient] **inpatient** basis in approved licensed hospitals are reimbursable provided that they require that level of care which must be documented on the hospital records.

i. (No change.)

(c) Dental services as performed by a licensed dentist in a long term care facility, or elsewhere outside the provider's office setting are reimbursable provided that:

1. The policies and procedures as detailed in this manual are followed.

2. In a long term care facility, the dentist rendering the dental services is not an owner, administrator, stockholder of the company or corporation or otherwise has a direct financial interest in the facility.

[Note:] 3. Reimbursement of a supplemental fee for an out-of-office visit in addition to a fee for service is limited to once per trip per facility, regardless of the number of patients examined or treated during the visit.

[3.] 4. The dentist who examines a long term care facility patient must provide the treatment necessary unless the examination indicates that a specialist is needed.

#### 10:56-1.13 Requirements for specialists

(a) The following conditions shall apply to specialists as defined in N.J.A.C. 10:56-1.1:

1. In New Jersey, and where required in other states, has obtained specialty certification from the appropriate agency of the state where dental services are to be rendered; or

2. In those states not requiring specialty certification:

i. Is a diplomate of the appropriate American Dental Association recognized board; or

ii. Meets the minimum requirements for that specialty as stipulated by the American Dental Association.

(b) Any provider who meets the qualifications in (a) above and desires specialist reimbursement is required to submit written documentation to the Prudential Insurance Company Medical Claims Division II, Provider Enrollment Section, P.O. Box 5007, Millville, New Jersey 08332. This documentation must be as follows:

1. In New Jersey, and where required in other states, a copy of the specialty certificate/permit issued by the appropriate agency of the state where dental services are to be rendered; or

2. In those states not requiring specialty certification and when the practitioner is not listed in the Directory of the American Dental Association under "Character of Practice-Specialist."

i. From his specialty board indicating his specialist status as a diplomate; or

ii. From the American Dental Association stipulating that he meets the minimum requirements for his specialty.

(c) Specialist reimbursement where appropriate will be limited to the following specialties.

1. Oral surgery;
2. Endodontics;
3. Pedodontics;
4. Orthodontics;
5. Periodontics;
6. Prosthodontics.

#### 10:56-1.14 Diagnostic services

(a) (No change.)

(b) Radiography rules are as follows:

1.-2. (No change.)

3. Reimbursement for dental X-rays [will] shall be limited according to the following guidelines.

i. A complete series radiographic study is defined and limited by age. It represents the maximum number of diagnostic x-rays reimbursable as a single radiographic study every three years without prior authorization as follows:

(1) Up to and including age six—eight films (six periapical plus two bitewing films);

(2) Age seven, up to and including age 14—12 films (10 periapical films, plus two bitewing films);

[Note:] (3) The need for additional films in (b)3i(1) and (2) above must be substantiated and the specific authorization obtained from the Dental Consultant.

[(3)] (4) For those patients 15 years of age or older—16 X-rays (at least 14 periapical plus two posterior bitewing films).

[Note:] (5) The three year limitation in (b)3i(1), (2), [and (3)], and (4) above will continue to apply even though there should be an age change

that would transfer the patient from one age category to another. For example, a patient who has eight X-rays at age six is not eligible for the 12 film series until he or she has reached age nine and three years have passed.

[4. Annual reimbursement will be limited to four intra-oral X-rays, bitewing or periapical, as appropriate, without authorization.

5. If a complete series radiological study is repeated within the three year limitation period without prior authorization, reimbursement will be subject to limitations in N.J.A.C. 10:56-1.14(b)4.]

[6.] 4. In an emergency situation, in order to establish a diagnosis (which must be recorded in Item 16, of Dental Claim Form MC-10) an X-ray may be taken at any time as dentally appropriate.

[7. A panoramic X-ray may be taken in lieu of a periapical X-ray(s) without authorization, but reimbursement will be limited to the equivalent number of periapical X-rays that would satisfy the situation, e.g., for one tooth treated the equivalent of one periapical X-ray, two teeth treated, two periapical X-ray, etc. or as may be determined appropriate by a Dental Consultant. Total reimbursement may not exceed the maximum allowable fee for a single panoramic X-ray. This same panorex may be used and billed for in conjunction with subsequent services using the original date of service and for a one year period thereafter, but the total cumulative reimbursement may not exceed the maximum allowable fee for a single panoramic X-ray.

8. In lieu of a complete series radiological study (see N.J.A.C. 10:56-1.4(b)1) a panoramic X-ray alone or with up to four intra-oral X-rays, bitewing, or periapical, as appropriate, may be taken without prior authorization. Reimbursement will be subject to the same limitations as cited in (b)1, 3, 4 and 5 above.

9. X-rays on an edentulous patients are not reimbursable unless a definite need can be documented, in which case either a panoramic X-ray or two occlusal X-rays are reimbursable. If periapical X-rays are taken, reimbursement may not exceed the lesser of the alternatives above. Such X-rays require documentation and authorization.]

[10.] 5. All X-ray films must be suitable for interpretation and when submitted to the New Jersey Medicaid Program or its agents must be properly mounted, marked "Right" and "Left" and identified with the patient's name, the date, and the name of the dentist. Films that are technically unacceptable for proper interpretation will be returned to the provider for replacement at no additional cost to the Medicaid program, or where appropriate, no reimbursement will be made. When already reimbursed, recoupment will be made where indicated.

[11.] 6. The originals of all X-ray films must be forwarded to the dental consultant when procedures requiring prior authorization are requested. It is recommended that the two film packet be used or a copy made by all dentists who wish to retain a set of X-ray films [on] in their offices at all times.

[12.] 7. Postoperative X-rays normally taken at the conclusion of dental treatment by a dental provider shall be maintained as part of the patient's dental records (for example—final X-ray(s) at completion of endodontic treatment, certain surgical procedures, and so forth).

[13.] 8. The originals of all X-rays must be available to authorized representatives of the New Jersey Medicaid Program or other agencies of the State of New Jersey as approved by the New Jersey Medicaid Program. Such X-rays will be reviewed by dental consultants of the Medicaid program and/or dentists representing organized dentistry, if appropriate.

[14.] 9. It is [not] most important, also, that all X-rays be examined carefully by the provider to assure quality care and to make certain that all necessary treatment has been diagnosed and completed.

(c) "Clinical laboratory services" means professional and technical laboratory services ordered by a dentist within the scope of his practice as defined by the laws of the state in which he practices and provided by a laboratory that is qualified to participate under the program. Such laboratories include:

1. Independent clinical laboratories, including physician operated, out of hospital laboratories which perform primarily diagnostic work referred by other practitioners;

2. Hospital laboratories and laboratories of educational institutions which provide laboratory services to ambulatory patients as requested by a licensed practitioner.

[Note:] 3. Services provided by any of the above laboratories must be billed directly to the program by the laboratory, and not by the dentist.

(d) Radiological (X-ray) services other than those ordinarily provided by a practitioner in his own office may be referred to a dental specialist who will provide radiological services limited to his own special field. Radiological services may also be requested from a physician who is a

specialist in radiology or a qualified hospital facility.

[Note:] 1. Services provided by another dentist, physician, or hospital facility must be billed directly to the program by that provider and not by the referring dentist.

(e) Prior authorization is required for reimbursement for additional aids such as diagnostic models, photographs, and so forth (exception—see section [21] N.J.A.C. 10:56-1.21 of this subchapter).

#### 10:56-1.15 Preventive dental care

(a) In addition to a dental examination every six months for those patients through age 17 and once every twelve months for those patients 18 years of age or older, preventive dental care encompasses the following recommended services:

##### 1. Prophylaxis:

[i. Topical flouride treatment should be administered in accordance with appropriate standards. This consists of topical application of stannous flouride or acid flouride phosphate as a liquid or gel. The use of flouride incorporated in the prophylaxis paste is not reimbursable as topical flouride treatment.

Note: A complete prophylaxis must be performed prior to the topical flouride treatment.]

i. Dental prophylaxis means the complete removal of calculus and stains from the exposed and unexposed areas of the teeth by scaling and polishing.

##### ii. (No change.)

##### 2. Flouride treatment

##### i. (No change.)

[Note:] ii. A complete prophylaxis must be performed prior to the topical flouride treatment.

##### [ii.] iii. (No change in text.)

[Note:] iv. This is not a covered service for persons 21 years of age and over.

#### 10:56-1.17 Endodontia

(a) When requesting endodontic treatment, consideration should be given to the age and general health of the patient, the status of the tooth in the arch, and the condition of the remaining dentition and supporting structures.

1. Reimbursement for root canal therapy for all teeth shall include extirpation, treatment, complete filling of the root canal(s) with permanent material, all necessary X-rays during treatment and post-operatively, and follow-up care.

[Note:] i. Prior authorization is necessary. When the patient is in pain, the dentist should institute appropriate emergency measures to extirpate the pulp and/or relieve the pain only until authorization is requested and received.

##### 2.-4. (No change.)

##### 5. Apicoectomy:

i. Apicoectomy will be considered for authorization and reimbursement only if one or more of the following conditions exist:

(1) Overfilled canal (previously treated tooth);

(2) Canal cannot be filled properly because of excessive root curvature or calcification;

(3) Fractured root tip that cannot be reached endodontically;

(4) Broken instrument in canal;

(5) Perforation of the apical third of canal;

(6) Broken root canal filling lying free in periapical tissues and acting as an irritant;

(7) Periapical pathology not resolved by previous endodontic therapy;

(8) Periapical pathology which will not be resolved by endodontic therapy alone;

(9) A post, post and core, or post-crown which cannot be removed.

[Note:] ii. Apicoectomy should not be performed for convenience. If endodontic treatment is necessary, but none of the above conditions exist, reimbursement for the apicoectomy will not be made.

[1.] iii. Retrograde filling(s) will be inserted when necessary in conjunction with appropriate endodontic treatment, but not in lieu of a properly filled canal.

[2.] iv. Post-treatment X-rays are required.

#### 10:56-1.19 Prosthodontic treatment

##### (a) (No change.)

##### (b) 1.-8. (No change.)

9. [Dental] Denture relining, rebasing (jumping) or repairing (other than as noted in this section) are reimbursable.

i. The fee will include all necessary adjustments for a six month period following insertion for relining and rebasing and three months for repairs.

##### 10. (No change.)

10:56-1.20 Exodontia and oral surgery

(a) Exodontia rules are as follows:

1. Extraction of teeth other than those classified as non-restorable requires prior authorization.

i. Where any [extraction] **extraction** is being considered which will necessitate the insertion of a dental prosthesis, prior authorization is mandatory. Reimbursement for such an extraction(s) rendered without appropriate authorization will be denied, or if already paid, reimbursement will be recovered. Due to the rule limiting the authorization of denture(s) (refer to N.J.A.C. 10:56-[1.6]1.19) it may be impossible to replace a denture(s) following such extraction(s). Therefore, careful consideration should be given to the condition of teeth[.]:

(1) Prior to a request for dentures initially; and

(2) Prior to any extraction which would jeopardize an existing denture.

ii. When any extraction is to be performed in conjunction with or during orthodontic treatment, the dentist must determine:

(1) That such orthodontic treatment has been authorized through the [Office of the Dental Director] **Chief, Bureau of Dental Services**, Division of Medical Assistance and Health Services. [(The regional dental consultant or the office of the dental director may be contacted for this information.)]

(2) That such extraction(s) has the express consent of the [treating orthodontist] **practitioner to whom orthodontic treatment has been authorized**. Reimbursement will be denied (or if already paid, reimbursement will be recovered) for any extraction(s) performed:

(A) In conjunction with orthodontic care if such orthodontic treatment has not had authorization from the [office of the dental director] **Chief, Bureau of Dental Services**; or

(B) On an appropriately authorized orthodontic case without the consent of the [treating orthodontist] **practitioner to whom orthodontic treatment has been authorized**, or the approval of the [office of the dental director] **Chief, Bureau of Dental Services**.

2.-5. (No change.)

(b) (No change.)

10:56-1.21 Orthodontic treatment

(a)-(d) (No change.)

(e) Rules concerning prior authorization for orthodontic treatment are:

1. i.-iii. (No change.)

iv. Diagnostic aids must include and reimbursement will be limited to:

(1) Diagnostic models with the current inter-arch relationship indicated;

(2) A cephalometric radiograph with a detailed tracing;

(3) A series of intra-oral radiographs consistent with policy as stated in section [1] 1.14 of this subchapter (or a diagnostic panoramic radiograph);

(4) Extra-oral lateral plate radiographs (but not if a diagnostic panoramic radiograph has been submitted);

(5) Photographs (minimum size 2 inches by 2 inches) or slides—maximum reimbursable—six.

[Note:] (6) All the diagnostic aids will be returned to the practitioner, but [must] **shall** be made available upon the request of the Division of Medical Assistance and Health Services, Bureau of Dental Services. It is suggested that models and X-rays be duplicated before submission to enable you to retain a set in your office should there be breakage or loss in mailing.

2.-3. (No change.)

(f) (No change.)

(g) Final records similar to diagnostic aids described in [(c)] (e)1.iv. above, taken at termination of treatment must be submitted with the claim for the last six monthly visits to:

Division of Medical Assistance and Health Services  
Bureau of Dental Services  
CN-713  
Trenton, New Jersey 08625

In no instance will any of the last six monthly visits be payable until final records are received.

(h) Failure to submit the records referred to in (g) above, may result in the recovery, by the Division of Medical Assistance and Health Services, of an amount not to exceed that paid for the previous 12 months of treatment actually reimbursed to the provider.

10:56-1.22 Adjunctive general services

(a) Anesthesia, analgesia, and intravenous sedation rules are as follows:

1.-2. (No change.)

3. General anesthesia: In any setting exclusive of a hospital, when general anesthesia is provided by the dentist, such may be authorized

subject to the following:

i.-iii. (No change.)

iv. When general anesthesia is administered by a dentist whose sole function is to administer general anesthesia, such service is reimbursable provided:

(1) Anesthetic management is necessary to perform restorative dentistry alone or restorative dentistry in conjunction with other dental services.

(2) Special general anesthesia codes are utilized (see subchapter 3 of this [sub]chapter. **Prior authorization is required.**

(3) An anesthesia record is maintained and submitted along with both the dental forms (MC-10) for anesthesia and treatment.

[Note 1.] (A) The anesthesia record submitted must show elapsed anesthesia time, pinpoint the time and amounts of drugs administered, pulse rate and character, blood pressure, respiration, and so forth.

[Note 2.] (B) Elapsed anesthesia time means the time from induction of the general anesthesia to the completion of the operation, or in other words, table (chair) time only.

[v. Authorization of general anesthesia is not required in conjunction with an emergency procedure.]

4. Intravenous sedation: [The] **Reimbursement for the administration of intravenous sedation [may be authorized for reimbursement] is subject to the following conditions:**

i. Such sedation is administered continuously during the operative or surgical procedure.

[Note:] ii. No reimbursement will be made for injections given as preoperative medication.

iii. [Necessity for same is demonstrated.] **The practitioner shall demonstrate the need for this service.**

iv. Person administering the intravenous sedation is a dentist satisfying all rules and regulations as established and has such written certification (permit) as may be required by the State of New Jersey or the state in which the procedure is being performed.

v. There can be only one charge for intravenous sedation per visit.

[v. Prior authorization of intravenous sedation is not required in conjunction with an emergency procedure.]

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

10:56-2.2 Dental services form (MC-10)

(a) [This form is to] **Dental services form (MC-10) shall be used for recording proposed treatment and also for billing of treatment rendered, as specified in Exhibit 1.**

(b) Procedure code numbers and descriptions as they appear in subchapter 3 of this chapter [must] **shall** be used on this form. A fee [must] **shall** be requested for each procedure and [must] **shall** be the usual and customary fee of the provider.

(c) When prior [approval] **authorization** is necessary (refer to subchapter 1 of this chapter for those treatment plans requiring prior authorization), the dental form MC-10 (both copies) should be sent to the [dental consultant in the dental field office serving the county in which the provider practices] **Dental Claims Review Unit, CN-713, Trenton, New Jersey 08625.**

1. Out-of-state providers [must] **shall** submit their dental form (MC-10) to the [division central office] **Bureau of Dental Services, CN-713, Trenton, New Jersey 08625**, for prior [approval] **authorization.**

(d) (No change.)

[(e) Instructions for completing the dental form (MC-10) are:

1. Item 1: Patient's name: Print patient's name, last name first, as it appears on the patient's validation form or Medicaid eligibility identification card.

2. Item 2: Patient's address: Print complete address, include zip code. Enter patient's telephone number in appropriate space.

3. Item 3: Health services program case number: Enter patient's health services case number exactly as it appears on the validation form or Medicaid eligibility identification card.

4. Item 4: Patient person number: Enter number as it appears on the validation form or Medicaid eligibility identification card. Patient person numbers 1 through 9 must be shown as 01, 02, 03, and so forth.

5. Item 5: Age: Enter patient's age in full years as attained at last birthday.

6. Item 6: Sex: Indicate the patient's sex by placing an X in the appropriate box.

7. Item 7: Other dental insurance: Indicate other dental health insurance coverage by entering an X in the appropriate box.

i. No fault auto coverage: Indicate by placing an X in the appropriate box if the treatment was necessary as a result of an auto accident.

ii. If the answer is yes to either question, attach a copy of the explanation of payment or the decline notice from the appropriate insurance carrier. If no payment has been received, a complete report of the current status of the claim should be attached.

(1) Claims collectible under the New Jersey no fault law are not reimbursable under the New Jersey Medicaid Program, however, supplemental payments can be made if the provider has received less than he would obtain from the Medicaid program.

8. Item 8: Illness or injury—employment related or injury due to automobile accident: Indicate if patient's illness or injury is employment related or result of auto accident by entering an X in the appropriate box. If yes is indicated in employment related questions, enter the name and address of the employer.

9. Item 9: EPSDT program: referral:

i. This question must be answered for recipients under 21 years of age.

ii. Early periodic screening, diagnosis and treatment (EPSDT), is an aspect of the Medicaid program which ensures that recipients under 21 years of age receive early detection of disease and illness, as well as diagnostic and treatment services. If an EPSDT screening uncovers a health problem or defect, the patient may be referred to another practitioner for further diagnosis and/or treatment.

iii. It is essential that the Medicaid program be able to relate diagnostic and/or treatment services to the original screening. Therefore, when a patient under 21 visits your office, a reasonable effort should be made to determine whether it is a result of an EPSDT program referral by asking the referring physician or clinic or the patient. If you are unable to obtain the information, check No.

10. Item 10: Place of service: Indicate the place of service by placing an X in the appropriate box.

11. Item 11: Provider name, address and number: This area is preprinted for the convenience of the provider who only need enter his telephone number in the appropriate box.

i. Inform Prudential Insurance Company immediately of any errors in preprinting.

12. Item 12: Existing or previous dentures: Indicate whether or not the patient has existing or previous dentures by placing an X in the appropriate box. If yes, indicate whether partial or complete dentures, date inserted, usable or repairable for both maxillary and mandibular.

i. When prior authorization for dentures is requested, the claim will not be reviewed by the dental consultant if this section is not completed.

13. Item 13: Number of X rays: Indicate the number of pretreatment and posttreatment X rays on appropriate line.

14. Item 14: Date of initial impressions: Insert date of initial impressions for maxillary and mandibular denture(s) on appropriate line, if applicable.

15. Item 15: Record recommended treatment: Do not make any entries in the shaded area. Use one line for each procedure. Print clearly.

i. Date of service: Date procedure was completed,—month, day and year. Numbers 1 through 9 are to be shown as 01, 02, 03, and so forth. Example: May 9, 1978 will be entered as 05 09 78.

ii. Procedure code: Enter the appropriate procedure code for service proposed or performed. Refer to Medicaid District Office for proper code. Since amount of payment will be determined from procedure code, accuracy is most important.

iii. Units of service: Do not use. These spaces for contractor use only.

iv. Fee requested: This provider must indicate his usual and customary charge for each procedure. Each charge should contain six numerals.

(1) Examples:

(A) \$1.00 written as 0001.00;

(B) \$20.00 written as 0020.00;

(C) \$300.00 written as 0300.00.

v. Amount B, code and jam: Do not use. These spaces for contractor use only.

vi. Tooth code: Identify tooth treated by utilizing tooth numbers from dental chart (Item 15G).

vii. Surface: Indicate each surface treated for each procedure. Use abbreviations as shown in item 19.

viii. Description of service: Briefly describe service rendered. Include materials used and all pertinent information using the abbreviations shown in item 19 as appropriate.

ix. Authorization for services only: Do not use.

x. The dental consultant will indicate by initials, date and possibly by a line connecting initials those services which are authorized and, therefore, reimbursable under the New Jersey Medicaid Program.

xi. Service denied: The dental consultant will indicate by an X in this column those services which are denied. The service itself will not be lined

out by the dental consultant.

xii. Complete dental chart accurately and in detail: Indicate missing teeth, extractions, restorations to be placed indicating all areas where treatment is proposed or has been completed as noted above.

16. Item 16: Diagnosis(es): Enter a diagnosis for those procedure codes prefixed with a "d" in subchapter 3 of this chapter. Where possible, select the diagnosis from the international classification of diseases (Adapted for use in the United States), as published by the United States Department of Health, Education, and Welfare. (Do not confuse the diagnosis with the patient's complaint or symptoms—pain, swelling, and so forth is not acceptable as a diagnosis.)

17. Item 17: Referral: Indicate in the appropriate box whether this patient was a referral from another practitioner. If yes, the name and individual Medicaid practitioner number (IMP number) of the referring practitioner must be provided.

18. Item 18: Remarks: This space is for provider use, should a remark be necessary. Box should be checked if additional information is attached.

19. Item 19: Abbreviations: To be used when describing the service rendered.

20. Item 20: Charting symbols: To be used when charting services on the dental chart portion of item 15.

21. Item 21: This section is to be completed on each claim. If one page is the complete claim, place an X in the top block. If there is more than one page to the complete claim, place an X in the second box and fill in blanks to the right.

i. For example: Page 1 of 3, page 2 of 3, and so forth.

22. Patient certification, see N.J.A.C. 10:49-1.26.

23. Item 23: Provider certification: The signature and IMP number of the dentist actually performing or supervising the service(s) described on the claim is required in item 23.

i. Exception: Dental groups: When practitioners in a group practice (whether sole ownership, association, partnership or corporation) submit claims for Medicaid reimbursement, the signature of any member of the group will be accepted on the claim form for billing purposes.

(1) However, the group will be required to enter the IMP number of the practitioner who personally performed the services represented on the claim. If a claim covers services performed by more than one practitioner, the IMP number of any one of the performing practitioners will be accepted.

(f) The dental form (MC-10) is available from the Medicaid Claims Division, Prudential Insurance Company, P.O. Box 1900, Millville, New Jersey 08332.]

[(g)] (e) Rules for payment are as follows.

1. Routine dental services:

i. After the routine dental services are completed, [have the] patient (or his authorized representative) shall sign the dental form MC-10, item 22. The provider [must also] shall personally sign and date the dental form MC-10, item 23.

ii. The top copy (contractor's/fiscal agent's) of the dental form MC-10 [should] shall be forwarded to:

The Prudential Insurance Company [of America]  
Medicaid Claims Division II  
P.O. Box 1900  
Millville, New Jersey 08332

(1) The second copy (provider's) should be retained by the provider.  
iii. Request for payment must be received within 90 days of the last treatment date.

2. Authorized treatment plans:

i. After previously authorized treatment plans are completed, the patient (or his authorized representative) [must] shall sign the dental form MC-10, item 22. The provider [must also] shall personally sign and date the dental form MC-10, item 23.

ii. The top copy (contractor's/fiscal agent's) of the dental form MC-10 [should] shall be forwarded to:

The Prudential Insurance Company [of America]  
Medicaid Claims Division II  
P.O. Box 1900  
Millville, New Jersey 08332

(1) The second copy (provider's) should be retained by the provider.  
iii. Request for payment must be received within 90 days of the last treatment date.

(1) (No change.)

3. Orthodontic treatment:

i. Following utilization of the Handicapping Malocclusion Assessment system, when the malocclusion does not meet the minimum number of points, the practitioner should not proceed with the diagnostic work-up,

but [should] shall bill for the Assessment Examination only by submitting the contractor/fiscal agent copy of a Dental Claim Form (MC-10) directly to:

The Prudential Insurance Company  
Medical Claims Division II  
P.O. Box 1900  
Millville, New Jersey 08332

identifying by procedure code 0140 the service that has been rendered. A copy of the Assessment Record Form (FD-10) [must] shall accompany this submission (limitation—see N.J.A.C. 10:56-1.14(a)4i).

ii. If the malocclusion meets or exceeds the minimum number of assessment points but the case does not fall within the parameters that have been established for orthodontic treatment under the Medicaid program, the dental form (MC-10) with authorization of the diagnostic services performed will be returned to the provider for completion of those sections requiring patient and provider signatures and dates. The contractor's/fiscal agent's copy may then be submitted to Prudential at the address above for reimbursement.

iii.-iv. (No change.)

vii. Request for payment must be received by the [Contractor] fiscal agent, the Prudential Insurance Co. no later than (90) days from the last date of service, and (12) months from the earliest date of service indicated on the Dental Claim Form (MC-10).

#### EXHIBIT I

Instructions for completing the dental form (MC-10) are:

1. Item 1: Patient's name: Print patient's name, last name first, as it appears on the patient's validation form or Medicaid eligibility identification card.

2. Item 2: Patient's address: Print complete address, include zip code. Enter patient's telephone number in appropriate space.

3. Item 3: Health services program case number: Enter patient's health services case number exactly as it appears on the validation form or Medicaid eligibility identification card.

4. Item 4: Patient person number: Enter number as it appears on the validation form or Medicaid eligibility identification card. Patient person numbers 1 through 9 must be shown as 01, 02, 03, and so forth.

5. Item 5: Age: Enter patient's date of birth.

6. Item 6: Sex: Indicate the patient's sex by placing an X in the appropriate box.

7. Item 7: Other dental insurance: Indicate other dental health insurance coverage by entering an X in the appropriate box.

i. No fault auto coverage: Indicated by placing an X in the appropriate box if the treatment was necessary as a result of an auto accident.

ii. If answer is yes to either question, attach a copy of the explanation of payment or the decline notice from the appropriate insurance carrier. If no payment has been received, a complete report of the current status of the claim should be attached.

(1) Claims collectible under the New Jersey no fault law are not reimbursable under the New Jersey Medicaid Program, however, supplemental payments can be made if the provider has received less than he would obtain from the Medicaid program.

8. Item 8: Illness or injury—employment related or injury due to automobile accident: Indicate if patient's illness or injury is employment related or result of auto accident by entering an X in the appropriate box. If yes is indicated in employment related questions, enter the name and address of the employer.

9. Item 9: Place of service: Indicate the place of service by placing an X in the appropriate box.

10. Item 10: EPSDT program referral:

i. This question must be answered for recipients under 21 years of age.

ii. Early periodic screening, diagnosis and treatment (EPSDT), is an aspect of the Medicaid program which ensures that recipients under 21 years of age receive early detection of disease and illness, as well as diagnostic and treatment services. If an EPSDT screening uncovers a health problem or defect, the patient may be referred to another practitioner for further diagnosis and/or treatment.

iii. It is essential that the Medicaid program be able to relate diagnostic and/or treatment services to the original screening. Therefore, when a patient under 21 visits your office, a reasonable effort should be made to determine whether it is as a result of an EPSDT program referral by asking the referring physician or clinic or the patient. If you are unable to obtain the information, check No.

11. Item 11: Provider name, address and number: This area is preprinted for the convenience of the provider who only need to enter his telephone number in the appropriate box.

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12. Item 12: Existing or previous dentures: Indicate whether or not the patient has existing or previous dentures by placing an X in the appropriate box. If yes, indicate whether partial or complete dentures, date inserted, usable or repairable for both maxillary and mandibular.

i. When prior authorization for dentures is requested, the claim will not be reviewed by the dental consultant if this section is not completed.

13. Item 13: Number of X rays: Indicate the number of pretreatment and posttreatment X rays on appropriate line.

14. Item 14:

14a. Date of initial impressions: Insert date of initial impressions for maxillary and mandibular denture(s), appliances, space maintainers, etc., on appropriate line, if applicable.

14b. Place the tooth code in the box provided and the date of initial preparation on the line adjacent to that code when the initial preparation is made for the crown.

14c. When initial treatment for authorized endodontic treatment is commenced, place the tooth code in the box and enter the date of initial treatment on the line adjacent to that tooth code.

15. Item 15: Record recommended treatment: Do not make any entries in the shaded area. Use one line for each procedure. Print clearly.

i. Date of service: Date procedure was completed—month, day and year. Numbers 1 through 9 are to be shown as 01, 02, 03, and so forth. Example: May 9, 1978 will be entered as 05 09 78.

ii. Procedure code: Enter the appropriate procedure code for service proposed or performed. Since amount of payment will be determined from the procedure code, accuracy is most important. The procedure codes and corresponding schedule of maximum allowances can be found at N.J.A.C. 10:56-3.

iii. Units of services: Do not use. These spaces for contractor use only.

iv. Fee requested: Providers must indicate their usual and customary charge for each procedure. Each charge should contain six numerals.

(1) Examples:

(A) \$1.00 written as 0001.00;

(B) \$20.00 written as 0020.00;

(C) \$300.00 written as 0300.00.

v. Amount B, code and jam: Do not use. These spaces for contractor use only.

vi. Tooth code: Identify tooth treated by utilizing tooth numbers from dental chart (Item 15G).

vii. Surface: Indicate each surface treated for each procedure. Use abbreviations as shown in item 19.

viii. Description of service: Briefly describe service rendered. Include materials used and all pertinent information using the abbreviations shown in item 19 as appropriate.

ix. Authorization for services only: Do not use.

x. The dental consultant will indicate by initials, date and possibly by a line connecting initials those services which are authorized and, therefore, reimbursable under the New Jersey Medicaid Program.

xi. Service denied: The dental consultant will indicate by an X in this column those services which are denied. The service itself will not be lined out by the dental consultant.

xii. Complete dental chart accurately and in detail: Indicate missing teeth, extractions, restorations to be placed indicating all areas where treatment is proposed or has been completed as noted above.

16. Item 16. Diagnosis(es): Enter a diagnosis for those procedure codes prefixed with a "d" in subchapter 3 of this chapter. Where possible, select the diagnosis from the international classification of diseases (Adapted for use in the United States), as published by the United States Department of Health, Education, and Welfare. (Do not confuse the diagnosis with the patient's complaint or symptoms—pain, swelling, and so forth is not acceptable as a diagnosis.)

17. Item 17: Referral: Indicate in the appropriate box whether this patient was a referral from another practitioner. If yes, the name and individual Medicaid practitioner number (IMP number) of the referring practitioner must be provided.

18. Item 18: Remarks: This space is for provider use, should a remark be necessary. Box should be checked if additional information is attached.

19. Item 19: Abbreviations: To be used when describing the service rendered.

20. Item 20: Charting symbols: To be used when charting services on the dental chart portion of item 15.

21. Item 21: This section is to be completed on each claim form. If one page is the complete claim, place an X in the top block. If there is more than one page to the complete claim, place an X in the second box and

fill in blanks to the right.

i. For example: Page 1 of 3, page 2 of 3, and so forth.

22. Patient certification, see N.J.A.C. 10:49-1.26.

23. Item 23: Provider certification: The signature and IMP number of the dentist actually performing or supervising the service(s) described on the claim is required in item 23.

i. Exception: Dental groups: When practitioners in a group practice (whether sole ownership, association, partnership or corporation) submit claims for Medicaid reimbursement, the signature of any member of the group will be accepted on the claim form for billing purposes.

(1) However, the group will be required to enter the IMP number of the practitioner who personally performed the services represented on the claim. If a claim covers services performed by more than one practitioner, the IMP number of any one of the performing practitioners will be accepted.

The dental form (MC-10) is available from the Medicaid Claims Division II, Prudential Insurance Company, P.O. Box 1900, Millville, New Jersey 08332.

**DIVISION OF PUBLIC WELFARE**

For proposals numbered PRN 1986-252 and 263, submit comments by August 6, 1986 to:

Audrey Harris, Director  
Division of Public Welfare  
CN 716  
Trenton, New Jersey 08625

(a)

**General Assistance Manual  
Emergency Assistance**

**Proposed Amendment: N.J.A.C. 10:85-4.6**

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

Proposal Number: PRN 1986-263.

The agency proposal follows:

**Summary**

The proposed amendment expands the provision of emergency grants in the General Assistance (GA) program for temporary shelter due to actual or imminent homelessness. The amendment extends the time period for which grants for emergency shelter may be authorized by the municipal welfare department (MWD) to two calendar months following the month in which the emergency becomes known to the MWD. The revision more accurately reflects the realities of the housing market faced by GA recipients as the result of an actual or imminent state of homelessness. The period of time necessary for homeless GA recipients to find more permanent shelter arrangements at a reasonable rate, often extends beyond the time period for which temporary shelter is currently funded by emergency grants.

**Social Impact**

The proposed amendment will have a positive social impact because the provision of extended time will enable New Jersey to more effectively address the needs of certain temporarily homeless citizens.

**Economic Impact**

The extended time period provided by this proposed amendment will have a beneficial economic impact on homeless recipients of GA in that it will allow the payment of an additional month of shelter cost. The cost to the public treasury is estimated at \$163,000 per year of which \$123,000 will be from the State and the remainder from the various municipalities in proportion to the number of homeless in each.

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

10:85-4.6 Emergency grants

(a) An emergency grant shall be authorized to or for an individual(s) otherwise eligible to receive [g]General [a]Assistance under the regulations in this manual when circumstances set forth in (a)1-2 below exist. In addition, these regulations shall apply to an emergency (as described in (a)1-2 below) which occurred within the seven calendar days immediately prior to the application for General Assistance if the applicant(s) is determined eligible at the time of application under established procedures and standards.

1.-2. (No change.)

(b) Standards for emergency grants are:

1. Emergency shelter: When an actual state of homelessness exists or is manifestly imminent in accordance with (a)1. or (a)2. of this section the authorized payment shall be the actual cost of adequate emergency shelter arrangements, at the most reasonable rate available, for a specified temporary period not to exceed [90 days following the date on] **the two calendar months following the month in which the state of homelessness first becomes known to the municipal welfare department.**

i.-ii. (No change.)

2.-4. (No change.)

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

(b)

**General Assistance Manual  
Pharmaceutical Assistance to the Aged and  
Disabled (PAAD) Information**

**Proposed Amendment: N.J.A.C. 10:85-8.4**

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

Proposal Number: PRN 1986-252.

The agency proposal follows:

**Summary**

The proposed amendment deletes obsolete eligibility information about the Pharmaceutical Assistance to the Aged and Disabled (PAAD) program and replaces it with an identified source of current information. This change is merely one of information about the program of another agency and, of itself, does not constitute a change in General Assistance regulations.

**Social Impact**

The only discernible social impact of this change is that arising from the elimination of inaccurate information and of whatever inappropriate action may have been taken on the basis of it.

**Economic Impact**

The proposed amendment will not, of itself, change the dollar flow to or from any person or agency. The amendment could result in the saving of whatever sums might have been expended on the basis of inaccurate information.

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

10:85-8.4 Referral to State agencies

(a)-(f) (No change.)

(g) Division of Medical Assistance and Health Services: The Division of Medical Assistance and Health Services, which is a division of the New Jersey Department of Human Services, administers the following programs:

1. Pharmaceutical Assistance to the Aged and Disabled (PAAD) program: Under [this] **the Pharmaceutical Assistance to the Aged and Disabled (PAAD) program, [eligible persons] pharmacies are reimbursed for services provided to eligible individuals** for approved claims covering the cost of prescription drugs including insulin, insulin syringes and needles. Each eligible individual pays a fixed amount (currently \$2.00) for each prescription or each purchase of diabetic supplies.

i. Eligibility requirements: This program restricts eligibility to residents of New Jersey who are 65 years of age or older and to Social Security Disability benefits recipients (eligibility limited to the person actually disabled) whose annual income is less than [\$12,000 (married couple \$15,000).] **specified limits. Current information and leaflets explaining details are available from the Medicaid District Office.**

ii. (No change.)

2. (No change.)

(h)-(j) (No change.)

(a)

**Assistance Standards Handbook**  
**Emergency Assistance: N.J.A.C. 10:82-5.10**  
**General Assistance Manual**  
**Emergency Grants: N.J.A.C. 10:85-4.6**

Take notice that the Department of Human Services has withdrawn proposals to N.J.A.C. 10:82-5.10 and 10:85-4.6 which appeared in the April 21, 1986 issue of the New Jersey Register at 18 N.J.R. 849(a) and 850(a). Those amendments extended the period during which emergency temporary shelter, with "co-pay" provisions, may be authorized for recipients of Aid to Families with Dependent Children (AFDC) and General Assistance (GA) benefits who are in an actual or imminent state of homelessness. As a substitute for the AFDC rule, the Department has adopted, with modifications as published in the June 2, 1986 New Jersey Register, a rule to provide emergency assistance for temporary shelter for a period of up to two calendar months following the month in which the emergency becomes known to the county welfare agency. That adoption does not require financial participation by the AFDC recipient toward the cost of the emergency temporary shelter. For the GA program, the Department intends to propose amendments to N.J.A.C. 10:85-4.6 similar to those adopted in the AFDC program at N.J.A.C. 10:82-5.10.

**INSURANCE**

(b)

**DIVISION OF ADMINISTRATION**  
**Automobile Insurance**  
**Coverage Option Survey: Personal Injury Protection**  
**and Tort Threshold Options**  
**Proposed New Rules: N.J.A.C. 11:3-22**

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

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, 17:28-1 et seq. and 39:6A-1 et seq.

Proposal Number: PRN 1986-269.

Submit comments by August 6, 1986 to:  
Verice M. Mason, Assistance Commissioner  
Legislative and Regulatory Affairs  
Department of Insurance  
CN 325  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984 (P.L. 1983, c.362 as amended by P.L. 1984, c.40), requires automobile insurers offering personal injury protection coverage to provide, at appropriately reduced premiums, optional medical expense deductibles, exclusions for no-fault nonmedical benefits and set-offs. In addition, the Act requires that insurers offer at appropriately reduced premiums a tort limitation option, which permits insureds to limit their right to sue for pain and suffering. Initially set at \$1,500, this threshold is annually adjusted by the Commissioner to reflect inflation.

The purpose of the Act is to permit insureds to choose the type of insurance that suits their needs and finances.

Acting upon the authorization and powers granted to the Commissioner pursuant to N.J.S.A. 39:6A-19 and N.J.S.A. 39:6A-20, the Department of Insurance issued three Orders, dated December 20, 1984, July 18, 1985 and January 10, 1986, respectively, which solicited information from insurers concerning policyholder selection of these coverage options. Companies addressed to respond to these Orders used survey forms developed by the Department to provide the number of automobile policies in force as of certain specified dates and to indicate the options selected by policyholders.

Collection of this information has enabled the Department to track consumer acceptance of the automobile insurance options and, therefore, to monitor the implementation and effectiveness of the New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act.

The Department has determined that data of this type should be collected on an ongoing basis and, as such, is proposing a new rule to effectuate this purpose. This proposal essentially continues and formalizes the data specifications and reporting procedures outlined in the aforementioned Orders. The proposal also clarifies the types of vehicles to which the rule's reporting requirements apply.

N.J.A.C. 11:3-22.1 and 2, respectively, establish purpose and scope sections for the proposed new rule. N.J.A.C. 11:3-22.3 provides procedural requirements with respect to submission of the data. Insurers are required to report coverage option selections, twice annually, based on the number of automobiles with insurance coverage in force as of January 31 and as of July 31 of each year. The proposal also establishes deadlines for the submission of each report to the Director of Consumer Affairs of the Department. The specific data to be filed by the insurers is detailed in the Coverage Option Survey Forms A and B, which are appended to the subchapter.

**Social Impact**

Collection of coverage selection information aids the Commissioner in monitoring the implementation and effectiveness of the New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act. Promulgation of a rule requiring submission of this data on a periodic basis will facilitate compliance and enhance enforcement of the data request.

The proposed rule will provide New Jersey automobile insurers with an expedient method by which to collect the required statistics.

**Economic Impact**

The economic purpose of the New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984, is to offer motorists the option to choose the type of insurance coverage that suits their needs and finances. The proposed rule provides a method of tracking the choices of consumers in their efforts to select appropriate insurance coverages.

Pursuant to the orders previously issued by the Department, insurers already have been required to collect data for monitoring purposes. Continuation of this process is not expected to result in substantial additional costs.

The administrative costs expected to be incurred by the Department of Insurance will be absorbed within the current budget.

Full text of the proposed new rules follows.

**SUBCHAPTER 22. COVERAGE OPTION SURVEY: PERSONAL INJURY PROTECTION AND TORT THRESHOLD OPTIONS**

**11:3-22.1 Purpose**

This subchapter requires the submission of data concerning policyholder selection of the various options provided under the New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984 (P.L. 1983, c.362 as amended by P.L. 1984 c.40) in order to monitor the implementation and effectiveness of the Act.

**11:3-22.2 Scope**

(a) This subchapter applies to every insurer authorized to transact the business of automobile insurance in this State.

(b) For the purpose of the reporting requirements of this subchapter, "Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired by an individual and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered an individually owned private passenger automobile owned by two or more relatives resident in the same household.

**11:3-22.3 Coverage option survey requirements**

(a) Every automobile insurer, on a biannual basis, shall complete and file with the Commissioner the coverage option survey required by this subchapter. The insurer's biannual survey shall reflect the total number of automobiles with inforce coverage as of January 31 and as of July 31 of each year, and shall indicate the personal injury protection and tort threshold options selected with respect to such automobile. Insurers shall use forms A and B, appended to this subchapter, to report the information required by this section.

(b) Survey forms reflecting coverage option selections as of January 31 of each year shall be filed with the Commissioner by February 14 of that year. Survey forms reflecting coverage option selections as of July 31 of each year shall be filed with the Commissioner by August 22 of that year.

(c) Completed coverage option survey forms shall be submitted to:  
Director of Consumer Affairs  
State of New Jersey, Department of Insurance  
201 East State Street, P.O. Box CN 325  
Trenton, New Jersey 08625

(d) Companies may submit the data required by this rule on a group basis, provided that each company included in the group is identified on the coverage option survey forms.

(e) Failure to provide the data required by this subchapter by the due dates in (b) above will result in Departmental sanctions as authorized by law.

Form A

STATE OF NEW JERSEY—DEPARTMENT OF INSURANCE  
AUTOMOBILE INSURANCE COVERAGE OPTION SURVEY

Company/Group: \_\_\_\_\_

Total Number of Automobiles with Insurance Policy Coverage in Force as of (January or July) 31, 19 \_\_\_\_\_

Options	Number of Automobiles
PIP Coverages for Medical Expense Only	_____
PIP Medical Expense Benefit Deductibles:	
\$ 500	_____
\$1,000	_____
\$2,500	_____
No deductible	_____
Reimbursement to Insurance Company of PIP Medical Expenses up to 20% of Non-Economic Loss	_____
Tort Threshold	_____
\$200	_____
†Threshold Index amount	_____

†Note: Due to the inflation index, the tort threshold is subject to change on January 1 of each year.

Form B

STATE OF NEW JERSEY—DEPARTMENT OF INSURANCE  
AUTOMOBILE INSURANCE COVERAGE OPTION SURVEY

Company/Group: \_\_\_\_\_

Number of Automobiles with Insurance Coverage in Force as of (January or July) 31, 19 \_\_\_\_\_

P.I.P. Deductible	Full P.I.P. with Tort Threshold of:	Medical P.I.P. Only with Tort Threshold of:
Set Off	\$200 Threshold Index Amount†	\$200 Threshold Index Amount†
0	With	
	Without	
\$ 500	With	
	Without	
\$1,000	With	
	Without	
\$2,500	With	
	Without	

†Note: Due to the inflation, the tort threshold amount is subject to change on January 1 of each year.

LAW AND PUBLIC SAFETY

NEW JERSEY RACING COMMISSION

The following proposals are authorized by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.

Submit comments by August 6, 1986 to:  
Bruce H. Garland, Executive Director  
New Jersey Racing Commission  
CN 088 Justice Complex  
Trenton, New Jersey 08625

(a)

Thoroughbred Rules: Super Six  
Proposed Amendment: N.J.A.C. 13:70-29.56

Authority: N.J.S.A. 5:5-30.  
Proposal Number: PRN 1986-271.

The agency proposal follows:

Summary

The amendments are being proposed as a result of Chapter 19, Public Law of 1986, which was signed into law in the State of New Jersey. Presently, tracks are able to take wagers where the bettor selects the first horse in each of six consecutive races. However, there is no carry-over provision, that is the entire pool is returned to bettors each day regardless of whether or not anyone chooses all six winners. The enacted legislation would allow for a carry-over of 75 percent of the pool in the event no one successfully selects all six winners of the designated races. The remaining 25 percent would be distributed to the bettor who correctly designated the next winning selections that day. The rule is now entitled "Super-Six" to avoid confusion with a lottery game called "Pick-Six."

Social Impact

The social impact of the proposed amendment is negligible. The rule does not authorize a new form of betting, it merely allows for a carry-over if no one correctly selects all six winners. There will be no differential impact on any segment of the public.

Economic Impact

The economic impact of the proposed amendment is positive. The carry-over provision is expected to generate increased handles at the five New Jersey tracks which, in turn, will increase state revenues, purse money to participants, track share and breeder programs, since each of these receive a percentage of the handle by statute. An actual total dollar amount cannot be estimated. There should be no increased costs.

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

13:70-29.56 Super-Six [Pick-Six]

(a) The **Super-Six** [Pick-Six] (or other approved name) is a form of pari-mutuel wagering. Each bettor selects the first horse in each of six consecutive races designated as the **Super-Six** [Pick-Six] races by the **permitholder** [association]. The principle of a **Super-Six** [Pick-Six] is in effect a contract by the purchaser of a **Super-Six** [Pick-Six] ticket to select the winners of each of the six races designated as the **Super-Six** [Pick-Six].

(b) The **Super-Six** [Pick-Six] pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, trifecta or other wagering pool. The **Super-Six** [Pick-Six] pool is a pool wherein the bettor is required to select six consecutive winning horses and is not a parlay.

(c) **Super-Six** [Pick-Six] tickets shall be sold in not less than **\$1.00** [\$2.00] denominations and only from machines capable of issuing six numbers.

(d) Races in which **Super-Six** [Pick-Six] pools shall be conducted shall be approved by the Commission and clearly designated in the program.

(e) The design of **Super-Six** [Pick-Six] tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

(f) The **Super-Six** [Pick-Six] pari-mutuel pool shall be calculated as follows:

1. **100** [75] percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the **Super-Six** [Pick-Six]. [The remaining undistributed 25 percent of the net pool shall be distributed among the holders of pari-mutuel tickets which correctly designate the

most winning selections less than the six winning selections herein before described.]

2. In the event there is no pari-mutuel ticket held which correctly designates the winner of all races comprising the Super-Six [Pick-Six], 25 [75] percent of that racing date's net amount available for distribution shall be distributed among the holders of pari-mutuel tickets correctly designating the most winning selections of the six races comprising the Super-Six [Pick-Six], and the remaining undistributed 75 [25] percent of said pool shall be carried over and added to the pool on the next day on which wagering is conducted. [distributed among those ticket holders who have designated the next most winning selections among those races constituting the Pick-Six.]

3. If, on the last day on which the system of wagering is conducted at a horse race meeting, no bettor selects the winning horses in those races, the total amount of the pool which exists on that day in connection with those races shall be paid to the bettor or bettors who selected the largest number of winning horses in those races. In no event shall any part of the pool be carried over to the next year's race meeting.

(g) Those horses constituting an entry or a field as defined within the rules and regulations of the Commission shall race in any Super-Six [Pick-Six] race as a single wagering interest for the purpose of the Super-Six [Pick-Six] pari-mutuel pool calculations and payouts to the public. A scratch after wagering has begun of any part of an entry of field selection in such a race shall be of no effect with respect to the status of such entry and/or field as a viable wagering interest.

(h) In the event a horse is excused in any Pick-Six race, the amount representing the purchase price of that pari-mutuel ticket shall be withdrawn from the gross distributable amount in the pool and that total net value of all such withdrawn tickets shall be distributed as a consolation award among the holders of such withdrawn Pick-Six tickets designating the most winning selections. No ticket holder shall receive such a consolation prize in the event said ticket holder is a recipient of monies pursuant to subsection (f) of this section.]

(h) At any time after wagering begins on the Super-Six pool should a horse, entire betting entry or field be scratched or declared a non starter in any Super-Six race, no further tickets selecting such horse, betting entry or field shall be issued, and wagers upon such horse, betting entry or field, for purposes of the Super-Six pool shall be deemed wagers upon the horse, betting entry or field upon which the most money has been wagered in the win pool at the track at the close of win pool betting for such race. In the event of a money tie, the tied horse, betting entry or field with the most inside post position shall be designated.

(i)-(j) (No change.)

(k) If, for any reason, any race or races of a Super-Six [Pick-Six] program is cancelled and declared "No Race," the Super-Six [Pick-Six] pool shall be distributed to the holders of the most winning selections of the remaining races pursuant to [paragraph (f)2 of this section] (f)1 and 2 above. In the event the Stewards cancel or declare as "No Race" three or more of the Super-Six [Pick-Six] races for any given date, all pari-mutuel tickets for that Super-Six [Pick-Six] pool shall be refunded and the Super-Six [Pick-Six] cancelled for that day.

(l) In the event of a dead heat for win between two or more horses in any Super-Six [Pick-Six] race, all such horses in the dead heat for win shall be considered as the winning horse in the race for the purpose of distributing the Super-Six [Pick-Six] pari-mutuel pool.

(m) No person shall disclose the number of tickets sold in the Super-Six [Pick-Six] pool or the number or amount of tickets selecting winners of Super-Six [Pick-Six] races prior to the time the Judges have declared the last Super-Six [Pick-Six] race on any given date official.

(n) No pari-mutuel ticket for the Super-Six [Pick-Six] pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the six races comprising the Super-Six [Pick-Six], except for refunds as required by this section.

(o) This rule shall be prominently displayed throughout the betting area of each association conducting a Super-Six [Pick-Six] program[,] and in the official racing program.

(p) Should circumstances occur which are not foreseen in this section, questions arising thereby shall be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of Super-Six pools will be final.

(a)

### **Harness Rules: Super Six Proposed New Rule: N.J.A.C. 13:71-27.53**

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1986-272.

The agency proposal follows:

#### **Summary**

The new rule is being proposed as a result of Chapter 19, Public Law of 1986, which was signed into law in the State of New Jersey. Presently, tracks are able to take wagers where the bettor selects the first horse in each of six consecutive races. However, there is no carry-over provision, that is, the entire pool is returned to bettors each day regardless of whether or not anyone chooses all six winners. The enacted legislation would allow for a carry-over of 75 percent of the pool in the event no one successfully selects all six winners of the designated races. The remaining 25 percent would be distributed to the bettor who correctly designated the next winning selections that day. The rule is entitled "Super-Six" to avoid confusion with a lottery game called "Pick-Six."

#### **Social Impact**

The social impact of the proposed new rule is negligible. The rule does not authorize a new form of betting, it merely allows for a carry-over if no one correctly selects all six winners. There will be no differential impact on any segment of the public.

#### **Economic Impact**

The economic impact of the proposed new rule is positive. The carry-over provision is expected to generate increased handles at the five New Jersey tracks which, in turn, will increase state revenue, purse money to participants, track share and breeder programs, since each of these receive a percentage of the handle by statute. An actual total dollar amount cannot be estimated. There should be no increased costs.

Full text of the proposed new rule follows.

13:71-27.53 Super-Six

(a) The Super-Six (or other approved name) is a form of pari-mutuel wagering. Each bettor selects the first horse in each of six consecutive races designated as the Super-Six races by the permitholder. The principle of a Super-Six is in effect a contract by the purchaser of a Super-Six ticket to select the winners of each of the six races designated as the Super-Six.

(b) The Super-Six pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, trifecta or other wagering pool. The Super-Six pool is a pool wherein the bettor is required to select six consecutive winning horses and is not a parlay.

(c) Super-Six tickets shall be sold in not less than \$1.00 denominations and only from machines capable of issuing six numbers.

(d) Races in which Super-Six pools shall be conducted shall be approved by the Commission and clearly designated in the program.

(e) The design of Super-Six tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

(f) The Super-Six pari-mutuel pool shall be calculated as follows:

1. 100 percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the Super-Six.

2. In the event there is no pari-mutuel ticket held which correctly designates the winner of all races comprising the Super-Six, 25 percent of that racing date's net amount available for distribution shall be distributed among the holders of pari-mutuel tickets correctly designating the most winning selections of the six races comprising the Super-Six, and the remaining undistributed 75 percent of said pool shall be carried over and added to the pool on the next day on which wagering is conducted.

3. If, on the last day on which this system of wagering is conducted at a horse race meeting, no bettor selects the winning horses in those races, the total amount of the pool which exists on that day in connection with those races shall be paid to the bettor or bettors who selected the largest number of winning horses in those races. In no event shall any part of the pool be carried over to the next year's race meeting.

(g) Those horses constituting an entry or a field as defined within the rules and regulations of the Commission shall race in any Super-Six race as a single wagering interest for the purpose of the Super-Six pari-mutuel

pool calculations and pay-outs to the public. A scratch after wagering has begun of any part of an entry of field selection in such a race shall be of no effect with respect to the status of such entry and/or field as a viable wagering interest.

(h) At any time after wagering begins on the Super-Six pool should a horse, entire betting entry or field be scratched or declared a non starter in any Super-Six race, no further tickets selecting such horse, betting entry or field shall be issued, and wagers upon such horse, betting entry or field, for purposes of the Super-Six pool shall be deemed wagers upon the horse, betting entry or field upon which the most money has been wagered in the win pool at the track at the close of win pool betting for such race. In the event of a money tie, the tied horse, betting entry or field with the most inside post position shall be designated.

(i) After off-time, there shall be no refund in either of the cases, provided for in (h) above.

(j) For the purpose of this section, when horses are prevented from starting by any malfunction of the starting gate itself they shall be considered as having been excused by the judges.

(k) If, for any reason, any race or races of a Super-Six program is cancelled and declared "No Race," the Super-Six pool shall be distributed to the holders of the most winning selections of the remaining races pursuant to (f)1 and 2 above. In the event the Stewards cancel or declare as "No Race" three or more of the Super-Six races for any given date, all pari-mutuel tickets for that Super-Six pool shall be refunded and the Super-Six cancelled for that day.

(l) In the event of a dead heat for win between two or more horses in any Super-Six race, all such horses in the dead heat for win shall be considered as the winning horse in the race for the purpose of distributing the Super-Six pari-mutuel pool.

(m) No person shall disclose the number of tickets sold in the Super-Six pool or the number or amount of tickets selecting winners of Super-Six races prior to the time the Judges have declared the last Super-Six race on any given date official.

(n) No pari-mutuel ticket for the Super-Six pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the six races comprising the Super-Six, except for refunds as required by this section.

(o) This rule shall be prominently displayed throughout the betting area of each association conducting a Super-Six program and in the official racing program.

(p) Should circumstances occur which are not foreseen in this section, questions arising thereby shall be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of Super-Six pools will be final.

## ENERGY

### DIVISION OF ENERGY PLANNING AND CONSERVATION

#### (a)

#### Business Energy Improvement Subsidy Program Proposed Amendments: N.J.A.C. 14A:6-2

Authorized By: Charles A. Richman, Acting Commissioner,  
Department of Energy.

Authority: N.J.S.A. 52:27F-11g and m; Pub. L. No. 97-377  
(1982).

Proposal Number: PRN 1986-256.

Submit comments by August 6, 1986 to:

Edward J. Linky  
Chief Regulatory Officer  
Department of Energy  
101 Commerce Street  
Newark, New Jersey 07102

The agency proposal follows:

#### Summary

The proposed amendments to N.J.A.C. 14A:6-2 are made to the rules governing the Business Energy Improvement Subsidy Program. The amendments are needed because of the receipt by the department, of Petroleum Violation Escrow Funds from the United States Department of Energy. These funds require state governments to establish restitutionary mechanisms to return these funds to the class of citizens injured

in the 1970s by violation of federal price controls on various classifications of crude oil. The New Jersey Department of Energy has determined that this subsidy program is a proper restitutionary mechanism by which a broad class of petroleum consumers in the state can be made whole from the economic injuries received in the 1970s. In addition, the subsidy program will promote energy conservation renovation for businesses and alternate energy production facilities.

The relatively high funding levels associated with this expanded program warrant that the department receive applications that are ready for project financing and implementation. This means that applications for projects in the conceptual stage will not be accepted for filing. Successful applicants will have 90 days from the date of the award of the subsidy to obtain all necessary federal, state, or local approvals for their project. The department will grant extensions of this deadline upon formal request by the grantee. The department imposes this requirement to ensure that only viable projects will continue to receive the benefits of this program.

#### Social Impact

The proposed amendments will have a positive social impact. The amendments expand a program which promotes investments by businesses in energy conservation equipment and renovations of existing structures and equipment, thereby creating employment and conserving energy. Of equal importance, the funds used to expand this program are Petroleum Violation Escrow funds which were recovered by the federal government and returned to the states. These funds must be allocated to the class of petroleum consumers injured during the period in which the federal regulations of the pricing of crude oil were violated. States are free to fashion the appropriate restitutionary mechanism for the return of these funds. The task of identifying each individual injured by the violation of the crude oil price regulations is impossible. The department has devised this program as one restitutionary mechanism for ameliorating the injury suffered by New Jersey consumers.

#### Economic Impact

It is anticipated that this program will have a positive economic impact in several areas. The program will spur both small and large businesses to invest in either the purchase of new energy saving equipment or, alternatively, will result in the renovation of existing equipment, thereby creating jobs and conserving energy dollars that would in all probability leave the state's economy.

Specific requirements in these regulations will ensure that projects which receive the benefits of the subsidy must move forward in a timely fashion or lose the subsidy. The department is committed to funding appropriate projects in an expeditious manner thereby insuring that the Petroleum Violation Escrow funds are returned to the state's economy as quickly as possible.

#### Environmental Impact

It is anticipated that this program will have a positive environmental impact. By causing investment in energy conservation equipment or in the renovation of existing equipment, less fossil fuel will be consumed by business thereby reducing local air pollution. By reducing overall energy demand such investments in energy conservation equipment can result in better electric and natural gas load management by the state's public utilities. More effective load management results in the more efficient use of energy and better natural resource management improving environmental quality.

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

### CHAPTER 6 GRANT[S] AND LOAN[S] PROGRAMS

#### SUBCHAPTER 2. BUSINESS ENERGY IMPROVEMENT [LOAN] SUBSIDY PROGRAM

##### 14A:6-2.1 Scope and purpose

(a) This subchapter establishes the rules governing the Business Energy Improvement [Loan] Subsidy Program. The Program provides [interest] subsidies [for certain loans obtained by] to eligible businesses for energy conservation renovations[.], **energy conserving construction and alternative energy production facilities.** The [interest] subsidies are intended to encourage **these purposes** [the installation of energy conservation renovations by businesses] by reducing the [effective interest rate on loans for such renovations.] **cost of these projects.**

(b) **The program is designed to assist mature projects that are beyond the conceptual stage.**

14A:6-2.2 Definitions

**"Alternative Energy Production Facility"** means a facility that produces energy by using: (a) solar technologies; (b) hydro power; (c) wind power; (d) cogeneration; or (e) recovery from solid waste.

**"Applicant"** means the owner or lessee of an eligible business who [that] applies for a[n interest] subsidy pursuant to this subchapter.

**"Application"** means a Business Energy Improvement [Loan] Subsidy application.

**"Commissioner"** means the Commissioner of the Department or its successor.

**"Department"** means the New Jersey Department of Energy or its successor.

**"Eligible business"** means:

1. Businesses meeting the Small Business Administration definition of small business contained in 13 C.F.R. Part 121.2 (49 F.R. 5030-37);

2. **Qualified Urban Enterprise Zone businesses as defined in P.L. 1983 c.303, and**

3. Multi-family buildings, condominiums, cooperatives and not-for-profit businesses, but not including religiously-owned or affiliated businesses, which are located in New Jersey.

**"Eligible loan"** means a loan made by a lender to the applicant for energy conservation renovations or **alternative energy production facility**, which meets the requirements of N.J.A.C. 14A:6-2.6.

**"Energy conservation renovation"** means any equipment, materials, alterations or improvements installed within an existing structure owned or leased by an eligible business that reduce energy consumption [in] or increase [the] energy efficiency [of an eligible business], and which have been approved by the Department pursuant to N.J.A.C. 14A:6-2.7, but shall not include new construction or energy conservation renovations installed prior to approval of a Business Energy Improvement [Loan] Subsidy application by the Department.

**"Energy conserving construction"** means materials, practices or equipment that exceeds the energy efficiency of those required under the **"Energy Subcode"**, N.J.A.C. 14A:3-4 as amended. Only Urban Enterprise Zone businesses are eligible for energy conserving construction subsidies.

**"Grant"** means full payment for the incremental cost of using materials, practices and equipment that exceed those required under the **"Energy Subcode"**, N.J.A.C. 14A:3-4, as amended, in lieu of using materials, practices and equipment that only meet the **"Energy Subcode"**, N.J.A.C. 14A:3-4, as amended.

**"Interest subsidy"** means funds provided by the Department to reduce the effective interest rate on an eligible loan.

**"Lender"** means State chartered banks, savings banks, savings and loan associations, national banks, federally-chartered savings and loan associations, approved out of State banks, economic development agencies, and other corporations authorized to transact the business of banking.

**"Multi-family buildings"** means owners and other proprietors of multi-family buildings used for residential occupancy and containing five or more dwelling units[, but not including condominiums, cooperatives and similar property regimes].

**"Program"** means the Business Energy Improvement [Loan] Subsidy Program established by this subchapter.

**"Urban Enterprise Zone"** or **"Enterprise Zone"** means an area that has been designated by the Commissioner of Community Affairs as an **"area in need of rehabilitation"** under the five-year tax abatement process (P.L. 1977, c.12 (C.54:4-3.95 et. seq.) or is qualified for that designation, and meets the criteria established by the Enterprise Zone Authority.

14A:6-2.3 Program duration and limitation of funding

(a) The number and amount of interest subsidies and the duration of the Program shall depend on the availability of sufficient revenues to cover interest subsidies previously approved by the Department and to provide sufficient monies for further interest subsidies. [The Business Energy Improvement Loan Subsidy Program shall continue only so long as funds remain available to the Department for the Program.]

(b) The Commissioner may [terminate] **suspend** the Program (with respect to new applicants) in the event that funds are exhausted or the anticipated demand for interest subsidies exceeds available funds.

(c) **Upon receipt of a subsidy, the applicant shall have 90 days to obtain all state, federal or local permit approvals or petition the Department for an extension with full explanation of the reason for the extension.**

14A:6-2.4 Requests for applications

The Department shall make available Business Energy Improvement [Loan] Subsidy applications on request, until the Program is [terminated] **suspended** pursuant to N.J.A.C. 14A:6-2.3.

14A:6-2.5 Submission requirements

(a) Each Business Energy Improvement [Loan] Subsidy application submitted to the Department shall include the following information:

1. Name and address of the applicant.

2. A precise description of each energy conservation renovation, **energy conserving construction or alternative energy production facility** for which [an interest] subsidy is sought.

3. **For energy conservation renovations**, [A] an analysis of the energy conservation renovation requirements of the eligible business[, which] shall be comprised of: [i.] [i.] the results of a Commercial and Apartment Conservation Service (CACCS) energy audit, Commercial Light Industrial Energy Technical Service (CLIENTS) survey, or other energy consumption and cost analysis of the eligible business approved by the Department. [; and]

4. **For energy conserving renovations and energy conserving construction, the following information shall be submitted:**

[i.] [i.] A reasonable construction bid with respect to the energy conserving renovations or **energy conserving construction**, including cost estimates for each energy conservation renovation or **energy conserving construction**. The construction bid shall be accompanied by the following:

(1) A sworn statement by the bidder, or an officer or partner of the bidder, indicating that the bidder is not, at the time of the construction bid, included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders; and

(2) A certification that, where applicable, the bidder is in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 et seq. and the rules and regulations promulgated pursuant thereto.

[4.] [ii.] Engineering calculations and energy savings calculations for each energy conservation renovation or **energy conserving construction**.

[5.] [iv.] The simple payback period and calculations for each energy conservation renovation or **energy conserving construction**. Only energy conservation renovations or **energy conserving construction** having a simple payback period of less than or equal to five years shall be included in the application and shall be eligible for [an interest] subsidy.

5. **For alternative energy production facilities, the following shall be submitted:**

i. An engineering analysis detailing:

(1) **Cost of construction of the facility including a reasonable construction bid;**

(2) **Type and quantity of alternative energy units produced;**

(3) **Cost of production per unit;**

(4) **Total avoided energy cost of conventional energy sources resulting from the alternative energy production units;**

(5) **Avoided energy cost per unit;**

(6) **Overall cost benefit of the facility.**

6. **For energy conserving renovations and alternative energy production facilities a [A] commitment by a lender for an eligible loan and the terms thereof; provided, however, that in the event that the commitment is not available on the date of submission of the application, same may be submitted as a supplement to the application, in accordance with the provisions of N.J.A.C. 14A:6-2.7(c)2 [(b)1.] ii.**

7. **For energy conserving construction, evidence that capital expenditures sufficient to cover the construction cost estimate provided under (a)4i. above, will be made.**

8.[7.] Such additional information as may be required by the Department to provide a complete and accurate description of the project.

(b) All calculations with respect to information contained in the application and any supporting documents shall be based on the energy estimating methods of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. ("ASHRAE"), including all revisions and updates adopted by ASHRAE. Copies of the document may be obtained from ASHRAE, Inc., [1971] 1791 Tullie Circle, N.E., Atlanta, Georgia 30329.

14A:6-2.6 Eligible loans

(a) Only eligible loans shall be reviewed by the Department for interest subsidies pursuant to N.J.A.C. 14A:6-2.8[7]. In order to be eligible for an interest subsidy, the loan shall meet the following requirements:

1. The loan (and any supporting or related documents) shall:

i. Be for the purpose of financing the installation of energy conservation renovations or **alternative energy production facilities** that meet the requirements of N.J.A.C. 14A:6-2.5 and that are approved by the Department pursuant to N.J.A.C. 14A:6-2.8[7].

ii. State separately [in the loan] the amount representing the principal, interest, [interest accruals] and penalties with respect to **all** [each] energy

conservation renovations[,] or **alternative energy production facility**, and separately account for same for each energy conservation renovation or **alternative energy production facility** during the term of the loan;

iii. Be for an amount (of principal) of not more than [\$250,000.]:

(1) \$500,000 for Energy Conservation Renovations;

(2) \$12,000,000 for Alternative Energy Production Facilities.

iv. Have a term of not more than five years for loans up to \$500,000 and a term of not more than 20 years for loans up to \$12,000,000.

v. Have a fixed interest rate; provided, however, that in the event of a substantial change in commercial loan market conditions, the Commissioner may, in his discretion, modify the requirement specified herein.

vi. Be amortized according to a predetermined monthly amortization schedule.

vii. Not obligate or render the Department liable to pay the lender or the applicant at any time, any amount of principal, interest, interest accruals or penalties, for any reason, including but not limited to:

(1) The default or late payment of the eligible loan by the applicant.

(2) Failure to pay, withholding of payment or seeking the return of the interest subsidy by the Department.

viii. Have been reviewed and approved by the lender in accordance with standard procedures.

(b) The Department does not guarantee the approval by lenders of loans for energy conservation renovations or **alternative energy production facility**. Applicants that are denied loans shall have no recourse to the Department. The Department shall not participate in any manner in any aspect of the lender's loan review process.

#### 14A:6-2.7 Eligible grants

In order to be eligible for a subsidy, the grant shall be for the purpose of financing the **energy conserving construction that meets the requirements of N.J.A.C. 14A:6-2.5 and that is approved by the Department pursuant to N.J.A.C. 14A:6-2.8.**

#### 14A:6-2.[7]8 Application and review procedures

(a) Applicants shall submit to the Department a completed Business Energy Improvement [Loan] Subsidy application. The application shall bear either a legible (non-metered) postmark or a date stamp from the Department's Office of Operations indicating that the application was submitted on or before any deadline established pursuant to N.J.A.C. 14A:6-2.3.

(b) The Department shall conduct a review of the applications commencing with the application bearing the earliest submission date. The Department may require the submission of additional information to complete the application or may require the resubmission of the entire application if incomplete. The Department shall review the applications to determine whether:

1. The application is made on behalf of an eligible business;

2. The application covers energy conservation renovations[,], **energy conserving construction or alternative energy production facilities**;

3. The application is complete as to form (required documentation is present and complete);

4. The application is complete as to the submission requirements of N.J.A.C. 14A:6-2.5;

5. The engineering calculations and other technical matters with respect to the energy conservation renovations, **energy conserving construction or alternative energy production facilities** are accurate and correct; and

6. The energy conservation renovations or **energy conserving construction** are appropriate for the eligible business.

(c) Upon completion of the review of an application pursuant to (b) [(a)] above, the Department shall notify the applicant in writing whether the application has been approved, approved with the condition that an eligible loan be obtained, or denied. Interest subsidies or grants shall be extended to applicants in the order that applications are approved.

1. In the event that an application is approved a [an interest] subsidy agreement shall be executed pursuant to (d)[(c)] below.

2. In the event that an application is approved with the condition that the applicant obtain an eligible loan, the Department shall:

i. Indicate preliminarily in writing, the terms of which an interest subsidy will be extended to the applicant, including but not limited to the energy conservation renovations for which the interest subsidy will be extended and the amount of the interest subsidy.

ii. Allow the applicant a period of 30 calendar days from the date of approval of the application to obtain an eligible loan on the terms which include any requirements established pursuant to (e)[(b)]2i. above [above i], and to file same with the Department.

iii. In the event that an eligible loan is not obtained for the energy

conservation renovations or the **alternative energy production facilities** approved by the Department within the 30 calendar day period, the Department may, in its discretion, extend the period for obtaining and filing the loan for an additional 30 calendar days. Upon filing of the loan by the applicant, the Department shall review the loan for eligibility in accordance with the requirements of N.J.A.C. 14A:6-2.6. The Department shall notify the applicant whether the application is approved pursuant to (c)[(b)]1 above or denied pursuant to (e)[(b)]3 below.

iv. Failure of the applicant to obtain an eligible loan by the conclusion of the appropriate 30 calendar day period and to file same with the Department shall result in a denial of the application.

v. In the event that a loan is obtained for energy conservation renovations or **alternative energy production facilities** on terms other than those approved by the Department, the applicant shall be required to file a new application with the Department pursuant to N.J.A.C. 14A:6-2.5 in order to be considered for an interest subsidy.

3. In the event that an application is denied, the applicant shall be ineligible to receive [an interest] a subsidy for the particular energy conservation renovations, **energy conserving construction or alternative energy production facilities** included in the application and shall not be permitted to submit another application for the same projects [energy conservation renovations].

(d) Upon approval of an application pursuant to (c)[(b)]1 above, the Department and the applicant shall execute in writing a [n interest] subsidy agreement, which shall include but not be limited to provisions specifying the energy conservation renovations, **energy conserving construction or the alternative energy production facilities** to which the [interest] subsidy shall apply, the terms and conditions on which the [interest] subsidy shall be made by the Department, the amount of the [interest] subsidy and the payment schedule and the effect of prepayment on any outstanding balance of an [the] interest subsidy. All [interest] subsidy agreements, whether specifically stated therein or not, shall be subject to the provisions of this subchapter.

#### 14A:6-2.[8]9 Conditions for payment of [interest] subsidies

(a) The Department shall pay [interest] subsidies directly to the applicant. [on the following terms:]

(b) **The following terms govern payment of interest subsidies:**

1. The applicant shall be solely responsible and liable for repayment of the principal, interest, interest accruals and penalties with respect to the eligible loan. The Department shall not be liable to the applicant for the repayment of principal, interest, interest accruals or penalties.

2. Interest subsidies shall be made by the Department at 50 percent of the lender's commercial lending rate up to 600 basis points; provided, however, that in the event of a substantial increase or decrease in commercial lending rates, the Commissioner may, in his discretion, modify the percentage or basis points available to applications for which an interest subsidy agreement has not been executed pursuant to N.J.A.C. 14A:6-2.7(c).

3. Interest subsidies shall be paid by the Department at intervals not exceeding six months in accordance with the terms of the interest subsidy agreement.

4. **The Department may in its discretion, pay the entire subsidy in one initial lump-sum payment at a negotiable discount rate no lower than six percent. The total value of the subsidy will be the same if the prepaid subsidy were invested at the negotiable discount rate compounded semi-annually over the term of the loan.**

[4.]5. The applicant shall provide, or cause to be provided, to the Department, at intervals not exceeding six months, and commencing not more than six months after the due date of the first repayment of the eligible loan, a certification that repayment of the eligible loan is being made timely to the lender, in accordance with the terms of the interest subsidy agreement. The certification shall be in the form of an official audit confirmation from the lender. **This confirmation is due 15 days prior to the scheduled subsidy payment.**

#### 14A:6-2.[9]10 Monitoring

[(a)] The Department shall monitor all work related to energy conservation renovations, **energy conserving construction or alternative energy production facilities** that are the subject of an [interest] subsidy agreement by the Department. "Monitoring" shall include, but not be limited to, reviewing plans, specifications and other documents and information and conducting on-site inspections to assess the progress and completion of work. The applicant shall comply promptly with all requests by the Department to conduct monitoring activities.

#### 14A:6-2.[10]11 Recission and withholding of funds

(a) The Department, in addition to any other rights or remedies avail-

able pursuant to law, may withhold or rescind payment of [an interest] a subsidy or any portion thereof for good cause. Such withholding or rescission shall terminate the obligation of the Department to make further payments of [interest] subsidies to the applicant. The term "good cause" shall include, but not be limited to the following:

1. Failure to comply with the requirements of this subchapter, or other applicable State laws or regulations.
2. Failure to comply with any condition or requirement of the [interest] subsidy agreement.
3. Submission of false or misleading information, or failing to submit relevant information to the Department.
4. Non-payment or failure to make timely repayment of an eligible loan, or declaration by the lender that the applicant is in default of an eligible loan.
5. Insolvency, bankruptcy or other condition affecting the financial integrity of the applicant.
6. Use of the [interest] subsidy for any purpose other than as specified in the [interest] subsidy agreement.
7. Inability or failure to install the energy conservation renovations, **energy conserving construction or the alternative energy production facility** in a timely manner, **absent force majeure or other exigent circumstances.**
8. Failure to provide documentation with respect to the installation of energy conservation renovations, **energy conserving construction or the building of alternative energy production facility.**
9. Modification of the terms of the eligible loan without express written consent of the Department.

(b) [Interest s]Subsidies shall be withheld or rescinded according to the following procedures:

1. The Department shall give written notice to the applicant of its intent to withhold or rescind [an interest] a subsidy in whole or in part.
2. Prior to the withholding or rescission of the [interest] subsidy the Department shall afford the applicant a period of 20 days, commencing on the date of written notice, to consult the Department in the matter, **and cure the issues forcing rescission.** The Department may, thereafter, withhold or rescind the [interest] subsidy in whole or in part. The withholding or rescission **determination** shall be in writing and shall be effective on the date such action is taken. **The determination will be provided to the applicant.**
3. The determination to withhold or rescind [an interest] a subsidy shall be solely within the discretion of the Department **and is not subject to further review by the Department.**

(c) In the event that a[n interest] subsidy is withheld or rescinded by the Department the applicant shall refund immediately the total amount of [interest] subsidy paid by the Department as of the date of rescission or withholding.

1. The Department shall return all rescinded monies to the Business Energy Improvement [Loan] Subsidy Program.

14A:6-2.[11]12 Severability

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

## TRANSPORTATION

### TRANSPORTATION OPERATIONS

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

Submit comments by August 6, 1986 to:

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

#### (a)

#### Restricted Parking and Stopping

**Truck Route U.S. 1 and 9 in Hudson County, Routes 38 in Burlington County, 33 in Monmouth County, 67 in Bergen County and 168 in Camden County**

**Proposed Amendments: N.J.A.C. 16:28A-1.23, 1.27, 1.51 and 1.71**

**Proposed New Rules: N.J.A.C. 16:28A-1.106**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139, 39:4-199.

Proposal Number: PRN 1986-257.

The agency proposal follows:

#### Summary

The proposed new rule and amendments will establish "no parking" zones along Truck Route U.S. 1 and 9 in the City of Jersey City, Hudson County, and Route 38 in Mount Laurel Township, Burlington County and "no parking bus stop" zones along routes 33 in Howell Township, Monmouth County; 67 in Fort Lee Borough, Bergen County and 168 in Gloucester Township, Camden County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon requests from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking" zones along Truck Route U.S. 1 and 9, and Route 38, and "no parking bus stop" zones along Routes 33, 67 and 168 were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.23, 1.27, 1.51 and 1.71 and add new rule N.J.A.C. 16:28A-1.106 based upon the requests from local officials and the traffic investigations.

#### Social Impact

The proposed new rule and amendments will establish "no parking" zones along Truck Route U.S. 1 and 9 in the City of Jersey City, Hudson County and Route 38 in Mount Laurel Township, Burlington County and "no parking bus stop" zones along Routes 33 in Howell Township, Monmouth County; 67 in Fort Lee Borough, Bergen County and 168 in Gloucester Township, Camden County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers of 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 "no parking" zones signs and the local officials will bear the costs for "no parking bus stop" zones 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-1.106 Truck Route U.S. 1 and 9**

(a) **The certain parts of State highway Truck Route U.S. 1 and 9 which runs from mile post 51 to mile post 54.5 (approximately 4.14 miles), below the Pulaski Skyway, 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 the City of Jersey City, Hudson County:**

**i. Along both sides of Truck route U.S. 1 and 9:**

(1) For the entire length including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

16:28A-1.23 Route 33

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

(c) The certain parts of State highway Route 33 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.-6. (No change.)

7. Along the eastbound (southerly) side in Howell Township, Monmouth County:

i. (See adoption at 18 N.J.R. 1105(a).)

ii. **Mid-block bus stop:**

(1) **Between Howell Road and Fairfield—Beginning 1,037 feet east of the easterly curb line of Howell Road and extending 135 feet easterly therefrom.**

8. Along the westbound (northerly) side in Howell Township, Monmouth County:

i. (See adoption at 18 N.J.R. 1105(a).)

ii. **Mid-block bus stop:**

(1) **Between Five Points Road and Brickyard Road—Beginning 1,037 feet east of the easterly curb line of Five Points Road and extending 135 feet easterly therefrom.**

16:28A-1.27 Route 38

(a) The certain parts of State highway Route 38 described in this section are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:3]4-139.

1.-3. (No change.)

4. No stopping or standing in Mount Laurel Township, Burlington County:

i. Along both sides:

(1) (No change.)

(2) **From the easterly curb line of Ark Road to a point 650 feet easterly therefrom, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.**

(b) (No change.)

16:28A-1.51 Route 168

(a) (No change.)

(b) The certain parts of State highway Route 168 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.-5. (No change.)

6. **Along the northbound (easterly) side in Gloucester Township, Camden County:**

i. **Mid-block bus stop:**

(1) **Erial Road—Beginning 200 feet south of the southerly curb line of Erial Road and extending 135 feet southerly therefrom.**

16:28A-1.71 Route 67

(a) The certain parts of State highway Route 67 described in [the] 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 westerly (southbound) side in Fort Lee Borough, Bergen County:

i. (No change.)

ii. **Far side bus stops:**

(1) Along [Palisade] Lemoine Avenue:

(A) (No change.)

(B) **Palisade Avenue—Beginning at the prolongation of the southerly curb line of Palisade Avenue and extending 100 feet southerly therefrom.**

iii. **Near side bus stop:**

(1) **Along Lemoine Avenue:**

(a) **Myrtle Avenue—Beginning at the northerly curb line of Myrtle Avenue and extending 107 feet northerly therefrom.**

(b) **Lincoln Avenue—Beginning at the northerly curb line of Lincoln Avenue and extending 155 feet northerly therefrom.**

(c) **Whiteman Street—Beginning at the northerly curb line of Whiteman Street and extending 155 feet northerly therefrom.**

iv. **Mid-block stop:**

(1) **Along Lemoine Avenue:**

(a) **Between Main Street and Bridge Plaza South—Beginning 132 feet north of the northerly curb line of Main Street and extending 149 feet northerly therefrom.**

2. (No change.)

3. Along the easterly (northbound) side in Fort Lee Borough, Bergen County:

i. **Far side bus stops:**

(1) **Along Lemoine Avenue:**

[(1)] (A) (No change.)

(B) **Palisade Avenue—Beginning at the northerly curb line of Palisade Avenue and extending 155 feet northerly therefrom.**

(C) **Main Street—Beginning at the northerly curb line of Main Street and extending 130 feet northerly therefrom.**

(D) **Bridge Plaza South—Beginning at the northerly curb line of Bridge Plaza South and extending 150 feet northerly therefrom.**

(E) **Lincoln Avenue—Beginning at the prolongation of the northerly curb line of Lincoln Avenue and extending 140 feet northerly therefrom.**

(F) **Myrtle Avenue—Beginning at the northerly curb line of Myrtle Avenue and extending 101 feet northerly therefrom.**

[(2)] Along Palisade Avenue:]

[(A)](G) **Kensington Road—Beginning at the northerly curb line of Kensington Road and continuing to a point 120 feet north thereof.**

**(a)**

**Restricted Parking and Stopping  
Route U.S. 9W in Bergen County**

**Proposed Amendment: N.J.A.C. 16:28A-1.61**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-199.

Proposal Number: PRN 1986-259.

The agency proposal follows:

**Summary**

The proposed amendment will establish "no parking" bus stop zones along Route U.S. 9W in Englewood Cliffs Borough, Bergen County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon a request from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no parking" bus stop zones along Route U.S. 9W in Englewood Cliffs Borough, Bergen County were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.61 based upon the request from local officials and the traffic investigation.

**Social Impact**

The proposed amendment will establish "no parking" bus stop zones along Route U.S. 9W in Englewood Cliffs Borough, Bergen County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The local officials will bear the costs for "no parking bus stop" zones 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-1.61 Route U.S. 9W

(a) The certain parts of State highway Route U.S. 9W 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. (No change.)

2. Along the westerly (southbound) side in Englewood Cliffs Borough, Bergen County:

i. **Far side bus stops:**

(1)-(6) (No change.)

(7) **John Street**—Beginning at the southerly curb line of John Street and extending 140 feet southerly therefrom.

ii. Near side bus stops:

(1)-(2) (No change.)

(3) **Charlotte Place**—Beginning at the northerly curb line of Charlotte Place and extending [105] 170 feet northerly therefrom.

(4) **Middlesex Avenue**—Beginning at the northerly curb line of Middlesex Avenue and extending 155 feet northerly therefrom.

(5) **West Bayview Avenue**—Beginning at the northerly curb line of West Bayview Avenue and extending 155 feet northerly therefrom.

3. Along the easterly (northbound) side in Englewood Cliffs Borough, Bergen County:

i. Far side bus stops:

(1)-(6) (No change.)

(7) **Middlesex Avenue**—Beginning at the prolongation of the northerly curb line of Middlesex Avenue and extending 231 feet northerly therefrom.

ii. Near side bus stops:

(1) **Palisades Avenue** [near side, 120 feet]—Beginning at the southerly curb line of Palisades Avenue and extending 178 feet southerly therefrom.

(2) **Sage Road** [(near side),—120 feet.

(3) **Charlotte Place**—Beginning at the southerly curb line of Charlotte Place and extending [105] 155 feet southerly therefrom.

(4) **Clendinen Place**—Beginning at the southerly curb line of Clendinen Place and extending [105] 170 feet southerly therefrom.

(5) **Bayview Avenue**—Beginning at the southerly curb line of Bayview Avenue and extending 180 feet southerly therefrom.

4.-7. (No change.)

(b) (No change.)

(a)

**Turns**

**Route 35 in Middlesex County**

**Proposed Amendment: N.J.A.C. 16:31-1.4**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-183.6.

Proposal Number: PRN 1986-250.

The agency proposal follows:

**Summary**

The proposed amendment will establish "no left turn" movement along Route 35 in Sayreville Borough, Middlesex County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from 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 left turn" movement along Route 35 in Sayreville Borough, Middlesex County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:31-1.4 based upon the request from local officials and the traffic investigation.

**Social Impact**

The proposed amendment will establish "no left turn" movement along Route 35 in Sayreville Borough, Middlesex County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local 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 "no left turn" signs. Motorists who violate the rule will be assessed the appropriate fine.

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

16:31-1.4 Route 35

(a) Turning movements of traffic on the certain parts of State highway Route 35 described [below] in this section are regulated as follows:

1. No left turn:

i.-x. (No change.)

xi. **North to west into the Amboy Cinema driveway in Sayreville Borough, Middlesex County.**

2. (No change.)

**TREASURY-GENERAL**

**DIVISION OF PENSIONS**

Proposals numbered PRN 1986-253 and 266 are authorized by Anthony Ferrazza, Secretary, Prison Officers' Pension Fund Commission.

Submit comments by August 6, 1986 to:

Peter J. Gorman, Esq.  
Administrative Practice Officer  
Division of Pensions  
20 West Front St.  
CN 295  
Trenton, New Jersey 08625

(b)

**Prison Officers' Pension Fund  
Election of Commission Members**

**Proposed Amendment: N.J.A.C. 17:7-1.4**

Authority: N.J.S.A. 43:7-19.

Proposal Number: PRN 1986-253.

The agency proposal follows:

**Summary**

The proposed amendment permits a person who is the only candidate nominated for a position as a member of the Prison Officers' Pension Fund Commission to be deemed elected to that position without balloting. The proposed amendment will eliminate needless expenses in situations where only one candidate has been nominated and there is no contest in the election. The proposed procedure will streamline the election process for members of the Prison Officers' Pension Fund Commission.

**Social Impact**

The proposed amendment will affect future candidates who seek election for the position of member of the Prison Officers' Pension Fund Commission in that any unopposed candidate will be deemed elected without balloting.

**Economic Impact**

The proposed amendment will have no adverse economic impact upon any of the persons who may be affected by the proposed amendment. The proposed amendment may in fact reduce the administrative costs of conducting such unopposed elections without damaging the candidates involved in such elections.

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

17:7-1.4 Election of member-commission

(a) The procedure for the election of a prison officer representative to the commission will involve:

1.-2. (No change.)

3. Ballots will be printed for each eligible member.

i.-viii. (No change.)

ix. **If only one candidate is nominated for a position, the candidate is deemed elected to the position without balloting.**

**STATE INVESTMENT COUNCIL**

Proposals numbered PRN 1986-254 and 255 are authorized by the State Investment Council, Roland M. Machold, Director, Division of Investment.

Submit comments by August 6, 1986 to:

Roland M. Machold  
Administrative Practice Officer  
Division of Investment  
349 West State Street  
CN 290  
Trenton, New Jersey 08625

**(a)****Common and Preferred Stocks and Issues  
Convertible into Common Stock  
Limitations****Proposed Amendments: N.J.A.C. 17:16-17.1 and  
17.3**

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1986-254.

The agency proposal follows:

**Summary**

The proposal amends current limitations on common and preferred stocks and issues convertible into common stock. Investment in common and convertible preferred stock in any one corporation is raised from a limit of two percent to a limit of four percent of the book value of the assets of the pension funds.

The total amount of purchases or acquisition of the common stock and convertible preferred stock of any one corporation is raised from a maximum of five percent to a maximum of 10 percent.

The amendment to N.J.A.C. 17:16-17.1(e)1. corrects a cross-reference citation to another rule.

**Social Impact**

The changes in N.J.A.C. 17:16-17.3 permit higher book value limits and higher percentages of stock purchases of any one corporation. The South African divestiture law (C. 308 P.L. 1985), limits the number of companies eligible for investment by the pension funds, and the increases cited help maintain access to the equities market.

**Economic Impact**

There is a possible benefit of increased returns through use of a higher percentage limit for common and preferred stock and higher percentage of acquisition of any one corporation.

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

**SUBCHAPTER 17. COMMON AND PREFERRED STOCKS AND  
ISSUES CONVERTIBLE INTO COMMON  
STOCK****17:16-17.1 Permissible investments**

(a)-(d) (No change.)

(e) Notwithstanding the above restrictions, the Director may:

1. Exercise the conversion privileges in the common stock of any security acquired under this Subchapter or Subchapter [8] 7 of this Chapter.

2.-3. (No change.)

**17:16-17.3 Limitations**

(a) (No change.)

(b) Not more than [two] **four** percent of the book value of any fund shall be invested in the common and preferred stock of any one corporation except that this limitation for the Trustees for the Support of Public Schools shall be 10 percent.

(c) The total amount of stock purchased or acquired of any one corporation shall not exceed [five] **10** percent of the common stock, or of any other class of stock which entitles the holder thereof to vote at all elections of directors, of such corporation.

**(b)****Repurchase Agreements  
Permissible Investments****Proposed Amendment: N.J.A.C. 17:16-37.1**

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1986-255.

The agency proposal follows:

**Summary**

The proposed amendment would permit investment in wholly-owned subsidiaries of banks or trust companies. This is being done because some major banks are now establishing separate subsidiaries to engage in repurchase agreements.

**Social Impact**

The proposed amendment would allow transactions in repurchase agreements with subsidiary banks and thereby prevent technical violations of the rule.

**Economic Impact**

The proposed amendment permits simplified transactions through direct contacts with subsidiaries. The proposed amendment may produce economic benefit through rapid completion of transactions.

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

**17:16-37.1 Permissible investments**

(a) Subject to the limitations contained in this subchapter, the Director may invest and reinvest moneys of any pension and annuity, static, demand, temporary reserve or trust group fund in repurchase agreements of any bank, provided that:

1. The seller is a bank or trust company **or a wholly-owned subsidiary of such bank or trust company** which:

i. Is headquartered in the United States; and

ii. Is not controlled by a foreign entity.

2.-3. (No change.)

**(c)****Standard Third Party Contracts****Proposed New Rule: N.J.A.C. 17:12-8.1**

Authorized By: Feather O'Connor, State Treasurer.

Authority: N.J.S.A. 52:18A-9.

Proposal Number: PRN 1986-245.

Submit comments by August 6, 1986 to:

Eileen Goldstein

Department of the Treasury

Office of Management and Budget

CN 213

Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

For the past seven years, the Department of Treasury has required that all third party agreements between State agencies and contractors such as local governments and school boards involving the expenditure of State and federal funds include standard "boilerplate" language which outlines the legal obligations of the third party contractors. During those seven years, State agencies attached or otherwise incorporated the boilerplate into all such third party agreements. The duplication and postage of this contract language, multiplied by the number of third party contracts entered into by the State on an annual basis, has generated a great deal of unnecessary paperwork and expense. This proposed new rule will allow State agencies to incorporate into their third party contracts the standard contract language by reference to this new section in the Administrative Code (N.J.A.C. 17:12-8.1).

**Social Impact**

The proposed new rule does not change the content of the standard third party language which has been used by State agencies for the past several years and which outlines the legal obligations of third party State contractors such as local governments and school boards. Rather, it is the intention of the State Treasurer to simplify the contracting procedure and save money by allowing State agencies to refer to this code section (N.J.A.C. 17:12-8.1) rather than attaching the language to each and every contract. This new rule will save State agencies time and money when preparing third party agreements. As a result of the new rule, it will be incumbent on third party contractors to refer to rule in the Administrative Code to fully determine their rights and responsibilities under their contracts with the State.

**Economic Impact**

The Paperwork Management Program, prior to its dissolution, estimated that allowing State agencies to include this contract language by reference would mean savings to the State and other government users of this contract language to be approximately \$200,000 annually. Costs imposed on third party contractors should be minimal, and would result from their accessing the referenced contract language.

**Full text** of the proposed new rule follows.

SUBCHAPTER 8. CONTRACTS

17:12-8.1 Standard third party contracts

(a) This subchapter applies to all third party contracts between State agencies and providers of goods and/or services to designated groups or individuals.

(b) A "third party contract" means an agreement between a State agency and a contractor involving the expenditure of State and/or federal funds on behalf of a third party or parties.

(c) Contract requirements are as follows:

1. A third party contract shall be used in all cases where the agencies of the State of New Jersey expend State and/or federal funds on behalf of a constituent group.

2. The following language shall be used in all third party contracts, either by reference to this section or by attachment of the full text of these requirements to the contract.

i. Compliance with Existing Laws. The Contractor, in order to induce a Department of the State of New Jersey, hereinafter referred to as the Department, to award this contract, agrees in the performance of this contract to comply with all federal, state, and municipal laws, rules and regulations generally applicable to the activities by whomsoever performed in which the Contractor is engaged in the performance of this contract. Failure to comply with such laws, rules, or regulations shall be grounds for termination of this agreement.

ii. Indemnification. The Contractor shall be solely responsible for and shall keep, save, and hold the State of New Jersey harmless from all claims, loss, liability, expense, or damage resulting from all mental or physical injuries or disabilities, including death, to employees or recipients of the Contractor's services or to any persons, or from any damage to any property substituted in connection with the delivery of the Contractor's services which results from the any acts or omissions, including negligence or malpractice, of any of its officers, directors, employees, agents, servants or independent contractors, or from the Contractor's failure to provide for the safety and protection of its employees, whether or not due to negligence, fault, or default of the Contractor. The Contractor's liability under this agreement shall continue after the termination of this agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

iii. Assignability. The Contractor shall not subcontract any of the work or services covered by this contract, nor shall any interest be assigned or transferred except as may be provided for in this contract or with the express written approval of the Department.

iv. Availability of Funds. The parties hereto recognize and agree that funding under this contract is expressly dependent upon the availability to the Department of funds appropriated by the State Legislature from state or federal revenue or such other funding sources as may be applicable. The Department shall not be held liable for any breach of this agreement because of the absence of available funding appropriations.

v. Procurement Standards. Procurement of supplies, equipment, and other services with funds provided by this contract shall be accomplished in a manner generally consistent with the Administration of Grants (34 CFR, Part 74), Subpart P.

Adherence to the standards contained in those applicable federal and state laws and regulations does not relieve the Contractor of the contractual responsibilities arising under its procurements. The Contractor is the responsible authority, without recourse to the Department regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a contract.

vi. Property Management Standards. Property furnished by the Department or acquired in whole or in part with federal or Department funds or whose cost was charged to a project supported by federal or Department funds shall be utilized and disposed of in a manner generally consistent with the Administrative of Grants (34 CFR, Part 74), Subpart O.

vii. Method of Payment.

a. At the Department's discretion, initial payment may be made to the Contractor upon receipt by the Department of a properly executed copy of this contract, signed by an appropriate officer of the Contractor organization, together with a properly executed Form AA-100. Such advances, however, shall not exceed the dollar limits established in this contract.

b. Progress payments shall be made by the Department on a periodic basis as prescribed in this contract. Such payments shall be issued upon receipt of the required financial and narrative reports described in this contract.

c. Payment may, at the discretion of the Department, be made either in fixed amount as determined by the Department to be reasonable to

maintain an appropriate level of contract services or in the form of reimbursement of actually reported expenditures.

d. At the Department's discretion, a final payment may be withheld pending receipt of final reports. If applicable, this payment is not to exceed five (5) percent of the total contract amount.

viii. Matching and Cost Sharing Requirements. The Contractor shall be required to account, to the satisfaction of the Department, for matching and sharing requirements of this contract in accordance with the Administration of Grants (34 CFR, Part 74), Subpart G.

ix. Program Income. Program income shall be defined as gross income earned by the Contractor from grant-supported activities. Such earnings include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

a. Interest earned on advances of contract funds shall be remitted to the Department except for interest earned on advances to instrumentalities of a state as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577).

b. Unless the contract provides otherwise, the Contractor shall be obligated to the Department with respect to royalties received as a result of copyrights or patents produced under the contract.

c. All other program income earned during the contract period shall be retained by the contractor and used in accordance with this contract.

x. Financial Management System.

a. The Financial Officer, designated by the Contractor of this contract, shall be responsible for maintaining an adequate financial management system. The Financial Officer will notify the Department when the Contractor cannot comply with the requirements established in this section of this contract.

b. Contractor's financial management system shall provide for:

1. Accurate, current, and complete disclosure of the financial results of each program or contract.

2. Records that adequately identify the source and application of funds for Department supported activities. These records shall contain information pertaining to contract awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income.

3. Effective internal and accounting controls over all funds, property, and other assets. The Contractor shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

4. Comparison of actual outlays with budgeted amounts for each contract. Also, relation of financial information with performance or productivity data, including the production of unit cost information required by the Department.

5. Accounting records that are supported by source documentation.

6. Procedures for determining reasonableness, allowability, and allocability of costs generally consistent with the provisions of the Administration of Grants (34 CFR, Part 74), Subpart H.

c. If the Department determines that the Contractor's accounting system does not meet the standards described in paragraph B above, additional information to monitor the contract may be required by the Department upon written notice to the Contractor until such time as the system meets with Department approval.

xi. Financial and Performance Reporting.

a. The contract budget as used in this section means the approved financial plan to carry out the purpose of the contract. This plan is the financial expression of the project or program as approved during the contract application and award process. The approved budget in this contract should be related to performance for program evaluation purposes whenever appropriate and required by the Department.

b. The Contractor shall submit interim expenditure reports comparing actual expenditures with the approved budget in this contract. These reports shall be submitted on a periodic basis as prescribed in this contract.

c. The Contractor shall submit a performance report on an interim basis as prescribed by the Department; however, reports shall not be required more frequently than quarterly or less frequently than annually. Performance reports shall be submitted as prescribed in this contract. The performance report shall present the following information for each program function or activity involved:

1. A comparison of actual accomplishments to the goals established in Program Specifications. Where the output of contract programs can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

2. Reasons why established goals were not met.

3. Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

d. The Contractor will submit a final report as prescribed in this contract. The final report shall contain financial statements including:

1. Balance Sheet—showing assets, liabilities, and fund balances of individuals funds and for all funds of the Contractor.

2. Operating Statements—which show sources of the revenue and purposes of expenditures for each fund.

3. Statement of Changes in Fund Balances—identifying additions to and deductions from balances of various funds, accounting for the difference between beginning and ending fund balances between successive balance sheet dates.

In addition, a comparison of actual with budget expenditures and a written narrative performance report, signed by an appropriate officer of the organization, of what was accomplished by the expenditure of funds towards achieving the purpose(s) of this contract. When an audit report is required by the Department pursuant to this contract, the financial data required above shall be included in the auditor's report and shall not be required of the Contractor. However, the contractor is not relieved of the requirement to submit a final narrative performance report.

e. Extension to reporting due dates may be granted upon written request to the Department.

f. If reports are not submitted as required the Department may, at its discretion, suspend payments on this contract or any contract entered into between the Department and the Contractor. The State of New Jersey may, at its discretion, take such action to withhold Contractor payment on this or any contract with other state agencies until the required reports have been submitted.

xii. Monitoring of Program Performance.

a. The Contractor shall constantly monitor the performance under grant-supported activities to assure that time schedules are being met, projected work until by time periods are being accomplished, and other performance goals are being achieved as applicable and as defined in Program Specifications, of this contract.

b. The Contractor shall inform the Department of the following types of conditions which affect program objectives and performance as soon as they become known:

1. Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Department assistance need to resolve the situation.

2. Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

c. The department may, at its discretion, make site visits to:

1. Review program accomplishments and management control systems.

2. Provide such technical assistance as may be required.

xiii. Audit requirements.

a. Audits of operations under this contract shall be conducted in the method specified.

b. Examinations in the form of audits or internal audits shall be conducted by qualified individuals who are sufficiently independent of those who authorize the expenditure of contract funds, to produce unbiased opinions, conclusions, or judgments. These audit examinations are intended to ascertain the effectiveness of the financial management systems and internal procedures that have been established to meet the terms and conditions of the contract and that accounts and financial statements present fairly the results of the Contractor operations.

c. Audit examinations will be made in accordance with generally accepted auditing standards including the standards published by the General Accounting Office, *Standards for Audit of Governmental Organizations, Programs, Activities and Functions*.

d. Audit examinations should be conducted on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the contract. Such audits will be conducted on the basis of the Contractor's fiscal year.

In accepting this contract, the Contractor agrees to and will allow such audits to be performed on an organization-wide basis. In the event of a subcontract agreement, the Contractor agrees to provide for and permit the Department to audit such records.

e. The scope of the audit will be financial and compliance as described in the General Accounting Office, *Standards for Audit of Governmental Organizations, Programs, Activities and Functions*. In the performance of the audit, the auditor(s) will include appropriate sampling of all contracts.

The Department may change the scope of the audit and will so notify the Contractor when the Contractor is responsible for providing for the audit.

In performing the compliance audit, the auditor(s) will determine the Contractor's compliance with applicable laws and regulations including rules and regulations issued by the federal agency responsible for providing contract funds.

f. Audit examinations will be conducted with reasonable frequency, on a continuing basis or at scheduled intervals usually annually, but not less frequently than every two years. The frequency of these audits shall depend upon the nature, size, and the complexity of the activity, as well as the historical experience and problems encountered with the Contractor.

g. New Contractors who have not contracted with the Department before will be required to have an audit performed at the end of the first contract period.

h. All such audit reports prepared by the Department or at its direction shall be promptly delivered to the Contractor.

i. The Contractor agrees to cooperate, and wherever feasible and possible, to assure timely and appropriate resolution of audit findings and recommendations.

xiv. Budget Revision and Modification.

a. This Section sets forth criteria and procedures to be followed by the Contractor in reporting deviations from the approved budget and in requesting approvals for budget revisions and modification. Budget category variances in excess of five thousand dollars (\$5,000) or 10 percent of the total contract, whichever is lower, shall require approval of the Department in writing.

b. Contractors shall request, in writing, approval of the Department when there is reason to believe a revision or modification will be necessary for the following reasons:

1. Changes in the scope, objective, or timing of the project or program.

2. The need for additional funding.

3. The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs if approval is required by the Department.

For the purposes of this contract, indirect costs are defined as those costs incurred for a common or joint purpose benefiting more than one cost objective and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved.

Direct costs are defined as those costs which can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged.

4. Contractor plans to transfer funds allotted for training allowances (direct payments to trainees) to other categories of expense.

5. For costs identified in the Cost Principles section of the Administration of Grants (34 CFR, Part 74), Subpart Q regulation that require prior approval.

c. The Department may also, at its option, restrict transfers of funds among direct cost categories for contracts which exceed \$100,000 when the cumulative amount of such transfers exceeds or is expected to exceed five percent of the total budget.

The same criteria shall apply to the cumulative amount of transfer among programs, functions, and activities when budgeted separately for a contract, except that the Department shall permit no transfer that would cause any state appropriation, or part thereof, to be used for purposes other than those intended.

d. All other changes to budgets, except as described in paragraphs B and C do not require approval.

e. When requesting approval for budget revisions, the Contractor shall clearly show the change in cost categories.

f. The Department may request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the Department and the Contractor, must be incorporated in written amendments to this contract.

g. If the Contractor is making program expenditures or providing contract services at a rate which, in the judgment of the Department, will result in substantial failure to expend the contract amount or provide contract services, the Department may so notify the Contractor. If, after consultation, the Contractor is unable to develop to the satisfaction of the Department, a plan to rectify its low level of program expenditures or contract services, the Department may, upon thirty (30) days notice to the Contractor, reduce the contract amount by a sum so that the

revised contract amount fairly projects program expenditures over the contract period. This reduction shall take into account the Contractor's fixed costs and shall establish the committed level of services for each program element of contract services at the reduced contract amount.

xv. Contract Closeout Procedures.

a. The following definitions shall apply for the purpose of this Section:

1. Contract Closeout—The closeout of a contract is the process by which the Department determines that all applicable administrative actions and all required work of the contract have been completed by the Contractor.

2. Date of Completion—The date when all activities under the contract are completed or the expiration date in the contract award document, or any supplement or amendment thereto.

b. The Contractor shall submit a final report upon completion of the contract period or termination of the contract. This final report shall be in accordance with Section XI paragraph C and D of this contract.

The Department may permit extensions when requested in writing by the Contractor.

c. The contractor will, together with the submission of the final report, refund to the Department any unexpended funds or unobligated (unencumbered) cash advanced except such sums that have been otherwise authorized, in writing, by the Department to be retained.

d. Within the limits of the contract amount, the Department may make a settlement for any upward or downward adjustments of costs after these reports are received.

e. In the event a final audit has not been performed prior to the closeout of the contract, the Department retains the right to recover any appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

f. The Contractor shall account for any property acquired with contract funds or received from the Department in accordance with the provisions of the "Property Management Standards" as referenced in Section VI of this contract.

xvi. Termination and Suspension.

a. The following definitions shall apply for the purposes of this Section:

1. Termination—The termination of a contract means the cancellation of assistance, in whole or in part, under a contract at any time prior to the date of completion.

2. Suspension—The suspension of a contract is an action by the Department which temporarily suspends assistance under the contract pending corrective action by the Contractor or pending a decision to terminate the contract by the Department.

3. Disallowed Costs—Disallowed costs are those charges to the contract which the Department or its representatives determine to be beyond the scope of the purpose of this contract, excessive or otherwise unallowable.

b. When the Contractor has failed to comply with contract award stipulations, standards, or conditions, the Department may upon thirty (30) days notice to the Contractor, suspend the contract and withhold further payments; prohibit the Contractor from incurring additional obligations of contract funds pending corrective action by the Contractor; or decide to terminate the contract in accordance with paragraph C below. The Department shall allow all necessary and proper costs which the Contractor could not reasonably avoid during the period of suspension provided that they meet the provisions of the Administration of Grants (34 CFR, Part 74), Subpart M.

c. The Department may terminate the contract, in whole or in part, upon thirty (30) days notice, whenever it is determined that the Contractor has failed to comply with the conditions of the contract. The Department shall promptly notify the Contractor, in writing, of the determination and the reasons for the termination together with the effective date. Payments made to the Contractor or recoveries by the Department under the contract terminated for cause shall be in accord with the legal right and liability of the parties.

d. The Department and the Contractor may terminate the contract in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions including the effective date and in case of partial terminations, the portion to be terminated. The Contractor shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible.

e. The Contract Closeout Procedures in Section XVI of this contract shall apply in all cases of termination of the contract.

xvii. Access to Records.

a. The Contractor, in accepting this contract, agrees to make available

to the Department, any federal agency whose funds are expended in the course of this contract, or any of their duly authorized representatives, pertinent accounting records, books, documents, papers as may be necessary to monitor and audit Contractor operations.

b. All visitations, inspections, and audits, including visits and requests for documentation in the discharge of the Department's responsibilities, shall as a general rule provide for prior notice when reasonable and practical to do so. However, the Department retains the right to make unannounced visitations, inspections, and audits as deemed necessary.

c. The Department reserves the right to have access to records of any subgrantees and requires the Contractor to provide for Department access to such records in any contract or grant with the subgrantee.

d. The Department reserves the right to have access to all work papers produced in connection with audits made by the Contractor or by Independent Certified Public Accountants or Licensed Public Accountants hired by the Contractor to perform such audits.

xviii. Record Retention.

a. Financial records, supporting documents, statistical records, and all other records pertinent to the contract shall be retained for a period of five years, with the following qualifications:

1. If any litigation, claim, or audit is started before the expiration of the 5-year period, the records shall be retained until all litigations, claims, or audit-findings involving the records have been resolved.

2. Records for nonexpendable property acquired with Department funds shall be retained for 5 years after its final disposition.

b. The retention period starts from the date of submission of the final expenditure report, or for contracts that are renewed annually, from the date of submission of the annual financial report.

c. The Department may request transfer of certain records to its custody from the Contractor when it determines that the records possess long-term retention value and will make arrangements with the Contractor to retain any records that are continuously needed for joint use.

xix. Subcontracts.

No contractor may subcontract any portion of services under this contract without Department approval.

No subcontract may be executed unless the format is developed and/or approved by the Department.

Any subcontract let under this contract shall be subject to Section xiii (Audit Requirements).

xx. Prior Expenditures.

No expenditures will be reimbursed for activities which occur outside of the contract period. Expenditures may be reimbursed if made during the contract period and in conformance with the program's specifications even if the contract is fully executed and dated after the date of commencement of the contract period. In order to reimburse such expenditures, an approved program application or equivalent document dated and executed by the appropriate authorities prior to any expenditures of funds on the contract and which sets forth the program's starting and ending dates must be attached to the fully executed contract.

(d) Exceptions to this section may be made:

1. With the approval of the Department of the Treasury; or,
2. By the agency through clarification and/or the addition of clauses.

**OTHER AGENCIES****PUBLIC EMPLOYMENT RELATIONS COMMISSION**

The following proposals are authorized by James W. Mastriani, Chairman, Public Employment Relations Commission.

A **public hearing** concerning these proposals will be held on:  
August 6, 1986 at 10:00 A.M.  
Public Employment Relations Commission  
495 West State St.  
Trenton, New Jersey 08625

Submit comments by August 6, 1986 to:  
James W. Mastriani, Chairman  
Public Employment Relations Commission  
495 West State Street, CN 429  
Trenton, New Jersey 08625

**(a)****Mediation and Fact-Finding, and Arbitration****Proposed Readoption with Amendments: N.J.A.C. 19:12**

Authority: N.J.S.A. 34:13A-5.4(e), 34:13A-6(b) and 34:13A-11.  
Proposal Number: PRN 1986-247.

The agency proposal follows:

**Summary**

In accordance with the "sunset" and other provisions of Executive Order 66(1978), the Public Employment Relations Commission proposes to readopt, with amendments, N.J.A.C. 19:12-1.1 through N.J.A.C. 19:12-5.11. These rules concern procedures for resolving negotiations, disputes between public employers and employee representatives through mediation, fact-finding and arbitration. The entire chapter shall expire on August 21, 1986. The proposed readoption is necessary to continue in full force and effect these mediation and fact-finding rules.

A summary of the text of each section in N.J.A.C. 19:12 follows:

N.J.A.C. 19:12-1.1, **Purpose of procedures**, explains that the rules provide procedure for timely resolving negotiations impasses.

N.J.A.C. 19:12-2.1, **Commencement of negotiations**, specifies the time periods for commencing negotiations.

N.J.A.C. 19:12-3.1, **Initiation of mediation**, details the provisions for securing a Commission-appointed mediator.

N.J.A.C. 19:12-3.2, **Appointment of a mediator**, specifies who may be appointed a mediator.

N.J.A.C. 19:12-3.3, **Mediator's function**, states that a mediator is to assist all parties to come to a voluntary agreement and that the mediator may hold separate or joint conferences and recommend fact-finding.

N.J.A.C. 19:12-3.4, **Mediator's confidentiality**, provides that all information disclosed by a party to a mediator shall be confidential.

N.J.A.C. 19:12-3.5, **Mediator's report**, provides for the submission of one or more confidential reports to the Director of Conciliation concerning the progress of mediation.

N.J.A.C. 19:12-4.1, **Initiation of fact-finding**, specifies the procedures for initiating fact-finding if mediation has been unsuccessful.

N.J.A.C. 19:12-4.2, **Appointment of fact-finder**, specifies the procedures for appointing a fact-finder and who may be appointed.

N.J.A.C. 19:12-4.3, **Fact-finder's function**, specifies the duties and powers of fact-finders and the allocation of costs of fact-finding.

N.J.A.C. 19:12-5.1, **Function of the Commission**, provides that the Commission will maintain an arbitration panel whose members are available to assist in the arbitration of unresolved grievances.

N.J.A.C. 19:12-5.2, **Request for submission of panel**, specifies the procedures for requesting the submission of a panel.

N.J.A.C. 19:12-5.3, **Appointment of an arbitrator**, specifies the procedures for selecting an arbitrator from the panel.

N.J.A.C. 19:12-5.4, **Code of Professional Responsibility for Arbitrators of Labor Management Disputes**, obligates arbitrators to be guided by the codes of professional responsibility of the National Academy of Arbitrators, American Arbitration Association and the Federal Mediation and Conciliation Service.

N.J.A.C. 19:12-5.5, **Time and place of hearing**, specifies the procedures for setting a hearing.

N.J.A.C. 19:12-5.6, **Adjournments**, sets the standard for granting adjournments.

N.J.A.C. 19:12-5.7, **Arbitration in the absence of a party**, empowers the arbitrator to proceed with a duly scheduled hearing in the absence of a party who has failed to obtain an adjournment.

N.J.A.C. 19:12-5.8, **Filing of briefs**, specifies the procedures for filing briefs.

N.J.A.C. 19:12-5.9, **Award**, specifies when an award must be issued, how it must be issued, and what must be in writing.

N.J.A.C. 19:12-5.10, **Subpoena power**, authorizes the arbitrator to issue subpoenas.

N.J.A.C. 19:12-5.11, **Cost of arbitration**, provides that the parties must bear the cost of arbitration.

The proposed amendment to N.J.A.C. 19:12-5.4 requires that the arbitrator submit his award directly to the Commission which will then serve the parties simultaneously; this change will insure that the Commission receives each award. The other proposed amendments reflect changes in the Commission's address and official titles and correct typographical errors.

N.J.A.C. 19:12-2.1, 19:12-3.1, 19:12-4.1 and 19:12-5.2 all contain footnotes stating that the Commission will supply blank forms upon request and setting forth the Commission's address at: 429 East State Street, Trenton, New Jersey 08608. The readopted rules will change each footnote to substitute the Commission's new address: 495 West State Street, CN 429, Trenton, New Jersey 08625.

The readopted rules will also capitalize these titles wherever they appear in N.J.A.C. 19:12: Chairman, Commission, Director of Conciliation and Director of Arbitration.

**Social Impact**

The readoption of this subchapter with the proposed minor changes will permit the continued smooth functioning of mediation, fact-finding and arbitration procedures which have worked to resolve negotiations impasses and contractual disputes between public employers and public employees without the disruption of public services and consistent with budget submission deadlines. Public employers and employees will continue to benefit from prompt, precise, and clear procedures for resolving their disputes. Readoption of these rules will permit the public to continue to benefit from the prompt and peaceful resolution of such disputes.

**Economic Impact**

Readoption of these rules will promote harmonious management-labor relations, reduce disruption in governmental services, and co-ordinate negotiations with budget submission deadlines. The parties to fact-finding shall bear their individually incurred costs while the Commission shall bear the costs of the fact-finder's services and necessary expenses unless subsequent legislation mandates otherwise. The parties shall bear the cost of arbitration in accordance with the Commission's fee schedule.

**Full text** of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 19:12.

OAL NOTE: The address which appears in footnotes to N.J.A.C. 19:12-2.1, 3.1, 4.1 and 5.2, regarding ordering forms, has been changed to:

PERC  
495 West State St.  
CN 429  
Trenton, New Jersey 08625

**Full text** of the amendments to the readoption follows (additions shown in boldface **thus**; deletions shown in brackets [thus]).

19:12-4.2 Appointment of fact-finder

(a) (No change.)

(b) The fact-finder [appointment] **appointed** pursuant to this subchapter may be a member of the Commission, an officer or employee of the Commission, a member of the Commission's fact-finding panel, or any other fact-finder, all of whom shall be considered officers of the Commission for the purpose of assisting the parties to effect a voluntary settlement and/or [to make] **making** findings of fact and [recommend] **recommending** the terms of settlement. If an appointed fact-finder is unable to serve or if for any reason cannot proceed pursuant to the appointment, another fact-finder shall be appointed. The appointment of a fact-finder pursuant to this subchapter shall not be reviewable.

19:12-5.2 Request for submission of panel

Arbitration under these rules is initiated by written request to the [director of conciliation] **Director of Arbitration**. One original and four copies of such request, signed and dated by the requesting party or parties, shall be filed requesting the submission of a panel of arbitrators. The request shall set forth the names and addresses of the parties, the names,

titles and telephone numbers of the parties' representative to contact, and a statement identifying the grievance to be arbitrated. The request shall be accompanied by a copy of the arbitration provisions of the parties' agreement.

19:12-5.3 Appointment of an arbitrator

Upon receipt of a written request pursuant to N.J.A.C. 19:12-5.2 (Request for submission of panel), the [director of conciliation] **Director of Arbitration** shall submit simultaneously to each party a copy of such request and an identical list of names of at least five persons chosen from the Arbitration Panel. Each party shall have seven days from the mailing date in which to cross off any names to which it objects, number the remaining names indicating in order of preference, and return the list to the [director of conciliation] **Director of Arbitration**. If a party does not return the list within the time specified, all persons named thereon shall be deemed acceptable. The [director of conciliation] **Director of Arbitration** shall appoint an arbitrator giving recognition to the parties' preference. If the parties' preference does not result in agreement upon any of the persons names, the [director of conciliation] **Director of Arbitration** shall submit a second such list and the procedures set forth above shall be repeated, except that each party shall number at least three names contained thereon indicating its order of preference. If the arbitrator appointed pursuant to this section declines or is unable to serve, the [director of conciliation] **Director of Arbitration** shall have the power to appoint an arbitrator not previously rejected by any party, without submission of any additional list. If parties have agreed upon a method of appointment different from that set forth above, such method shall be followed. Action of the [director of conciliation] **Director of Arbitration** hereunder shall not be reviewable.

19:12-5.9 Award

The arbitrator shall issue an award as soon as possible after the close of hearing, but not more than 45 days thereafter or such other time for the date of award that the arbitrator shall fix upon written notice to the parties. The award of the arbitrator shall be in writing and [served simultaneously on the parties with a copy to the Public Employment Relations Commission] submitted directly to the **Public Employment Relations Commission which will then serve the parties simultaneously**. The arbitrator may, upon the mutual agreement of the parties, submit the award without a written opinion.

(a)

**Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments**

**Proposed Readoption with Amendments: N.J.A.C. 19:16**

Authority: N.J.S.A. 34:13A-5.4(e), 34:13A-6(b) and 34:13A-11 et seq.

Proposal Number: PRN 1986-248.

The agency proposal follows:

**Summary**

In accordance with the "sunset" and other provisions of Executive Order 66(1978) the Public Employment Relations Commission proposes to readopt, with amendments, N.J.A.C. 19:16 concerning negotiations, impasse procedures and compulsory interest arbitration for labor disputes involving public fire and police departments. This chapter shall expire on August 21, 1986. The proposed readoption is necessary to continue in full force and effect these rules.

A summary of the text of each section in N.J.A.C. 19:16 follows:

N.J.A.C. 19:16-1.1, **Purpose of procedures**, explains that these rules implement c.85, P.L. 1977, providing for compulsory interest arbitration of labor disputes in public fire and police departments.

N.J.A.C. 19:16-2.1, **Commencement of negotiations**, specifies the time periods for commencing negotiations and requires that negotiations commence no later than 150 days before the employer's required budget submission date.

N.J.A.C. 19:16-3.1, **Mediation; Initiation of mediation**, details the procedures for securing a Commission-appointed mediator.

N.J.A.C. 19:16-3.2, **Appointment of a mediator**, specifies who may be appointed as a mediator.

N.J.A.C. 19:16-3.3, **Mediator's function**, states that the mediator is to assist the parties to reach a voluntary agreement and that the mediator may hold separate or joint conferences.

N.J.A.C. 19:16-3.4, **Mediator's confidentiality**, provides that information disclosed by a party to a mediator shall be confidential.

N.J.A.C. 19:16-3.5, **Mediator's report**, provides for the submission of one or more confidential reports to the Director of Conciliation concerning the progress of mediation.

N.J.A.C. 19:16-4.1, **Initiation of fact-finding**, specifies the procedures for jointly or separately initiating fact-finding if mediation has been unsuccessful and for responding to separate requests.

N.J.A.C. 19:16-4.2, **Appointment of a fact-finder**, specifies the procedures for appointing a fact-finder and who may be appointed.

N.J.A.C. 19:16-4.3, **Fact-finder's function**, specifies the duties and powers of fact-finders and the allocation of costs of fact-finding.

N.J.A.C. 19:16-5.1, **Scope of compulsory interest arbitration**, states that this subchapter relates to notification requirements, compulsory interest arbitration proceedings and the designation of arbitrators to resolve impasses in collective negotiations involving public employers and exclusive employee representatives of public fire and police departments.

N.J.A.C. 19:16-5.2, **Initiation of compulsory interest arbitration**, specifies the procedures for commencing interest arbitration proceedings.

N.J.A.C. 19:16-5.3, **Notification requirement**, requires parties to notify the Director of Arbitration at least 60 days before the employer's budget submission date whether they have agreed upon a terminal procedure resolving negotiations impasses; if they have the parties shall reduce the procedure to writing and submit it to the Director of Arbitration for approval.

N.J.A.C. 19:16-5.4, **Contents of the notification or petition requesting the initiation of compulsory interest arbitration**, specifies what must be contained in either a petition requesting the initiation of compulsory interest arbitration or a 60-day notification concerning the terminal procedure for disputes.

N.J.A.C. 19:16-5.5, **Response to the notification or petition requesting the initiation of compulsory interest arbitration**, specifies when a response to a notification or petition must be filed, how it must be served, what it must say and what a party must do if a dispute exists concerning the negotiability or economic identity of a proposal.

N.J.A.C. 19:16-5.6, **Appointment of an arbitrator or panel of arbitrators**, requires the Commission to maintain a panel of compulsory interest arbitrators and specifies the procedures to follow for selecting an arbitrator from the panel or using one or more other arbitrators.

N.J.A.C. 19:16-5.7, **Conduct of arbitration proceeding**, specifies the arbitrator's jurisdiction, duties and powers to conduct arbitration proceedings, including hearings, adjournments, ex parte proceedings, briefs and subpoenas. The rule further provides for the confidentiality of information disclosed in arbitration; the use of final offer arbitration on economic items as a package and non-economic items issue-by-issue if a different terminal procedure has not been chosen and approved; and the barring of any arbitration award on any issue which is the subject of a scope of negotiations petition pending with the Commission.

N.J.A.C. 19:16-5.8, **Stenographic record**, provides that stenographic records are not required but may be made at the expense of the requesting party.

N.J.A.C. 19:16-5.9, **Opinion and award**, provides for issuing an opinion and award as expeditiously as possible after the close of hearing; the opinion and award must be signed, must be based on a reasonable determination of the issues, giving due weight to statutory criteria, and must set forth reasons for the result.

N.J.A.C. 19:16-5.10, **Code of Professional Responsibility for Arbitrators of Labor-Management Disputes**, obligates arbitrators to be guided by the code of professional responsibility of the National Academy of Arbitrators, American Arbitration Association, and the Federal Mediation and Conciliation Service.

N.J.A.C. 19:16-5.11, **Cost of arbitration**, requires the parties to bear the costs of the arbitrator's services in accordance with a fee schedule adopted by the Commission; parties must also pay the costs of their appointees to arbitration panels.

N.J.A.C. 19:16-6.1, **Purpose of procedure**, states that these rules provide an expeditious procedure for resolving disputes concerning whether an issue is economic or noneconomic for purposes of interest arbitration.

N.J.A.C. 19:16-6.2, **Procedure**, specifies the procedures for initiating issue definition proceedings, for responding to petitions, and for determining these issues.

N.J.A.C. 19:16-7.1, **Failure to submit a notice or other document**, provides that such failure shall not provide the basis for any delay in these proceedings, nor shall it otherwise prevent a dispute's resolution through compulsory interest arbitration.

The proposed amendments to N.J.A.C. 19:16-5.7 will require that briefs

in interest arbitration proceedings be filed within 30 days from the close of the hearing. The proposed amendments to N.J.A.C. 19:16-5.9 will require that the interest arbitrator issue the opinion and award within 45 days after briefs are filed and that he submit the opinion and award directly to the Commission which will then serve the parties simultaneously. The changes in these two rules will promote promptness in interest arbitration proceedings. The other proposed amendments reflect changes in the Commission's address and official titles and correct typographical errors in N.J.A.C. 19:16-5.7(h), 19:16-6.2(b)(4) and 19:16-6.2(c).

N.J.A.C. 19:16-3.1, 19:16-4.1, 19:16-5.2, 19:16-5.3, 19:16-6.2 all contain footnotes stating that the Commission will supply blank forms upon request and setting forth the Commission's old address at 429 East State Street, Trenton, New Jersey 08608. The readopted rules will change each footnote to substitute the Commission's new address: 495 West State Street, CN 429, Trenton, New Jersey 08625.

The readopted rules will also capitalize these titles, words and phrases wherever they appear in N.J.A.C. 19:16: Chairman, Commission, Director of Conciliation, Director of Arbitration, Initiation of Compulsory Interest Arbitration, Compulsory Interest Arbitration, Special Panel of Interest Arbitrators, and Tripartite Panel of Arbitrators.

**Social Impact**

Readoption of this subchapter with the proposed minor amendments will permit the continued smooth functioning of mediation, fact-finding and compulsory interest arbitration proceedings which have worked to resolve negotiations impasses without the disruption of public services and consistent with budget submission deadlines. The public will continue to benefit from the prompt and peaceful resolution of negotiations disputes. Public employers and employees will continue to benefit from prompt, precise, and clear procedures for resolving their disputes.

**Economic Impact**

Generally, the rules help achieve the prompt and peaceful resolution of negotiations disputes without disruption of governmental services and consistent with budget submission deadlines. Specifically, the parties to fact-finding shall bear their individually incurred costs while the Commission shall bear the costs of the fact-finders' services and necessary expenses. The parties shall bear the cost of arbitration in accordance with the Commission's fee schedule and shall pay their own appointees to arbitration panels.

**Full text** of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 19:16.

**OAL NOTE:** The address which appears in footnotes to 19:16-2.1, 3.1, 4.1, 5.2, 5.3 and 6.2, regarding ordering forms, has been changed to:

PERC  
495 W. State St.  
CN 429  
Trenton, N.J. 08625

**Full text** of the amendments to the readoption follows (additions shown in boldface **thus**; deletions shown in brackets [thus]).

19:16-5.7 Conduct of the arbitration proceeding

(a)-(g) (No change.)

(h) The arbitrator shall be permitted to take evidence, but shall not render a decision on any issue which is the subject of a petition for a scope of negotiations determination filed with the Commission or on any issue which is the subject of an [issue definition pursuant] **issue definition proceeding pursuant** to N.J.A.C. 19:16-8.1 et seq.

(i)-(j) (No change.)

(k) The parties, at the discretion of the arbitrator, may file post-hearing briefs. The arbitrator, after consultation with the parties, shall have the authority to set a time period for the submission of briefs[.], **but that period shall not exceed 30 days from the close of the hearing.** Briefs shall be submitted to the arbitrator along with submission of proof of service on all parties. The parties shall not be permitted to revise their positions or to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.

19:16-5.9 Opinion and award

If the impasse is not otherwise resolved, the arbitrator or arbitrators shall decide the dispute and issue a written opinion and award [as expeditiously as possible after the closing of hearing] **within 45 days after the filing of briefs.** The opinion and award shall be signed and based on a reasonable determination of the issues, giving due weight to those factors listed in N.J.S.A. 34:13A-16(g) which are judged relevant for the resolution of the specific dispute. The opinion and award shall set forth

the reasons for the result reached. Copies of the opinion and award shall be [served simultaneously on the parties and the commission] **submitted directly to the Commission which will then serve the parties simultaneously.**

19:16-6.2 Procedure

(a) (No change.)

(b) (No change.)

1.-3. (No change.)

4. A listing of the item or items [in] **on** which there is a dispute as to the definition of the issue or issues as economic or noneconomic issues.

5. (No change.)

(c) The party opposing the definition of the disputed issue or issues set forth in the petition may submit to the Commission within 10 days [a] of receipt of the petition its position with respect to each disputed issue or issues, together with a brief or statement in lieu of brief to support its position. Failure to submit such a response shall be deemed to indicate acceptance of the issue definition advanced by the petitioner. A copy of the response must be served on the petitioner and proof of such service must be filed with the Commission.

(d)-(g) (No change.)

**(a)**

**ELECTION LAW ENFORCEMENT COMMISSION**

**Surplus Campaign Funds**

**Proposed Amendments: N.J.A.C. 19:25-1.7,**

**19:25-7.2.**

**Proposed Repeal and New Rules: 19:25-7.3 and 7.4.**

Authorized By: Election Law Enforcement Commission,

Frederick M. Herrmann, Executive Director.

Authority: N.J.S.A. 19:44A-6.

Proposal Number: PRN 1986-262.

Submit comments by August 6, 1986 to:

Gregory E. Nagy, Esq.  
Staff Counsel  
Election Law Enforcement Commission  
28 W. State Street, Suite 1215  
Trenton, NJ 08608

The agency proposal follows:

**Summary**

The current regulations of the New Jersey Election Law Enforcement Commission (hereafter "the Commission") state that campaign funds may be used for any lawful purpose and shall not be used to defray private expenses of any candidate or any other person; see N.J.A.C. 19:25-7.2. However, there is no provision covering the use of campaign funds remaining after an election. There have been several requests from candidates and committees to the Commission for advisory opinions as to the proper use of surplus campaign funds, and there have been a number of legislative bills introduced to address the issue.

The purpose of the proposed amendments is to define surplus campaign funds, to distinguish those funds remaining after the filing of the final report or after the termination of the candidacy, to prohibit the use of such funds for personal use, and to give guidance as to uses which are proper. The Commission proposes to add a definition of "surplus campaign funds" to its general definitions in N.J.A.C. 19:25-1.7. A list of allowed uses is set forth in proposed N.J.A.C. 19:25-7.4(b), but the list is not all inclusive because the Commission cannot foresee every permissible use. Rather, the list includes uses which the Commission already has advised are permissible or can now foresee would be permissible, based in part on a review of the corresponding federal election law, 2 U.S.C. §439a and accompanying regulations, 11 C.F.R. §§113.1 and 113.2, and a review of similar statutes in other states and of the obviously proper uses set forth in the New Jersey legislative bills on the subject. Because the Commission may refer a knowingly improper use of surplus campaign funds as a violation of the New Jersey Campaign Contributions and Expenditures Reporting Act to the Attorney General for prosecution pursuant to N.J.S.A. 19:44A-6(b)(10), suggestions from the Attorney General's Office have been incorporated in the amendments as well.

The amendments to the language of N.J.A.C. 19:25-7.2 prohibiting the "conversion" of campaign funds to "personal use" is for the purpose of using parallel language in that regulation and proposed N.J.A.C. 19:25-7.4(a).

N.J.A.C. 19:25-7.3 represents the combination of the current N.J.A.C.

19:25-7.3 and 7.4. The reference to "political party committee" is deleted as it is included in the definition of continuing political committee.

#### Social Impact

The proposed amendments will regulate the use of campaign contributions not expended for campaign purposes. The proposal affects candidates, political committees, and continuing political committees subject to the provisions of "The New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 et seq. While the proposal does not directly affect contributors to candidates, political committees, or continuing political committees; the Commission anticipates that it will enhance public confidence in the financing of election campaigns by specifically prohibiting the conversion of the proceeds of such contributions for any personal use by a candidate or any other person; see proposed N.J.A.C. 19:25-7.2. The Commission anticipates that candidates, campaign treasurers, and other persons charged with accountability for campaign funds will benefit from the adoption of specific guidelines for permissible uses as contemplated in proposed N.J.A.C. 19:25-7.4. The Commission does not anticipate that the proposal will create any administrative hardship for candidates, treasurers, or other interested persons because the proposal does not establish any new reporting requirements.

#### Economic Impact

The Commission believes that this proposal does not have any significant economic impact because it does not create any new reporting obligations.

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

#### 19:25-1.7 Definitions

The following words and terms, when used in this chapter and in the interpretation of the act, shall have the following meanings unless a different meaning clearly appears from the context.

"**Surplus campaign funds**" means amounts received by contributions to a candidate, political committee, or continuing political committee serving as the campaign committee of a candidate, and remaining after the filing of the final report or, if no final report has been filed, after the termination of the candidacy.

### SUBCHAPTER 7. USE OR TRANSMITTAL OF DEPOSITED FUNDS; SURPLUS CAMPAIGN FUNDS

#### 19:25-7.2 Use of funds; general

Funds so deposited may be used in accordance with the provisions of the act and of these regulations for any lawful purpose. Such funds shall not be [used to defray private expenses of any candidate or any other person.] **converted to any personal use by the candidate or any other person.**

#### 19:25-7.3 Transmittal of funds to another candidate, political committee, or continuing political committee

[(a) The act does not prohibit the transmittal of funds by a candidate or committee to another candidate, political committee, political party committee or other continuing political committee for the lawful purposes of such other candidate or committee.]

**Funds received by contributions to a candidate, political committee, or continuing political committee may be transferred before or after deposit to another candidate, political committee, or continuing political committee for any lawful purpose of such other candidate or committee, provided there is no express or implied prohibition by the original contributor against such transmittal.**

#### [19:25-7.4 Transmittal of deposited funds to political party committee for general purposes

The act does not prohibit the transmittal of excess or unused funds to a political party committee for the general uses of such political party committee, provided that there is no express or implied limitation by the original contributors against such transmittal at the time of the contribution or thereafter.]

#### 19:25-7.4 Use or disposition of surplus campaign funds, including surplus campaign funds of gubernatorial candidates who elect not to seek public funding

(a) **Surplus campaign funds shall not be converted to any personal use by the candidate or any other person.**

(b) **The Act does not prohibit the use of surplus campaign funds for any of the following purposes or any other lawful purpose not involving conversion for personal use:**

1. **The payment of outstanding campaign expenses;**

2. **Transmittal to another candidate, political committee, or continuing political committee for the lawful purpose of such other candidate or committee;**

3. **The pro rata repayment of contributors, except that contributors of less than \$100.00 may be excluded from repayment;**

4. **The repayment of loans made by a candidate to his campaign where the loan is documented and reported as such at the time it is made;**

5. **Donation to any organization described in section 170(c) of the Internal Revenue Code of 1954;**

6. **Retention by a candidate, political committee, or continuing political committee serving as the campaign committee of a candidate, in a separate campaign account established pursuant to N.J.S.A. 19:44A-12 for a future election campaign of such candidate, political committee, or continuing political committee serving as the campaign committee of a candidate.**

### CASINO CONTROL COMMISSION

The following proposals are authorized by the Casino Control Commission, Theron G. Schmidt, Executive Secretary.

Submit comments by August 6, 1986 to:

Deno R. Marino  
Deputy Director, Operations  
Casino Control Commission  
Princeton Pike Office Park, Bldg. 5  
CN 208  
Trenton, New Jersey 08625

#### (a)

### Accounting and Internal Controls Jackpot Payouts

#### Proposed Amendment: N.J.A.C. 19:45-1.40

Authority: N.J.S.A. 5:12-63(c), 69(a), and 70(i).

Proposal Number: PRN 1986-246.

The agency proposal follows:

#### Summary

The proposed amendment to N.J.A.C. 19:45-1.40(g) and (h) would increase the threshold figure for manually paid slot machine jackpots which require verification by slot supervisors, from \$600.00 to \$1,200.00.

#### Social Impact

The proposed amendment will increase the efficiency and the quality of management within the Slot Department. Specifically, 38 percent of the daily manual jackpot payouts are under \$1,200.00. Therefore, the time spent for manual jackpot payouts will be reduced and slot supervisors will have more time to perform managerial duties thereby enhancing customer service and slot security. In addition, the proposed change in the regulation will not have a material negative affect on the adequacy of internal control over the payment of manual jackpots since a security department representative must still be present to verify all manually paid jackpots.

#### Economic Impact

The proposed amendment will have limited economic impact. The new procedures will not effect gross revenue of the casinos in any significant way. A possible positive economic impact stemming from the rule change may be an increase in tourism from the enhanced enjoyment of slot patrons since slot supervisors will have more time to service their needs. There is no negative economic impact associated with the proposed regulation.

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

#### 19:45-1.40 Jackpot payouts

(a)-(f) (No change.)

(g) All coin or currency paid to a patron as a result of winning a jackpot shall be:

1. (No change.)

2. Disbursed by a slot cashier to a slot attendant or slot supervisor and if the manual jackpot is [ \$600.00 ] **\$1,200.00** or more, to a slot supervisor who shall transport the coin or currency directly to the patron.

(h) Signatures attesting to the accuracy of the information contained on the originals shall be, at a minimum, of the following personnel at the following times:

1. The original:

- i. (No change.)
- ii. A slot attendant or slot supervisor after observing the reel characters of the slot machine or if the manual jackpot is [\$600.00] **\$1,200.00** or more, a slot supervisor after observing the reel characters of the slot machine; and
- 2. The duplicate:
  - i. (No change.)
  - ii. A slot attendant or slot supervisor after observing the reel characters of the slot machine or if the manual jackpot is [\$600.00] **\$1,200.00** or more, a slot supervisor after observing the reel characters of the slot machine;
  - iii.-iv. (No change.)
  - (i)-(j) (No change.)

**(a)****Rules of the Games  
Insurance Wagers****Proposed Amendment: N.J.A.C. 19:47-2.9**

Authority: N.J.S.A. 5:12-63(c) and 5:12-100(f).

Proposal Number: PRN 1986-251.

The agency proposal follows:

**Summary**

The proposed amendment to N.J.A.C. 19:47-2.9(b) would permit an insurance wager to exceed half of the player's initial wager when, because of the limitation of the value of chip denominations, half of the initial wager cannot be bet. The player would be permitted to bet in excess of half the initial wager to the next unit that can be wagered in chips.

**Social Impact**

The proposed amendment to N.J.A.C. 19:47-2.9(b) is expected to greatly reduce the high volume of coin exchanges at the blackjack tables which slows down the game and in turn causes patron dissatisfaction. By reducing the volume of coin exchanges, the proposed regulation may provide a more enjoyable game to patrons. In addition, the proposed amendment will promote consistency among the 11 casinos regarding the handling of odd insurance wagers.

**Economic Impact**

The casinos may experience a slight economic benefit as a result of the proposed amendment to N.J.A.C. 19:47-2.9(b). The reduction in the number of coin exchanges may allow for more hands to be dealt per hour, thus increasing the casino's blackjack revenue.

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

19:47-2.9 Insurance wagers

- (a) (No change.)
- (b) An insurance bet may be made by placing on the insurance line of the layout an amount not more than half the amount staked on the player's initial wager [which], **except that a player may bet an amount in excess of half the initial wager to the next unit that can be wagered in chips, when because of the limitation of the value of chip denominations, half the initial wager cannot be bet. All insurance wagers shall be [accomplished] placed immediately after the second card is dealt to each player and prior to any additional cards being dealt to them.**
- (c)-(d) (No change.)

**HEALTH****(b)****LOCAL AND COMMUNITY HEALTH SERVICES****Order to Remove from Sale and Recall Foods, Drugs,  
Cosmetics and Devices****Proposed New Rule: N.J.A.C. 8:21-5**Authorized By: J. Richard Goldstein, M.D., Commissioner,  
Department of Health.

Authority: N.J.S.A. 24:2-1.

Proposal Number: PRN 1986-264.

Submit comments by August 6, 1986 to:

Kenneth Kolano, Chief  
Food and Milk Program  
Environmental Health Services  
Division of Local and Community Health Services  
New Jersey Department of Health  
CN 364  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

The statutory provisions under N.J.S.A. 24:4-12 gives the Department of Health the authority to embargo foods, drugs, cosmetics or devices based upon probable cause or suspicion that the products are adulterated or misbranded. The statutory provisions under N.J.S.A. 24:4-1 provide for confiscation when foods, drugs, cosmetics or devices are found to be in violation of the provisions of the subtitle. The embargo provisions were established to detain products pending final action and the confiscation provisions require that the Department seek court action before confiscation proceeding can be initiated. Both of these statutory provisions do not provide the Commissioner with a timely legal mechanism to carry-out emergency measures when a food, drug, cosmetic or device has been shown to be life threatening or may cause serious injury.

The proposed new rules N.J.A.C. 8:21-5 will give the Commissioner of Health the specific authority to order the immediate removal from sale of a food, drug, cosmetic or device when such an emergency situation occurs. N.J.A.C. 8:21-5.2 clarifies the commissioner's authority to order the recall of a food, drug, cosmetic or device when the department finds that it is adulterated or misbranded. N.J.A.C. 8:21-5.3 establishes a specific protocol and procedure for manufacturers and distributors to conduct an orderly, complete, and timely recall of foods, drugs, cosmetics and devices based upon the hazard the product poses to consumers.

**Social Impact**

The proposed new rule will enable the Commissioner of Health to quickly remove from sale any food, drug, cosmetic, or device when the department receives information that indicates an imminent or real threat of serious injury or death could result if the product(s) in question remains available for sale. The implementation of these regulations could avert serious injury or death when a toxic substance has been found to be deliberately introduced to a product or a contaminated product is identified.

The new rules would enable the department to closely monitor the recall of a product by the manufacturer or distributor. The consumer would be provided the assurance that upon discovery of adulterated or misbranded product(s) in the marketplace, the department has a mechanism in place to ensure that they would be quickly and effectively removed from distribution channels.

**Economic Impact**

The authority to immediately remove from sale food, drug, or cosmetic product(s) that have been shown to be life threatening or could cause serious injury could have a significant negative economic impact upon the companies manufacturing, distributing, or selling the implicated products. The commissioner believes that in the case of such a serious threat, the protection of public health and welfare should take precedent over these economic factors. The actions taken by several major drug manufacturers in the recent cases of drug tamperings support this position.

The standards that establish a specific procedure should not be a severe economic burden upon the industry. The specific procedures established for conducting a recall will enable the industry to act quickly and efficiently to remove adulterated or misbranded products from the marketplace.

The procedures may actually save companies additional expenses when governmental agencies discover that a recall has not been completed effectively. The regulations should not have a significant economic impact on the operations of the State Department of Health. The department should be able to carry-out the enforcement of these regulations with existing resources.

Full text of the proposed new rule follows:

**SUBCHAPTER 5. ORDER TO REMOVE FROM SALE AND  
RECALL FOODS, DRUGS, COSMETICS, AND  
DEVICES**

**8:21-5.1 Order to remove from sale**

(a) The Commissioner of Health may order a manufacturer, distributor, or retailer to immediately remove from sale an adulterated food, drug, cosmetic, or device defined under N.J.S.A. 24:1-1 when the commissioner receives documented information obtained through investigation(s) conducted by the Department of Health, U.S. Food and Drug Administration, U.S. Department of Agriculture, U.S. Environmental Protection Agency, or other law enforcement agencies indicating that such product(s) has been shown to be life threatening or could cause serious injury.

(b) The commissioner will initiate such an order when in his view such extraordinary measures are necessary to protect the public's health, safety and welfare.

(c) The commissioner will take emergency measures as he may determine necessary in order to effectuate the immediate removal from sale of the adulterated product(s). All retail and wholesale outlets offering the product(s) for sale or distribution shall, upon notification, comply with the order by immediately removing the suspect product(s) from all store shelves. The commissioner will advise the manufacturer and the wholesale and retail outlets of the manner of the disposition of the product(s). The sale and distribution of the product(s) shall be banned in the state until such time that either the commissioner authorizes the resumption of sale or action is taken to initiate a recall of the product(s).

(d) The provisions of these regulations shall be enforced by local health departments, and the State Department of Health. If necessary, the commissioner may also request the assistance of local and state police officers in enforcing these regulations.

**8:21-5.2 Order to recall**

The commissioner or his or her designee may order a manufacturer or distributor of a food, drug or cosmetic device as defined under N.J.S.A. 24:1-1 to initiate a recall when a determination has been made that such product when has been offered for sale presents a risk of illness, injury, consumer deception, or is misbranded, or adulterated and the firm has not initiated a recall of the product.

**8:21-5.3 Procedures for recall**

(a) The commissioner or his or her designee will notify the firm of this determination and of the need to immediately begin recall of the product. Such notification will be by letter or telegram to a responsible official of the firm, but may be preceded by oral communication or by a visit from an authorized representative of the department with formal, written confirmation from the commissioner or his or her designee. The notification will specify the violation, the health hazard of the violative product, the recall strategy, and other appropriate instructions for conducting the recall.

(b) Upon receipt of an order to recall, the firm shall provide the department with any or all of the following information:

1. Identity of the product(s) involved, to include product code(s) and/or lot number(s), if applicable;
2. Total amount of such product(s) produced and/or the time span of the production and methodology utilized to arrive at said figure;
3. Total amount of such product(s) estimated to be in distribution channels;
4. Distribution information, including the number of directed accounts and, where necessary, the identity of the direct accounts and methodology utilized to arrive at said figure;
5. The firm shall verbally advise the department of the content of the recall notification which shall be sent to all direct accounts as soon as possible, a copy of which shall be forwarded to the department within five days;
6. The department will review the information submitted and advise the firm of the necessary changes in the firm's strategy. Pending this review, the firm shall not delay initiation of its product removal or correction.

(c) A recalling firm is responsible for promptly notifying each of its affected direct accounts about the recall. The format content, and extent of a recall communication should be commensurate with the hazard of the product being recalled and the strategy approved by the department. In general terms, the purpose of a recall communication is to convey:

1. That the product in question is subject to a recall;
2. That further distribution or use of any remaining product shall cease immediately;
3. Instructions regarding the disposition of the product;
4. A recall communication can be accomplished by telegrams, mailgrams, or first class letters conspicuously marked, preferably in bold red type, on the letter and the envelope: Food, Drug, Cosmetic, or Device Recall. The letter and the envelope should be also marked: "URGENT" when deemed necessary by the commissioner;
5. A recall communication should be written in accordance with the following guidelines:
  - i. Brief and to the point;
  - ii. Identify clearly the product, size, lot or batch number(s), code(s) or serial number(s), and any other pertinent descriptive information to enable accurate and immediate identification of the product(s) under recall;
  - iii. Explain concisely the reason for the recall and the hazard involved, if any;
  - iv. Provide specific instructions on what should be done with respect to the recalled product(s);
  - v. Provide a ready means for the recipient of the communication to report to the recalling firm whether it has any of the product(s);
  - vi. The recall communication should not contain irrelevant qualifications, promotional materials, or any other statement that may detract from the message. Where necessary, follow-up communications should be sent within two weeks to those who fail to respond to the initial recall communication;
6. Consignees that receive a recall communication should immediately carry-out the instructions set forth by the recalling firm and extend the recall to its customers in accordance with the information provided in the recall communication.

(d) The recalling firm shall submit periodic recall status reports to the department so that the department may assess the progress of the recall. The frequency of such reports will be determined by the relative urgency of the recall and will be specified by the department.

1. Unless otherwise specified or inappropriate in a given situation, the recall status report should contain the following information:

- i. Number of consignees notified of the recall, date, and method of notification;
- ii. Number of consignees responded to the recall notification and quantity of products on hand at the time it was received;
- iii. Number of consignees that did not respond. If needed, the identity of nonresponding consignees may be requested by the department;
- iv. Number of products returned or corrected by each consignee contacted and the quantity of products accounted for;
- v. Number and results of effectiveness checks that were made;
- vi. Estimated time frames for completion of the recall.

2. Recall status reports are to be discontinued when the department is satisfied that the recall or corrective actions have been completed.

(e) A recalling firm may request termination of its recall by submitting a written request to the department stating that the recall is effective in accordance with the criteria set forth in the recall strategy approved by the department and by accompanying the request with the most current recall status report and a description of the disposition of the recalled product.

(f) A manufacturer or distributor may decide of its own violation and under any circumstances to remove or correct a distributed product. A firm that does so because it believes the product to be violative shall notify immediately the department's Food and Milk Program or Drug Control Program. Such removal or corrective action will be considered a recall only if the department regards the product to be involved in a violation that is subject to legal action. The firm will be asked to produce the department with the following information:

1. Identity of the product involved to include product codes and/or lot number(s) if applicable;
2. Reason for the removal or corrective action and the date and circumstances under which the product deficiency or possible deficiency was discovered;
3. Evaluation of the risk associated with the deficiency or possible deficiency;

- 4. Total amount of such products produced and/or the time span of the production and methodology utilized to arrive at said figure;
  - 5. Total amount of such products estimated to be in distribution channels;
  - 6. Distribution information, including the number of direct accounts and, where necessary, the identity of the direct accounts;
  - 7. A copy of the firm's recall notification, if any, that has been issued, or a proposed communication if none has been issued;
  - 8. Proposed strategy for conducting the recall;
  - 9. Name and telephone number of the firm's official who should be contacted concerning the recall.
- (g) The department will review the information submitted and recommend any appropriate changes in the firm's strategy for the recall which shall not delay initiation of the product removal or correction.

**(a)**

**DIVISION OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH**

**Worker and Community Right to Know Act**

**Proposed Amendments: N.J.A.C. 8:59-1.3, 2.1, 3.13, 5.1, 5.5, 6.2, 7.1, 7.2, 8.1, 8.2, 8.5 and 10.3**

**Proposed New Rules: N.J.A.C. 8:59-1.5, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11 and 8.12**

Authorized By: J. Richard Goldstein, M.D., Commissioner, Department of Health.

Authority: L. 1983, c.315, N.J.S.A. 34:5A-1 et seq., specifically N.J.S.A. 34:5A-32; N.J.S.A. 26:1A-16; N.J.S.A. 26:1A-37.

Submit comments by August 6, 1986 to:

Richard Willinger, Esq.  
Occupational Disease Prevention and Information Program  
New Jersey Department of Health  
CN 360  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., enacted on August 29, 1983 and effective one year later, established a comprehensive system for the disclosure and dissemination of information about hazardous substances in the workplace and the environment to workers and community residents. Rules were promulgated to implement the Act on October 1, 1984 and were amended on January 21, 1985. Additional amendments and several new rules are being proposed at this time. They fall into several categories:

1. Reflection of an amendment to the Worker and Community Right To Know Act on June 29, 1985, which extended the deadlines for completion of the workplace survey, labeling of containers, and establishing an education and training program to October 30, 1985. The deadline for completing the education and training program was extended to December 31, 1985. These new dates are reflected in amendments to N.J.A.C. 8:59-2.1(d), 5.1(a), 5.1(b), 6.2(a), 6.2(b) and 6.2(e).

2. Reflection of an amendment to the Worker and Community Right to Know Act on January 21, 1986, which deleted certain employer groups from coverage by the law and added several employer groups to the law by amending the definition of "employer" in N.J.A.C. 8:59-1.3 Definitions. Covered employers are variously categorized by two, three and four-digit Standard Industrial Classification Codes. For ease in understanding the changes, all employer groups have been categorized by four-digit SIC codes in the tables which follow. These three tables list the employers which have been deleted from coverage by the law, those employer groups which have been added to the law, and, finally, a comprehensive list of currently covered employer groups (which includes the additions).

The following employer groups have been deleted from the law (by four-digit SIC code):

<u>SIC</u>	<u>DESCRIPTION</u>
	<b>TRANSPORTATION SERVICES</b>
	Arrangement of passenger transportation
4722	Arrangement of transportation of freight and cargo
4723	
	<b>COMMUNICATION</b>
4832	Radio broadcasting
4833	Television broadcasting
4899	Communication services, not elsewhere classified
	<b>WHOLESALE TRADE-NONDURABLE GOODS</b>
5111	Printing and writing paper
5112	Stationery supplies
5113	Industry & personal service paper
5133	Piece goods (woven fabrics)
5134	Notions and other dry goods
5136	Men's and boys' clothing and furnishings
5137	Women's, children's and infants' clothing and accessories
5139	Footwear
5141	Groceries, general line
5142	Frozen foods
5143	Dairy products
5144	Poultry and poultry products
5145	Confectionery
5146	Fish and seafoods
5147	Meats and meat products
5148	Fresh fruits and vegetables
5149	Groceries and related products, not elsewhere classified
5152	Cotton
5153	Grain
5154	Livestock
5159	Farm-product raw materials, not elsewhere classified
	<b>AUTOMOTIVE REPAIR, SERVICES, AND GARAGES</b>
7512	Passenger car rental and leasing, without drivers
7513	Truck rental and leasing, without drivers
7519	Utility trailer and recreational vehicle rental
7523	Parking lots
7525	Parking structures
7542	Car washes
7549	Automotive services, except repair and car washes
	<b>MISCELLANEOUS REPAIR SERVICES</b>
7622	Radio and television repair shops
7623	Refrigeration and air conditioning service and repair shops
7629	Electrical and electronic repair shops, not elsewhere classified
7631	Watch, clock, and jewelry repair
7641	Reupholstery and furniture repair
7694	Armature rewinding shops
7699	Repair shops and related services, not elsewhere classified
	<b>HEALTH SERVICES</b>
8011	Offices of physicians
8021	Offices of dentists
8031	Offices of osteopathic physicians
8041	Offices of chiropractors
8042	Offices of optometrists
8049	Offices of health practitioners not elsewhere classified
8051	Skilled nursing care facilities
8059	Nursing and personal care, not elsewhere classified
8071	Medical laboratories
8072	Dental laboratories
8081	Outpatient care facilities
8091	Health and allied services, not elsewhere classified
	<b>EDUCATIONAL SERVICES</b>
8231	Libraries and information centers
8241	Correspondence schools
8243	Data processing schools
8244	Business and secretarial schools
8299	Schools & educational services, not elsewhere classified
	<b>MUSEUMS, ART GALLERIES, BOTANICAL AND ZOOLOGICAL GARDENS</b>
8411	Museum and art galleries
8421	Arboreta, botanical, and zoological gardens

The following employer groups have been added to the law (by four-digit SIC code):

<u>SIC</u>	<u>DESCRIPTION</u>	
	<b>AGRICULTURAL SERVICES</b>	4511
0782	Lawn and garden services	4582
	<b>TRANSPORTATION BY AIR</b>	4583
4511	Air transportation, certificated carriers	46
4582	Airports and flying fields	4712
4583	Airport terminal services	4742
	<b>WHOLESALE TRADE—DURABLE GOODS</b>	4743
5085	Industrial supplies	4782
5087	Service establishment equipment and supplies	4783
5093	Scrap and waste materials	4784
	<b>AUTOMOBILE DEALERS AND GASOLINE SERVICE STATIONS</b>	4789
5511	Motor vehicle dealers (new and used)	4811
5521	Motor vehicle dealers (used only)	4821
5541	Gasoline service stations	49
	<b>PERSONAL SERVICES</b>	
7216	Dry cleaning plants, except rug cleaning	5085
7217	Carpet and upholstery cleaning	5087
7218	Industrial laundrers	5093
	<b>BUSINESS SERVICES</b>	
7397	Commercial testing laboratories	

The following is a complete listing of employer groups who are currently covered by the Right to Know law:

<u>SIC</u>	<u>DESCRIPTION</u>	
	<b>AGRICULTURAL SERVICES</b>	5122
0782	Lawn and garden services	5161
20	<b>FOOD AND KINDRED PRODUCTS (ENTIRE GROUP)</b>	5171
21	<b>TOBACCO MANUFACTURING (ENTIRE GROUP)</b>	5172
22	<b>TEXTILE MILL PRODUCTS (ENTIRE GROUP)</b>	5181
23	<b>APPAREL AND OTHER TEXTILE PRODUCTS (ENTIRE GROUP)</b>	5182
24	<b>LUMBER AND WOOD PRODUCTS (ENTIRE GROUP)</b>	5191
25	<b>FURNITURE AND FIXTURES (ENTIRE GROUP)</b>	5194
26	<b>PAPER AND ALLIED PRODUCTS (ENTIRE GROUP)</b>	5198
27	<b>PRINTING AND PUBLISHING (ENTIRE GROUP)</b>	5199
28	<b>CHEMICALS AND ALLIED PRODUCTS (ENTIRE GROUP)</b>	
29	<b>PETROLEUM AND COAL PRODUCTS (ENTIRE GROUP)</b>	5511
30	<b>RUBBER AND MISCELLANEOUS PLASTIC PRODUCTS (ENTIRE GROUP)</b>	5521
31	<b>LEATHER AND LEATHER PRODUCTS (ENTIRE GROUP)</b>	5541
32	<b>STONE, CLAY AND GLASS PRODUCTS (ENTIRE GROUP)</b>	7216
33	<b>PRIMARY METAL INDUSTRIES (ENTIRE GROUP)</b>	7217
34	<b>FABRICATED METAL PRODUCTS (ENTIRE GROUP)</b>	7218
35	<b>MACHINERY, EXCEPT ELECTRICAL (ENTIRE GROUP)</b>	7397
36	<b>ELECTRICAL AND ELECTRONIC EQUIPMENT (ENTIRE GROUP)</b>	7531
37	<b>TRANSPORTATION EQUIPMENT (ENTIRE GROUP)</b>	7534
38	<b>INSTRUMENTS AND RELATED PRODUCTS (ENTIRE GROUP)</b>	7535
39	<b>MISCELLANEOUS MANUFACTURING INDUSTRIES (ENTIRE GROUP)</b>	7538

	<b>TRANSPORTATION BY AIR</b>
	Air transportation, certificated carriers
	Airports and flying fields
	Airport terminal services
	<b>PIPE LINES, EXCEPT NATURAL GAS (ENTIRE GROUP)</b>
	<b>TRANSPORTATION SERVICES</b>
	Freight forwarding
	Rental of railroad cars with care of lading
	Rental of railroad cars without care of lading
	Inspection and weighing services connected with transportation
	Packing and crating
	Fixed facilities for handling motor vehicle transportation, not elsewhere classified
	Services incidental to transportation, not elsewhere classified
	<b>COMMUNICATION</b>
	Telephone communication (wire or radio)
	Telegraph communication (wire or radio)
	<b>ELECTRIC, GAS, AND SANITARY SERVICES (ENTIRE GROUP)</b>
	<b>WHOLESALE TRADE—DURABLE GOODS</b>
	Industrial supplies
	Service establishment equipment and supplies
	Scrap and waste materials
	<b>WHOLESALE TRADE—NONDURABLE GOODS</b>
	Drugs, drug proprietaries, and druggists' sundries
	Chemicals and allied products
	Petroleum bulk stations & terminals
	Petroleum and petroleum products wholesalers, except bulk stations and terminals
	Beer and ale
	Wines and distilled alcoholic beverages
	Farm supplies
	Tobacco and tobacco products
	Paints, varnishes, and supplies
	Nondurable goods, not elsewhere classified
	<b>AUTOMOBILE DEALERS AND GASOLINE SERVICE STATIONS</b>
	Motor vehicle dealers (new and used)
	Motor vehicle dealers (used only)
	Gasoline service stations
	<b>PERSONAL SERVICES</b>
	Dry cleaning plants, except rug cleaning
	Carpet and upholstery cleaning
	Industrial laundrers
	<b>BUSINESS SERVICES</b>
	Commercial testing laboratories
	<b>AUTOMOTIVE REPAIR, SERVICES, AND GARAGES</b>
	Top and body repair shops
	Tire retreading and repair shops
	Paint shops
	General automotive repair shops
	Automotive repair shops, not elsewhere classified
	<b>MISCELLANEOUS REPAIR SERVICES</b>
	Welding repair
	<b>HEALTH SERVICES</b>
	General medical & surgical hospitals
	Psychiatric hospitals
	Specialty hospitals, except psychiatric
	<b>EDUCATIONAL SERVICES</b>
	Elementary and secondary schools
	Colleges, universities, and professional schools
	Junior colleges and technical institutes
	Vocational schools, except vocational high schools, not elsewhere classified

ALL STATE AND LOCAL GOVERNMENTS, OR ANY AGENCY,  
AUTHORITY, DEPARTMENT, BUREAU, OR  
INSTRUMENTALITY THEREOF.

On October 10, 1985, the United States Third Circuit Court of Appeals rendered a decision about coverage of manufacturing establishments (SIC codes 20 through 39) by the Worker and Community Right to Know Act. The court held that manufacturing establishments were partially covered by the Act and reserved decision on the question of labeling. Some of the major provisions of the court's decision included:

a. Manufacturing establishments are not required to complete the workplace survey.

b. Manufacturing establishments are not required to conduct an education and training program on hazardous substances for their employees. (Note: Manufacturers will still have to conduct an education and training program on hazardous substances for their employees pursuant to the federal Occupational Safety and Health Administration's Hazard Communication Standard.)

c. Manufacturing establishments *are* required to complete the environmental survey.

d. Manufacturing establishments *are* required to complete the emergency services information survey.

e. The court remanded to the federal District Court for an evidentiary hearing the question of whether manufacturing establishments must label substances on the Environmental Hazardous Substance List. (Note: The District Court has expanded this issue to include the question of whether manufacturers must comply with the universal labeling provisions of the Right to Know law.) A hearing is expected to be held this summer.

f. The Right to Know law can validly require the disclosure of hazardous substance names which are considered trade secrets if they meet the definition of a special health hazard substance.

4. Reflection of an amendment to the Worker and Community Right to Know Act on January 21, 1986 which states that employers who report no hazardous substances on their workplace survey transmitted to the Department of Health are exempt from all provisions of the Act except for filing an annual update to the Workplace Survey and being liable for enforcement action if necessary. Employers reporting no hazardous substances will also receive a refund of the Right to Know assessment which they have paid to the Department of Labor for the Right to Know Fund.

5. A "technically qualified person" is required to conduct the education and training program for employees. The existing definition of this phrase called for education, training or experience in understanding the health risks associated with hazardous substances which was not specific enough for many employers to ascertain whether they or their employees could conduct the required program. The Department has replaced the original definition with a more detailed definition in N.J.A.C. 8:59-1.3, Definitions.

6. Typographical errors are being corrected in N.J.A.C. 8:59-3.13, 5.1(h), 7.1(c), 7.2(d), 8.2(a) and 10.3

7. A conflict between state and federal law has come to the attention of the Department in the case of the labeling of controlled substances in storage and in transit. N.J.A.C. 8:59-5.5(i) has been added to allow labels on controlled substances required by federal law to be substituted for labeling information required by the New Jersey Worker and Community Right to Know Act.

8. The department is required by law to transmit hazardous substance fact sheets to employers in response to the hazardous substances reported on the workplace survey. Many non-covered employers are requesting fact sheets and many others are requesting a complete set of the 2051 hazardous substance fact sheets. In order to reduce the cost to the department to print these extra fact sheets, N.J.A.C. 8:59-7.1(h) is being amended to allow the department to charge for fact sheets requested by persons to whom the law does not require that fact sheets be sent automatically.

9. N.J.A.C. 8:59-7.2 sets forth a list of employer obligations under the Act. Subsections (d), (e) and (f) detail an employer's obligation to provide surveys, hazardous substance fact sheets, and chemical names to employees and employee representatives. These three sections have been modified to make the language consistent and clarify that an employee must make a written request for this information and that an employer must provide it as soon as possible.

10. N.J.A.C. 8:59-8.2 establishes the factors to be considered by the Department in imposing civil administrative penalties against employers who violate provisions of the Worker and Community Right to Know

Act. A formula is established to compute the penalty and appeal procedures are provided to challenge the penalty.

11. N.J.A.C. 8:59-8.5 states the Department of Health's right to obtain employee health and exposure records. Subsection (c) is added in order to explain that the Department uses employee health and exposure records for the protection of the community at large. The Department's mandate is to protect the public's health. Community residents are exposed to numerous hazardous substances, generally in very low concentrations. Workplace exposures are generally much higher and show health effects in a statistically significant manner. Once it is known based on workplace exposures, that a hazardous substance causes health hazards to people, the risk to the general public can be more accurately determined. Subsection (d) lists other statutory authority which would enable the Commissioner to obtain health and exposure records for protection of the public's health from all employers fully or partially covered by the Right to Know law.

12. Subchapter 8, N.J.A.C. 8:59-8 Enforcement, is expanded to reflect provisions of the Act relating to civil administrative orders, N.J.A.C. 8:59-8.6, civil actions, N.J.A.C. 8:59-8.7, and civil penalties, N.J.A.C. 8:59-8.8. N.J.A.C. 8:59-8.1 is amended to add a sentence which appears in the Act.

13. New rules are being added to establish procedures for compliance inspections, N.J.A.C. 8:59-8.9 and 8.10, to handle complaints of violations by employees, N.J.A.C. 8:59-8.11, and to require the posting of any order, penalty or notice of contest by an employer, N.J.A.C. 8:59-8.12.

#### Economic Impact

The deletion of thousands of employers from coverage under the law will save them funds which would have been spent on compliance activities. Those who are being added will incur costs of compliance. The extension of the compliance deadlines could reduce the expense of an employer to comply by allowing additional time to use existing employees rather than hiring outside assistance to comply within a shorter period of time. Enabling employers reporting no hazardous substances to receive a refund of their Right to Know assessment fee will save employers hundreds of thousands of dollars. The imposition of civil administrative penalties or civil penalties will obviously have an economic impact upon employers who are found to be in violation of the Act. This is a necessary economic imposition to penalize employers who violate the law.

#### Social Impact

Employees who are exposed to hazardous substances and work for employers deleted from the law could possibly suffer health impairment in the future. The extension of the compliance deadlines will enable more employers to comply with the requirements of the Act within the legally mandated deadlines. The establishment of rules governing the imposition of civil administrative penalties will convey to some employers the economic reality that it is less expensive to comply with the law than to be penalized for violating the law. If the Department can determine health effects from exposure to hazardous substances through examining employee health and exposure records, the knowledge gained will serve to protect the public at large from environmental and community exposure to the same substances. The bulk of the amendments and new rules deal with enforcement and will enable the Department to enforce the law to insure that hazardous substances are reported, containers are labeled, employees are educated and trained, and employees receive the information to which they are entitled.

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

#### 8:59-1.3 Definitions

...

"Chemical name" [is] means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the Chemical Abstracts Service rules of nomenclature.

...

"Employer" means any person or corporation in the State engaged in business operations [having] **which has** a Standard Industrial Classification, as designated in the Standard Industrial Classification Manual prepared by the federal Office of Management and Budget, with the following Major Group Numbers, Group Numbers, or Industry Numbers, as the case may be: Major Group Number 07 (Agricultural Services), only Industry Number 0782—Lawn and garden services; Major Group [numbers] Numbers 20 through 39 inclusive (manufacturing industries [.] ;

[numbers 46 through 49 inclusive (pipelines, transportation services, communications, and electric, gas, and sanitary services.) Major Group Number 45 (Transportation by Air), only Industry Number 4511—Air Transportation, certified carriers, and Group Number 458—Air Transportation Services; Major Group Number 46 (Pipelines, Except Natural Gas); Major Group Number 47 (Transportation Services), only Group Numbers 471—Freight Forwarding, 474—Rental of Railroad Cars, and 478—Miscellaneous Services Incidental to Transportation; Major Group Number 48 (Communication), only Group Numbers 481—Telephone Communication, and 482—Telegraph Communication; Major Group Number 49 (Electric, Gas and Sanitary Services); Major Group Number 50 (Wholesale Trade—Durable Goods), only Industry Numbers 5085—Industrial Supplies, 5087—Service Establishment Equipment and Supplies, and 5093—Scrap and Waste Materials; [number] Major Group Number 51 (Wholesale trade, nondurable goods), only Group Numbers 512—Drugs, Drug Proprietaries and Druggists' Sundries, 516—Chemicals and Allied Products, 517—Petroleum and Petroleum Products, 518—Beer, Wine and Distilled Alcoholic Beverages, and 519—Miscellaneous Nondurable Goods; Major Group Number 55 (Automobile Dealers and Gasoline Service Stations), only Group Numbers 551—Motor Vehicle Dealers (New and Used), 552—Motor Vehicle Dealers (Used only), and 554—Gasoline Service Stations; Major Group Number 72 (Personal Services), only Industry Numbers 7216—Dry Cleaning Plants, Except Rug Cleaning, 7217—Carpet and Upholstery Cleaning, and 7218—Industrial Launderers; Major Group Number 73 (Business Services), only Industry Number 7397—Commercial testing laboratories; [number] Major Group Number 75 (automotive repair, services, and garages), only Group Number 753—Automotive Repair Shops; [number] Major Group Number 76 (miscellaneous repair services), only Industry Number 7692—Welding Repair; [number] Major Group Number 80 (health services), only Group Number 806—Hospitals; [number] and Major Group Number 82 (educational services), only Group Numbers 821—Elementary and Secondary Schools and 822—Colleges and Universities, and Industry Number 8249—Vocational Schools [and number 84 (museums, art galleries, botanical and zoological gardens)]. Except for the purposes of the Worker and Community Right to Know Fund, N.J.S.A. 34:5A-26, "employer" means the State and local governments, or any agency, authority, department, bureau, or instrumentality thereof.

...  
"Technically qualified person" means a person who [, because of education training or experience, understands the health risks associated with the toxic or hazardous substance or mixture, and is familiar with the protective procedures to be followed in the use or handling of such substances] is a registered nurse, or has a bachelor's degree in industrial hygiene, environmental science, health education, chemistry, or a related field and understands the health risks associated with exposure to hazardous substances; or has completed at least 30 hours of hazardous materials training offered by the New Jersey State Safety Council, an accredited public or private educational institution, labor union, trade association, or government agency and understands the health risks associated with exposure to hazardous substances, and has at least one year of experience supervising employees who handle hazardous substances or work with hazardous substances. The thirty hour requirement may be met by the combination of one or more hazardous materials training courses.

8:59-1.4<sup>5</sup> Severability  
(No change in text.)

**8:59-1.4 Covered employers exempt from provisions of the law**

(a) Any employer whose workplace survey transmitted to the Department of Health indicates that no hazardous substances are present at the facility, shall be exempt from the provisions of the Act for that facility, except for the requirement to annually update the workplace survey pursuant to N.J.A.C. 8:59-2, and except for the provisions of N.J.S.A. 34:5A-33 and N.J.A.C. 8:59-8 providing for enforcement of violations of the Act.

(b) Any employer exempted from the provisions of the Act pursuant to this section who transmits to the Department of Health an update of the workplace survey which indicates that a hazardous substance is present at the employer's facility shall immediately be subject to the provisions of the Act.

**SUBCHAPTER 2. WORKPLACE SURVEY**

**8:59-2.1 General provisions**

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

(d) [Within] By October 30, 1985, or within 90 days of receipt of a workplace survey, whichever is later, an employer shall complete and

transmit the survey to the Department of Health; the county health department, county clerk, or designated county lead agency, of the county in which the employer's facility is located; the local fire department; and the local police department.

(e) (No change.)

**SUBCHAPTER 3. TRADE SECRETS**

8:59-3.13 [Approval] Appeal of determination  
(No change in text.)

**SUBCHAPTER 5. LABELING CONTAINERS**

**8:59-5.1 General provisions**

(a) By [March 1, 1985] **October 30, 1985**, every container at an employer's facility containing a hazardous substance shall bear a label indicating the chemical name and Chemical Abstracts Service number of the hazardous substance or the trade secret registry number assigned to the hazardous substance. Common names specified in N.J.A.C. 8:59-5.7 may be substituted for the chemical name of the substance.

(b) By [March 1, 1985] **October 30, 1985**, every container at an employer's facility in which more than one percent of the [content] contents of the container are unknown, shall bear a label stating "Contents Unknown" or "Contents Partially Unknown", as appropriate, in addition to other labeling required by N.J.A.C. 8:59-5.

(c)-(g) (No change.)

(h) Reaction [vessels] vessels are containers in which a reaction or mixing takes place which do not meet the definition of process container. Reaction vessels shall contain labels which identify the substances which are added to the vessel and removed from the vessel. These labels may be placed on an adjoining wall or post in close proximity to the reaction vessel. Batch sheets or operating manuals which contain the information required for labeling in N.J.A.C. 8:59-5.1(a), (b), and (c) may be placed on an adjoining wall or post in close proximity to the reaction vessel to meet the requirement of this section.

(i)-(j) (No change.)

**8:59-5.5 Exceptions to labeling requirements**

(a)-(h) (No change.)

(i) **Labels on shipping containers of controlled substances regulated by the Federal Controlled Substances Act and/or the Controlled Substances Import and Export Act which purposefully do not indicate the contents of the container as controlled substances in order to guard against storage and in-transit losses may be substituted for the information required by N.J.A.C. 8:59-5.1.**

**SUBCHAPTER 6. EDUCATION AND TRAINING PROGRAM**

**8:59-6.2 Program for employees**

(a) By [March 1, 1985.] **October 30, 1985**, an employer shall establish an education and training program for his employees. By **December 31, 1985**, an employer shall provide current employees with a complete education and training program, and annually thereafter.

(b) Beginning on [March 1, 1985] **January 1, 1986**, an employer shall provide new or reassigned employees with an education and training program within the first month of employment or reassignment.

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

(e) **Beginning on January 1, 1986**, [Prior] prior to entering an employment agreement with a prospective employee, an employer shall notify the prospective employee of the availability of workplace surveys and appropriate hazardous [substances] substance fact sheets at the Department of Health; county health department, county clerk, or designated county lead agency; and employer's facility for the facility at which the prospective employee will be employed.

**SUBCHAPTER 7. EMPLOYEE AND PUBLIC ACCESS TO INFORMATION**

**8:59-7.1 Department of Health obligations**

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

(c) [An] Any person may request in writing from the department a copy of a workplace survey for a facility or a copy of any hazardous substance fact sheet.

(d)-(g) (No change.)

(h) The department shall have the right to charge for making and supplying copies of any documents requested by any persons in accordance with N.J.S.A. 47:1A-1 et seq. **The department shall have the right to charge for copies of hazardous substance fact sheets requested by any**

person except for those sent to an employer in response to hazardous substances reported on the workplace survey and except for research and development laboratories covered by the Act.

#### 8:59-7.2 Employer obligations

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

(d) An employer shall, upon written request, provide an employee or employee representative with a copy of a workplace survey, appropriate hazardous substance fact sheets and, if applicable, an [and] environmental survey, at no cost. This information shall be provided as soon as possible but at the latest within five working days of the request.

(e) An employer shall, upon written request, provide an employee or employee representative with the chemical name of a substance in a container labeled with a common name. This information shall be provided as soon as possible but at the latest within five working days of the request.

(f) An employer shall, upon written request, provide an employee or employee representative [, upon written request,] with the chemical name and Chemical Abstracts Service number or trade secret registry number of all hazardous substances and, after August 29, 1986, the five most predominant substances contained in any container which is not labeled pursuant to the Act. This information shall be provided as soon as possible but at the latest within five working days of the request.

(g)-(i) (No change.)

### SUBCHAPTER 8. ENFORCEMENT

#### 8:59-8.1 Violations

Whenever, on the basis of information available to him, the Commissioner of the Department of Health finds that an employer is in violation of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq[;] ., or any rule [and] or regulation adopted pursuant thereto, the Commissioner of the Department of Health shall issue an order requiring the employer to comply, shall bring a civil action, shall levy a civil administrative penalty, or shall bring an action for a civil penalty, in accordance with N.J.S.A. 34:5A-33. The exercise of any of the remedies provided in this subchapter shall not preclude recourse to any other remedy so provided.

#### 8:59-8.2 Civil administrative penalty

(a) The Commissioner of the State Department of Health is authorized pursuant to N.J.S.A. 34:5A-33 to impose a civil administrative penalty of not more than \$2,500 for each violation and additional penalties of not more than \$1,000 for each day during which a violation continues after receipt of an order from the [commissioner] Commissioner to cease the violation.

(b) The penalty which may be assessed for a violation is to be determined by application of factors indicative of the seriousness and type of the violation, as set forth below.

##### 1. Seriousness:

i. Within the Commissioner's discretion, significant violations shall include, but not be limited to:

- (1) Filing false information on the workplace survey;
- (2) Filing a trade secret claim in bad faith which clearly does not meet the criteria for a trade secret;
- (3) Failure to conduct an education and training program;
- (4) Failure to supply information requested by a county health department, county clerk, or designated county lead agency, local police department, or local fire department concerning the workplace survey.

ii. Within the Commissioner's discretion, major violations shall include, but not be limited to:

- (1) Failure to return a completed workplace survey to the department within the deadline set forth in N.J.A.C. 8:59-2;
- (2) Failure to convey copies of the workplace survey to the county health department, county clerk, or designated county lead agency, local fire department, or local police department;
- (3) Omission from the workplace survey of more than five percent of the hazardous substances present at the employer's facility;
- (4) Failure to make a good faith effort to obtain the chemical names and Chemical Abstract Service numbers of the components of a product which are unknown to the employer, from the manufacturer or supplier of the product;
- (5) Failure to supply the chemical name or common name and Chemical Abstracts Service number of a substance claimed to be a trade secret on the trade secret section of the workplace survey which is filed with the department;
- (6) Failure to file the trade secret section of the workplace survey with the department, if applicable;

(7) Failure to prepare a hazardous substance fact sheet for a trade secret substance in accordance with the requirements of N.J.A.C. 8:59-4.4(b);

(8) Failure to label more than five percent of containers containing hazardous substances by the deadlines set forth in N.J.A.C. 8:59-5.1;

(9) Failure to label more than five percent of all containers by the deadline set forth in N.J.A.C. 8:59-5.1(c);

(10) Failure to label more than five percent of containers in accordance with the requirements of N.J.A.C. 8:59-5;

(11) Conducting an education and training program that does not comply with the requirements set forth in N.J.A.C. 8:59-6;

(12) Failure to provide employees with material provided by the department;

(13) Failure to post posters provided by the department to inform employees of their rights under the law;

(14) Failure to provide an employee with a copy of a workplace survey, appropriate hazardous substance fact sheets, and, if applicable, an environmental survey, as soon as possible but at the latest within five working days of the request;

(15) Failure to provide copies of employee health and exposure records requested by the department;

(16) Failure to grant the department access to employees in order to request permission to review their health and exposure records;

(17) Failure to establish and maintain a central file which contains a workplace survey, appropriate hazardous substance fact sheets, and, if applicable, an environmental survey;

(18) Failure to provide an employee with the chemical name of a substance in a container labeled with a common name, or in a container which is not labeled pursuant to the provisions of N.J.A.C. 8:59-5, as soon as possible or at the latest within five working days of the request.

iii. Within the Commissioner's discretion, any other violations of the Act or these regulations shall be considered non-serious violations. The Commissioner reserves the right to find other violations of the Act to be serious.

2. Type factor: The type factor reflects the circumstances of the violation and the responsibility of the violator. There are three types of violations:

i. Willful: A willful violation is one which is the result of some deliberate, knowing or purposeful action or inaction by the violator.

ii. Highly foreseeable: A highly foreseeable violation is one which, while not willful, was so clearly likely to have happened under all the circumstances that the violator can be charged with having known it was going to happen and failing to prevent it.

iii. Unintentional but foreseeable: An unintentional but foreseeable violation is one which the violator, by the exercise of reasonable diligence, could and should have foreseen and prevented.

3. The following presumptions shall be applied in the determination of the appropriate type factor:

i. An employer is presumed to have knowledge of all statutes and regulations applicable to its facility.

ii. Any violation known to the violator which continues for a period of 30 days or more without the violator taking steps to eliminate it, shall be presumed a willful violation.

4. Schedule of factor values: Penalties for violations shall be computed after assigning values to the Seriousness and Type Factors from the ranges set forth below:

i. Seriousness	Values
(1) Significant	1.00
(2) Major	1.00 to 0.40
(3) Minor	0.40 to 0
ii. Type:	
(1) Willful	1.00
(2) Highly foreseeable	1.00 to 0.50
(3) Unintentional but foreseeable	0.50 to 0

5. Computation of penalty: The penalty for violations shall be computed as follows:

i. (Seriousness) × (Type) × (\$2,500) = Penalty for each violation.

ii. (Seriousness) × (Type) × (\$1,000) = Penalty for each day of violation after receipt of an administrative order to cease the violation from the date specified in the order for correction of the violation.

(c) Before any civil administrative penalty is imposed pursuant to this subchapter, the employer shall be notified by certified mail, return receipt requested, or by personal service. Such notice shall include:

1. A reference to the section of the Act, rule, regulation or order violated;
2. A concise statement of the facts alleged to constitute a violation;
3. A statement of the amount of the civil administrative penalties to be imposed; and

4. A statement of the employer's right to a hearing.

(d) The employer shall have 20 calendar days from receipt of the notice of imposition of a civil administrative penalty within which to deliver to the Commissioner a written request for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1-1 et seq. Subsequent to the hearing and upon finding that a violation has occurred, the Commissioner may issue a final order imposing the amount of the fine specified in the notice or such lesser amount as he may assess pursuant to the provisions on compromise of N.J.A.C. 8:59-8.2(h).

(e) If no hearing is requested, the notice of imposition of a civil administrative penalty shall become a final order upon expiration of the 20 calendar day period following receipt of the notice by the employer.

(f) Payment of the civil administrative penalty is due when a final order is issued or when the notice of imposition of a civil administrative penalty becomes a final order.

(g) The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in the Act, and the payment of a civil administrative penalty shall not be deemed to affect the availability of any other enforcement provision in connection with the violation for which the penalty is levied.

[(b)] (h) A civil administrative penalty imposed pursuant to this subchapter[,] may be compromised by the Commissioner, in whole or in part, upon the posting by the employer of a performance bond in an amount and upon terms and conditions deemed satisfactory by the Commissioner.

8:59-8.5 Employee health and exposure records

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

(d) The use of the employee health and exposure records obtained pursuant to (a) and (b) above is not limited to the evaluation of an employee's health and exposure to hazardous substances. The information obtained will be used in epidemiological studies to determine the impact of hazardous substances on worker and community populations. The study of worker exposure to a hazardous substance indicates the health effect of that substance on a person, whether he is in the workplace or in the community. Such data from health and exposure records are necessary for determining the health effects to community residents from hazardous substances.

(e) The Commissioner's authority to obtain employee health and exposure records on behalf of the public's health is further set forth in N.J.S.A. 26:1A-16 and N.J.S.A. 26:1A-37.

8:59-8.6 Civil administrative order

(a) Whenever, on the basis of information available to him, the Commissioner of the Department of Health finds that an employer is in violation of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., or any rule or regulation adopted pursuant thereto, the Commissioner of the Department of Health may issue an order:

1. Specifying the provision or provisions of the Act, or the rule or regulation adopted pursuant thereto, of which the employer is in violation;
2. Citing the action which caused the violation;
3. Requiring the employer to comply with the provision of the Act or the rules and regulations adopted pursuant thereto of which the employer is in violation; and

4. Giving notice to the employer of the right to a hearing on the matter contained in the order.

(b) A civil administrative order shall be sent to an employer by certified mail, return receipt requested, or by personal service.

(c) The employer shall have 20 calendar days from receipt of the civil administrative order within which to deliver to the Commissioner a written request for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1-1 et seq. Subsequent to the hearing and upon finding that a violation has occurred, the Commissioner may issue a final order requiring the employer to comply with the provision of the Act or the rules and regulations adopted pursuant thereto of which the employer is in violation, as specified in the civil administrative order.

(d) If no hearing is requested, the civil administrative order shall become a final order upon expiration of the 20 calendar day period following receipt of the order by the employer.

(e) The authority to issue a civil administrative order is in addition to all other enforcement provisions in the Act, and compliance with an administrative order shall not be deemed to affect the viability of any other enforcement provisions in connection with the violation for which the order was issued.

8:59-8.7 Civil action

The Commissioner of the Department of Health is authorized to commence a civil action in Superior Court for appropriate relief from a violation of the Act. The relief may include an assessment against the violator for the costs of any investigation, inspection, or monitoring survey which led to the discovery and establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subchapter.

8:59-8.8 Civil penalty

(a) An employer who violates the Act, an order issued pursuant to N.J.A.C. 8:59-8.6, or a court order issued pursuant to N.J.A.C. 8:59-8.7, or who fails to pay in full a civil administrative penalty levied pursuant to N.J.A.C. 8:59-8.2, shall be subject, upon order of a court, to a civil penalty not to exceed \$2,500 for each day during which the violation continues.

(b) An employer who willfully or knowingly violates the Act, or who willfully or knowingly makes a false statement, representation, or certification in any document filed or required to be maintained under the Act, or who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device required to be maintained pursuant to the Act, is subject upon order of a court, to a civil penalty of not less than \$10,000 nor more than \$5,000 per day of violation.

(c) Any penalty imposed pursuant to this section may be collected, and any costs incurred in connection therewith may be recovered, in a summary proceeding pursuant to the "Penalty Enforcement Law", N.J.S.A. 2A:58-1 et seq. The Superior Court shall have jurisdiction to enforce the "Penalty Enforcement Law".

8:59-8.9 Inspection procedures

(a) Right to Know Enforcement Officers of the Department of Health are authorized to enter during normal operating hours any facility or other area where work is performed by an employee of an employer; to inspect and investigate during normal operating hours within reasonable limits and in a reasonable manner, any such facility; and to review records required by the Act and rules and regulations promulgated pursuant thereto, and other records which are directly related to the purpose of the inspection.

(b) Upon a refusal to permit the Right to Know Enforcement Officer, in exercise of his official duties, to enter an employer's facility during normal operating hours, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, the department shall take appropriate action, including compulsory process, if necessary. The term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent.

(c) Any permission by an employer to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, civil administrative order, or penalty under the Act.

(d) Right to Know Enforcement Officers shall have the authority to take or obtain photographs related to the purpose of the inspection.

(e) Right to Know Enforcement Officers shall have the authority to question privately any employer, owner, operator, agent or employee of a facility concerning matters regarding the Worker and Community Right to Know Act to the extent they deem necessary for the conduct of an effective and thorough inspection.

8:59-8.10 Representatives of employers and employees

(a) Right to Know Enforcement Officers shall be in charge of inspections and questioning of persons. A representative of the employer and representative authorized by his employees shall be given an opportunity to accompany the Right to Know Enforcement Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Right to Know Enforcement Officer may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Right to Know Enforcement Officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

(b) If there is a disagreement as to who is the representative authorized by the employer and employees to accompany the Right to Know Enforcement Officer on the inspection, the Right to Know Enforcement Officer shall make the final determination as to who is the authorized representative. The Right to Know Enforcement Officer shall have the authority to talk to any employee of the facility during the inspection concerning matters regarding Right to Know compliance.

(c) If in the judgment of the Right to Know Enforcement Officer good cause has been shown why accompaniment by a third party who is not an employee of the employer is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Right to Know Enforcement Officer during the inspection.

(d) Right to Know Enforcement Officers are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection.

**8:59-8.11 Complaints by employees**

(a) Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the department or a Right to Know Enforcement Officer. Upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall be kept confidential by the department.

(b) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Right to Know Enforcement Officer of any violation of the Act which he has reason to believe exists in such workplace.

**8:59-8.12 Posting of orders, penalties and notices of contest**

(a) Upon receipt of any civil administrative order, civil administrative penalty, court order, or civil penalty under the Act, the employer shall immediately post such order or penalty, or a copy thereof, unedited, at or near each place an alleged violation referred to in the order or penalty

occurred. Where, because of the nature of the employer's operations, it is not practicable to post the order or penalty at or near each place of alleged violation, such order or penalty shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees.

(b) Each civil administrative order, civil administrative penalty, court order, or civil penalty or a copy thereof, shall remain posted until the violation has been abated, or for three working days, whichever is later.

(c) Any employer who contests the provisions of a civil administrative order, civil administrative penalty, court order, or civil penalty, shall post such notice of contest next to the order or penalty being contested for as long as the order or penalty is required to be posted.

**SUBCHAPTER 10. SPECIAL HEALTH HAZARD SUBSTANCE LIST**

**8:59-10.3 Modification of the list**

The Special Health Hazard Substance List shall be modified in accordance with the procedures set forth in N.J.A.C. [8:59-3] 8:59-9.3, and with the use of other reference sources deemed appropriate by the department.

# RULE ADOPTIONS

## AGRICULTURE

### (a)

#### DIVISION OF ANIMAL HEALTH

##### Indemnification Avian Influenza

###### Adopted New Rules: N.J.A.C. 2:9-1.1 and 1.2.

Proposed: May 5, 1986 at 18 N.J.R. 870(a).

Adopted: June 5, 1986, by Arthur R. Brown, Jr., Secretary  
Department of Agriculture.

Filed: June 6, 1986 as R.1986 d.250 without change.

Authority: N.J.S.A. 4:5-1 and 4:5-10.

Effective Date: July 7, 1986.

Expiration Date: July 7, 1991.

###### Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

#### CHAPTER 9 AVIAN INFLUENZA

##### SUBCHAPTER 1. INDEMNIFICATION

###### 2:9-1.1 Indemnities

(a) The handling and disposition of any and all poultry, poultry products or equipment, which is in the opinion of the Department of Agriculture likely to spread or harbor Avian Influenza shall be dealt with in accordance to the directives of the Division of Animal Health of the New Jersey Department of Agriculture.

(b) Indemnity to be paid for any bird destroyed pursuant to an order of the Department shall be the market value of the type and classification of the average bird of such type and kind. No indemnity for any one bird shall exceed \$20.00 per bird.

(c) No indemnity shall be paid for any actions not taken pursuant to a directive of the Department, or in contradiction of a directive of the Department.

###### 2:9-1.2 Disposal costs

(a) The disposal costs of any birds destroyed pursuant to a directive of or by the Department shall be paid as follows:

1. Should the owner undertake to dispose of the birds pursuant to the directives of the Department, the owner shall submit the disposal bill to the Department. If the Department finds the bill reasonable, the Department shall reimburse the bill, or such costs as the Department deems reasonable.

2. No disposal undertaken without Department supervision, or in contradiction to the directives of the Department, shall be paid.

## BANKING

### (b)

#### DIVISION OF BANKING

##### Restriction on Leeway Investments by Banks and Savings Banks

###### Adopted New Rule: N.J.A.C. 3:11-11

Proposed: January 21, 1986 at 18 N.J.R. 132(a).

Adopted: June 5, 1986 by Roger F. Wagner, Acting  
Commissioner, Department of Banking.

Filed: June 5, 1986 as R.1986 d.245, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:9A-24.13 (P.L. 1985, c.168).

Effective Date: July 7, 1986.

Expiration Date: March 19, 1989.

###### Summary of Public Comments and Agency Responses:

The Department of Banking received six public comments in response to the proposal. Two were submitted by savings banks, two by commercial banks and two from trade associations.

COMMENTS: Two comment letters suggested dropping this regulation in its entirety. One comment noted that savings banks in this State have a ten year history of making prudent and profitable leeway investments and urged the Department to rely on its examination process and cease and desist authority to address problem situations on a case-by-case basis. One commercial bank recommended an exception from the proposed regulation for institutions that have demonstrated success in making prudent investments under their traditional powers.

RESPONSE: While it is acknowledged savings banks have not misused their leeway powers and many commercial banks have done well with traditional powers, the Department believes that the advent of the unfolding economic and competitive environment of the last few years may elevate the risk exposure of nontraditional investment powers. As such, the Department has determined that it is appropriate to establish standards and a review and approval process to prevent problems before they occur. In addition, while the new regulation is designed to address risk, the approach to control such risk is not a state-wide standard which ignores the financial and managerial resources of the individual institution. To the contrary, the criteria for approval set forth in the regulation considers the financial and managerial capabilities of individual institutions and will be applied on an institution-by-institution basis. Moreover, merely relying on existing supervision would not be an adequate alternative to the proposed regulation. Imprudent investments can increase dramatically between examinations.

COMMENTS: Five comments received concerned the approval process including limiting the approval process to 30 days and automatic approval after 30 days if action by the Commissioner is not taken within this period. Three comments objected to the approval process in total and suggested alternatives such as quarterly filings and prior or after-the-fact notification.

RESPONSE: As previously mentioned, the Department remains convinced that the review and approval process is necessary to control safety and soundness problems. However, the Department has made a modification in response to the comments. The Department has reduced the 90 day approval period to a 60 day time limit once all the required information has been filed. This modification does not negatively affect the concerns of purpose of the regulation.

As to the one comment questioning the responsiveness of the Department with respect to these and other banking applications, the Department is not currently aware of undue delays. The Department has and will continue to monitor this and other review and approval processes and will take steps, if necessary, to prevent untimely delays.

COMMENTS: Two comments suggested the need to maintain the confidentiality of records made part of the review and approval process.

RESPONSE: The Department is cognizant of the dynamics of the financial market place and recognizes the need to maintain the confidentiality of records that touch upon trade or business secrets. To this end, the Commissioner is proposing a separate regulation to meet these concerns.

COMMENTS: Rather than having an approved list of activities, one commentator suggested listing specific items that the Department believes to be undesirable.

RESPONSE: It is not deemed feasible to create such a list. Since it would be impossible to envision every potential investment vehicle, every institution might desire to make in order to stipulate those which would be considered undesirable. Further, new forms of investment periodically come upon the marketplace. The Department cannot foretell in advance if such forms of investment are desirable or undesirable for every institution. The adopted list contains items which are deemed acceptable for all institutions. The rule provides for an application process which will allow for the orderly consideration of an investment not on the approved list. As specific areas of investment warrant, they may be added to the approved list through amendment of the rule.

COMMENTS: Two comments were received on the prohibition against tie-in requirements.

RESPONSE: After considering two comments regarding the wording on prohibition against tie-in requirements, the prohibition continues, with modification, to avoid conflict for those banks restricted by Section

106(b) of the Banking Holding Company Act.

COMMENTS: One trade association discussed the absence of a grandfather clause for investments made pursuant to Chapter 112, P.L. 1975 which has granted "leeway investment" authority to savings banks prior to the adoption of N.J.S.A. 17:9A-24.12.

RESPONSE: A grandfather clause appears appropriate and a new rule N.J.A.C. 3:11-11.12, has been added upon adoption to grandfather existing leeway investments. In the Department's opinion, this added provision does not undermine the regulation's fundamental purpose.

COMMENTS: One comment objected to having activities which were previously permitted by other sections of the law reclassified under leeway section of the statutes.

RESPONSE: This is a misinterpretation, as the regulation lists activities which are permitted pursuant to "leeway". Therefore, if an activity or investment is authorized by a provision of law, other than this subchapter, the bank has the flexibility to perform the activity or make the investment under either authority.

COMMENTS: One comment proposed the deletion of the entire section 3:11-11.6, as they contend it is too restrictive for subsidiary companies which operate outside the bounds of permissible activities for a State bank.

RESPONSE: This is a misinterpretation. The intent of the original proposal was to stipulate that if some other law or regulation applies to an activity, the subsidiary company is to comply with that law.

COMMENTS: One trade association commenting suggested removing the word "subsidiary" found in N.J.A.C. 3:11-11.11(a)1, 2, and 3.

RESPONSE: The Department agreed to make this change since it would clarify that the record keeping requirement applied to bank records.

COMMENTS: Four of the six comments received recommended expanding the list of activities not requiring the prior approval of the Commissioner. Those activities suggested are:

1. Establish, trade in and sell mutual funds and common trust funds established by it or others.
2. Ownership of financial institutions such as savings banks, savings and loans, commercial banks and credit unions.
3. Insurance underwriting.
4. Acquiring capital stock of or become a member of any stock or mutual insurance company whose primary purpose is to provide or underwrite liability or casualty insurance for banks located in the United States of America.
5. Acting as a general or limited partner or joint venturer in an entity which engages in activities which are permitted to banks by law or regulation.
6. Acquire a non-controlling interest in an entity which engages only in activities which are permitted to banks by law or regulation.

RESPONSE: After consideration of comments submitted regarding items 1, 2 and 3, the Department has concluded that these items should be part of the review and approval process. However, the Department intends to periodically review the list of preapproved activities in order to determine whether additional activities should be added.

Given the waning supply of insurance at increasing costs, especially for financial institutions, the Department has included item 4 in the list of preapproved activities.

With respect to item 5, the Department feels this comment, if adopted, would give authority for a bank to charter a subsidiary bank. In the Department's opinion, this activity should not be removed from the review and approval process.

With respect to item 6, two commentators suggested permitting the acquisition of non-controlling interests in entities which engage only in activities which are permitted to banks by law or regulation. The Department does not have an objection to this and has modified the definition of equity securities to include equity securities issued by a corporation, partnership or joint venture engaged exclusively in activities which are part of or incidental to the business of the institution.

COMMENTS: Two comments received addressed the need for a hearing before the Commissioner if an application is denied or the Commissioner orders a bank to divest itself of a subsidiary.

RESPONSE: With regard to the first comment, an aggrieved party may appeal to the Appellate Division pursuant to N.J. Crt. R. 2:2-3(a)(2). With regard to the second comment, the Commissioner would rely on the Department's cease and desist authority to order the disposition of a subsidiary. Therefore, the aggrieved parties may utilize the provision of N.J.S.A. 17:9A-267 in order to redress any grievance.

COMMENTS: Two comments, while agreeing there is a need for the Department to examine leeway investments, urged that paragraph b of

Section 3:11-8 be deleted. One commentator felt this paragraph was unnecessary and suggested a provision that any bank automatically assent to examination of its leeway subsidiary companies by the Department. The other commentator felt a joint venturer may be reluctant to sign an agreement authorizing the Department to conduct an examination as the joint venturer would want to maintain its other business records, which do not concern the bank's leeway investment, confidential.

RESPONSE: Because leeway investments may align a bank with partners, joint venturers or other business entities not familiar with supervisory methods, the Department feels that paragraph (b) is necessary to ensure access to all information needed to ascertain the soundness of a particular investment. Since the original wording of paragraph (b) could be interpreted to mean supervisory examination of all records of a subsidiary which performs other activities for its own behalf, outside of a bank's leeway subsidiary interest, this wording has been revised to clarify the Department's intent that only those subsidiary records pertaining to the bank's leeway investment be subject to examination. This modification does not negatively affect the concerns or purpose of this regulation.

COMMENTS: One commentator felt that the term national securities exchange is not adequately defined.

RESPONSE: The Department felt it was not necessary to define this term because numerous financial dictionaries and reference manuals list those exchanges registered as national security exchanges. In addition, the Security and Exchange Commission can readily provide this information.

COMMENTS: Other comments dealing with permissible equity security investments suggested: (1) including equity securities issued by banks, savings banks, saving and loan associations, national banking associations or a bank holding company; and (2) allowing investments in companies whose securities are quoted on the National Association of Securities Dealers Automated Quotation System.

RESPONSE: The Department believes that these comments suggesting expansion of permissible equity securities are well founded. As a result, the definition of equity securities has been amended to permit such investments.

COMMENTS: One comment addressed the wording of the section dealing with the limitation on equity security investments.

RESPONSE: To clarify the diversification limitations on investments, the Department has revised paragraph (b) of Section 3:11-11.3. The modified language preserves the original intent of undue concentration of investment in the securities of any one issue while limiting the bank's risk exposure.

COMMENTS: One comment requested that a clarification be made to N.J.A.C. 3:11-11.4(c) to make it certain that a bank may loan to one of its subsidiaries up to the legal lending limitations and, in addition, may make a capital investment in that subsidiary up to one percent of its assets.

RESPONSE: The Department agrees and has revised this section to clarify the Department's original intent. Since the restriction of this provision is substantially the same as that which pertains to loans of any corporation in which the bank has invested in equity securities pursuant to leeway, a similar revision has been made to N.J.A.C. 3:11-11.3(c).

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).

#### SUBCHAPTER 11. RESTRICTIONS OF LEEWAY INVESTMENTS

##### 3:11-11.1 Definitions

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

"Bank" means a bank as defined in N.J.S.A. 17:9A-1(1) and a savings bank as defined in N.J.S.A. 17:9A-1(13).

"Control" means the power to directly or indirectly vote 25 percent or more of the voting stock of a subsidiary company, the ability to control in any manner the election of a majority of a subsidiary company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a subsidiary company.

"Equity securities" means:

\*1.\* Shares of common or preferred stock registered on a national securities exchange \*or quoted on the National Association of Securities Dealers Automated Quotation System; and

2. Equity securities issued by a corporation, partnership or joint venture engaged exclusively in activities which are part of or incidental to the

**business of the institution\*.**

**\*3.\*** Equity securities does not mean \*[shares of stock of any bank, savings bank, savings and loan association, national banking association or bank holding company, nor does it mean]\* securities issued by a subsidiary company.

"Capital funds" means capital, surplus, reserves, undivided profits and capital notes.

"Subsidiary company" means any corporation, partnership, association, joint venture or other business entity directly or indirectly controlled by a bank.

"Total liabilities" means total liabilities as defined in N.J.S.A. 17:9A-60(3), 60(6) and 60(8).

**3:11-11.2 Type of investment**

(a) Only to the extent and upon the conditions that have been authorized by N.J.S.A. 17:9A-24.12 and in accordance with the procedures and limitations contained in this subchapter:

1. A bank, by resolution of its board of directors, and without prior approval of the commissioner, may invest:

- i. In equity securities;
- ii. In subsidiary companies which engage in the activities prescribed in this subchapter; and
- iii. Directly in those activities which are prescribed in this subchapter for subsidiary companies; and

2. A bank, by resolution of its board of directors, may apply to the commissioner for approval to make other investments. The application procedure and approval process shall be as provided in N.J.A.C. 3:11-11.9 and N.J.A.C. 3:11-11.10.

**3:11-11.3 Equity security investments**

(a) A bank shall be prohibited from investing, pursuant to N.J.S.A. 17:9A-24.12, in stocks, preferred or common, issued by a corporation in which it has made a stock investment under some other provision of law.

(b) A bank may invest in equity securities under N.J.S.A. 17:9A-24.12 provided that no bank shall make an investment in the stock of any corporation pursuant to this subchapter, except as otherwise provided by this subchapter, at any time when the \*[total of all such investments in stocks of such corporation exceeds or if the making of such investment would cause such investment to exceed two percentum of the total outstanding shares of the preferred or of the common stock of such corporation or three percentum of the capital funds of the bank, whichever amount is less.]\* **\*total ownership of any one class of equity securities of such corporation exceeds or if the making of such investment would cause such investment to exceed two percentum of any one class of the outstanding equity securities of such corporation. In addition the aggregate amount invested in all classes of the outstanding equity securities of any one corporation shall not exceed three percentum of the capital funds of the bank.\*** A bank, by resolution of its board of directors, may apply to the Commissioner for approval to make an investment in equity securities beyond the maximum amount provided above. The application procedure and approval process shall be as provided in N.J.A.C. 3:11-11.9 and N.J.A.C. 3:11-11.10.

(c) This subchapter shall not prohibit a bank from making loans or incurring liabilities authorized by a provision of law other than N.J.S.A. 17:9A-24.12 to any corporation in which the bank has invested in the equity securities pursuant to this subchapter. The total liabilities **\***, **not including equity investments made pursuant to this subchapter,\*** of any person incurred by virtue of any provision of law, including this subchapter, are subject to the total liability limitations in N.J.S.A. 17:9A-62.

**3:11-11.4 Subsidiary companies**

(a) A bank shall be prohibited from contributing to the capital or investing in the capital stock of a subsidiary company, pursuant to N.J.S.A. 17:9A-24.12, in which it has a capital or stock investment pursuant to some other provision of law.

(b) A bank may contribute to the capital or invest in the capital stock of only those subsidiary companies which:

1. Engage in the activities prescribed in this subchapter; and/or
2. Are specifically approved by the commissioner.

(c) This subchapter shall not prohibit a bank from making loans or incurring liabilities authorized by a provision of law, other than N.J.S.A. 17:9A-24.12, to any subsidiary company in which the bank has contributed to the capital or invested in the capital stock pursuant to this subchapter. The total liabilities **\***, **not including capital investments made pursuant to this subchapter,\*** of any one subsidiary company to the bank incurred by virtue of any provision of law, including this subchapter, are subject to the total liability limitations in N.J.S.A. 17:9A-62.

**3:11-11.5 Permissible activities**

(a) A subsidiary company may engage in the following activities:

1. Originating, investing in, selling, purchasing (including purchasing participations in), servicing, or otherwise dealing in loans of any type which may be made by a bank;
2. Provide services primarily for other financial institutions (for example, accounting, auditing, clerical, consulting, data processing, investment advisory, managerial);
3. Acquiring improved or unimproved real property for the purpose of subdividing, developing, constructing improvements thereon, and re-selling, leasing or operating such property for the production of income;
4. Providing real estate services (for example, brokerage, appraisal, inspection, property management, relocation services);
5. Providing equity and debt investments in corporations or projects designed primarily to promote community welfare, such as economic rehabilitation and development of low income areas by providing housing, services, or jobs for residents;
6. Providing travel agency and tax preparation services;
7. Providing insurance brokerage or agency services;
8. Providing securities services (for example, brokerage, investment advice);
9. Issuing letters of credit;
10. Issuing credit cards and engaging in credit card operations;
11. Acquiring personal property for the purpose of leasing such property;
12. Acting as underwriter for credit life insurance and credit accident and health insurance that is directly related to an extension of credit by the bank.

**\*13. Acquiring capital stock of, or becoming a member of, any stock or mutual insurance company whose primary purpose is to provide or underwrite liability or casualty insurance for banks located in the United States of America.\***

**3:11-11.6 Subsidiary company compliance with law**

Except as otherwise permitted by statute or regulation, all provisions of State banking laws applicable to the operations of the bank shall be equally applicable to the operations of its subsidiary company.

**3:11-11.7 Prohibition against tie-in requirements**

A bank **\***, who invests in subsidiary companies pursuant to this subchapter or engages directly in those activities which are prescribed in this subchapter for subsidiary companies,\* shall not directly or indirectly condition any extension of credit, lease or sale of property of any kind, or furnish any service on the requirement that the customer shall obtain some other credit, property, or service from the bank or any subsidiary company of the bank, other than a \*[condition or requirement that such bank shall reasonably impose to assure the soundness of the credit]\* **\*loan, discount, deposit, or trust service\*.**

**3:11-11.8 Examination of subsidiary companies**

(a) Each subsidiary company shall be subject to examination and supervision by the Commissioner of Banking in the same manner and to the same extent as the bank. If upon examination the Commissioner shall ascertain that the subsidiary company is created or operated in violation of law or regulation or that the manner of operation is detrimental to the business of the bank and its depositors, the Commissioner may order the bank to dispose of all or part of such subsidiary upon such terms as he may deem proper. The cost of an examination into the condition of an existing business proposed to be acquired and operated as a subsidiary company shall be paid by the bank. The cost of any subsequent examinations of a subsidiary company shall be borne by the subsidiary company or the bank.

(b) A bank shall file a letter agreement with the Department of Banking, signed by both the bank and the subsidiary company, authorizing the Banking Department to conduct such examinations of the **\*records of the\*** subsidiary company **\*that relate to the bank's leeway investment\*** as the Commissioner deems appropriate.

**3:11-11.9 Approval procedures for other investments**

(a) A bank which seeks to make an investment or engage in any activity requiring the specific approval of the Commissioner shall submit a written application. Within 30 days of the filing of such application, the Commissioner shall notify the applicant in writing either that all information required by this section has been filed or that additional specified information must be filed. The Commissioner shall, within **\*[90]\* \*60\*** days of the date of written notice that all required information has been filed, endorse thereon his approval or disapproval.

(b) A bank which makes an application to the Commissioner as specified in this subchapter shall submit the following information:

1. The total amount, in dollars and as a percentage of assets and capital funds, of investments that the applicant seeks to make;
2. An identification of the applicant's investment thresholds as determined in accordance with N.J.S.A. 17:9A-24.12;
3. A description and quantification, as a dollar amount and as a percentage of assets and capital funds, of the applicant's outstanding investments pursuant to this subchapter;
4. A business plan which describes the proposed specific investment (including any existing investment made pursuant to other laws or regulations) and its anticipated financial impact on the applicant; and
5. Such other information as may be requested in writing by the Commissioner.

## 3:11-11.10 Criteria for approval

In determining whether to approve or deny any application for prior approval under this subchapter, the Commissioner shall consider the financial and managerial resources and future prospects of the bank and the investment involved, including the financial capability of the bank to make the proposed investment under this subchapter, conflicts of interest, unsafe and unsound banking practices and any other matter the Commissioner deems to be in the public interest.

## 3:11-11.11 Record keeping requirements

(a) For the purpose of monitoring the bank's diversification of investments made under the leeway provision (N.J.S.A. 17:9A-24.12) and to determine if the investments are in accordance with the applicable investment limitations, the bank is required to maintain records which will identify all such investments made under the leeway provision:

1. These \*[subsidiary]\* records shall contain a description of each leeway investment. The description should contain, but not be limited to the name of the person, partnership, corporation, other business entity, association or body politic (leeway entity) that the bank has invested in; its business address and the amount and form of the investment;

2. These \*[subsidiary]\* records shall also contain a detailed listing of any other investments or loans made to each leeway entity pursuant to other provisions of the law. Any other investments or loans shall include, but not be limited to, any loan or extension of credit by the bank to the leeway entity; the purchase by the Bank of securities, other assets, or obligations of the leeway entity under repurchase agreement; the discount by the Bank of promissory notes, bills of exchange, conditional sales contracts, or similar paper, with or without recourse, issued by the leeway entity and discounted for a third party; acceptances of securities issued by a leeway entity as collateral for any loan, and issuance of a guarantee, acceptance, or letter of credit on behalf of a leeway entity;

3. These \*[subsidiary]\* records shall be kept up to date in order that they tie into the bank's daily statement of condition.

## \*3:11-11.12 Existing investments

A bank whose existing leeway investments would not conform to the requirements of this subchapter shall not be prohibited solely for that reason from maintaining such investments and making investments to which it was legally committed to prior to July 7, 1986. However, no new leeway investments may be entered into after July 7, 1986 other than in compliance with this subchapter.\*

## COMMUNITY AFFAIRS

## (a)

## DIVISION OF HOUSING AND DEVELOPMENT

## Uniform Construction Code

## Licensing

## Adopted Amendments: N.J.A.C. 5:23-5.5 and 5.7

Proposed: April 7, 1986 at 18 N.J.R. 594(a).

Adopted: May 30, 1986 by Leonard S. Coleman, Jr.,

Commissioner, Department of Community Affairs.

Filed: June 10, 1986 as R.1986, d.255, without change.

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

Effective Date: July 7, 1986.

Expiration Date: April 1, 1988.

## Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

## 5:23-5.5 General license requirements

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

(d) Special provisions:

1.-4. (No change.)

5. An applicant who is licensed as a building inspector, electrical inspector, fire protection inspector or plumbing inspector shall be eligible for licensure as an inspector at the same level or lower in any other subcode upon satisfactory completion of the approved educational program, if applicable, and the examination for licensure as an inspector in that other subcode, provided that the applicant has at least the number of years of experience required for that other subcode inspector's license.

## 5:23-5.7 Subcode official requirements

(a) A candidate for a license as a building, electrical, fire protection or plumbing subcode official shall meet the following qualifications:

1.-5. (No change.)

6. A person who is already licensed as a building, plumbing or electrical subcode official shall be deemed to have satisfied the requirement for any other subcode official license other than the fire protection subcode official license.

## (b)

## NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

## Occupancy Requirements Regarding Income

## Adopted Amendments: N.J.A.C. 5:80-8.1, 8.2 and 8.3

## Adopted New Rules: N.J.A.C. 5:80-8.1 and 8.4

Proposed: July 1, 1985 at 17 N.J.R. 1620(a).

Adopted: June 12, 1986 by James L. Logue, Executive Director,  
New Jersey Housing and Mortgage Finance Agency.

Filed: June 13, 1986 as R.1986 d.258, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:14K-5g.

Effective Date: July 7, 1986.

Expiration Date: May 20, 1990.

## Summary of Public Comments and Agency Responses:

No comments received.

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

## SUBCHAPTER 8. OCCUPANCY REQUIREMENTS REGARDING INCOME

## 5:80-8.1 General applicability

(a) Regulations within this subchapter shall apply to all Agency \*financed\* housing projects. In the event the housing project is assisted, directly or indirectly, by subsidies provided by the Department of Housing and Urban Development \*(HUD)\*, any appropriate HUD regulations shall also apply. In the event there are any inconsistencies between the regulations in this subchapter and applicable HUD regulations, HUD regulations shall prevail.

(b) For purposes of this subchapter, "Family" shall be defined as follows:

1. For projects receiving subsidies under Section 236 or Section 8 Programs, two or more persons who live or expect to live together as a single household in the same dwelling unit and are related by blood, marriage or operation of law, or who demonstrate a stable relationship which has existed over a period of time.

2. For all other projects, two or more persons who live or expect to live together as a single household in the same dwelling unit or an individual at least 18 years of age who is not a full-time student.

## 5:80-8.2 Maximum gross aggregate family income

(a) Pursuant to N.J.S.A. 55:14K-8(a), the maximum gross aggregate family income for eligibility for admission to any housing project financed by the New Jersey Housing and Mortgage Finance Agency shall be \$45,000 \*[\*]\* \*provided\* \*[(b) The income limit is revised to \$45,000 with the condition]\* that projects having units with income limits in excess of \$36,000 will be required to give preference to qualified applicant \*[households]\* \*families\* with incomes below \$36,000.

\*[(c)]\*(b)\* Notwithstanding (a) \*[and (b)]\* above, for Housing Projects which receive a loan from the Agency on or after January 17, 1984, admission to Housing Projects shall be limited to families whose gross aggregate family income at the time of admission does not exceed six times the annual rental or carrying charges approved by the Agency except for families with three or more dependents whose incomes may be up to seven times the annual rental or carrying charges. Annual rental or carrying charges shall include the value or cost of heat, light, water, sewerage, parking facilities and cooking fuel which are provided to or incurred by the family in connection with its occupancy of a dwelling. In addition, carrying charges include rent normally associated with rental projects as well as other costs associated with cooperative apartments. There may also be included an amount equal to six percent of the original cash investment of the family in a mutual or cooperative housing project and the value or cost of repainting and replacing any fixtures or appliances.

\*[(d)]\*(c)\* Notwithstanding (a), \*[(b) and (c)]\* \*and (b)\* above, when a Housing Project has received a loan from the Agency, on or after January 17, 1984, that is insured or guaranteed by the United States of America or any agency or instrumentality thereof, the Agency may adopt the admission standards for such Project the currently prescribed, utilized or required by the guarantor or insurer.

\*[(e)]\*(d)\* Notwithstanding (a), (b)\*[, (c) and (d)]\* \*and (c)\* above, the Agency, in conjunction with any financing on or after January 17, 1984, may impose income limits at levels lower than those set forth above.

5:80-8.3 Occupancy requirements for housing projects financed pursuant to Section 103(b)(4) of the Internal Revenue Code

For Housing Projects financed by the Agency with the proceeds of bonds where the interest is exempt from Federal taxation, and where the Project must contain a certain number of units to be occupied by individuals of low and moderate income pursuant to Section 103(b)(4) of the Internal Revenue Code, at all times during the qualified project period, as defined in Section 103(b)(12)(b), at least 23 percent of the units shall be occupied by individuals of low and moderate income as defined in Section 103(b)(12)(c), except in the case of target area projects where at least 18 percent of the units shall be occupied by individuals of low and moderate income. In allocating the units in a project which shall be occupied by individuals of low and moderate income, the Agency may require the distribution of low and moderate income units among the different sized units to reflect the same percentage distribution as the number of different sized units bears to the total number of units. A greater percentage of the low and moderate income units may, however, be allocated to the larger units. Additionally, low and moderate income units shall be distributed throughout the project such that the tenants of such units will have equal access to and enjoyment of all common facilities of the project. If there are changes in Federal law or in the internal revenue code or regulations with regard to the above-referenced matter, the Agency may adjust the above requirements accordingly.

5:80-8.4 Special Multiple Family Unit within Housing Projects located in municipalities affected by casino gaming

(a) Special Multiple Family Units may be approved and designated by the Agency in accordance with this Section on application by the Housing Sponsor where the Agency determines the municipality wherein the project is located is experiencing housing shortages as a result of the authorization of casino gaming.

(b) A Special Multiple Family Unit is a dwelling unit specifically designed to accommodate two or more families \*[(including single individuals)]\* \*as defined in N.J.A.C. 5:80-8.1(b)\*, and which has been so certified by the Agency after adequately meeting the following minimum criteria:

1. The dwelling unit has separate sleeping areas, each with adequate privacy, for each family; and
2. The dwelling unit has separate full bathrooms, each with adequate privacy, for each family; and
3. The rental of the dwelling unit complies with all relevant State and local occupancy laws.

(c) For purposes of determining income eligibility for admission into a Special Multiple Family Unit, the gross aggregate family income of each family is to be considered separate and apart from the gross aggregate family income of the other family or families occupying the unit. The full rental and carrying charges of the unit are to be used in determining each family's eligibility for admission, notwithstanding each family's planned or actual percentage contribution toward those charges, provided there is a written consent in the lease holding each family jointly and severally liable for these charges.

(d) A single family is deemed to exist among two or more individuals if those individuals have a joint personal economic relationship, other than their mutual interest in renting the same dwelling unit. Joint ownership of personal assets, commingling of personal accounts, economic dependency among the individuals, and/or the joint filing of income tax returns shall be evidence of a joint personal economic relationship.

(e) The rental of units to families \*[, (including single individuals)]\* must be consistent with Federal housing and tax laws and/or regulations, where such laws or regulations apply to government-financed developments or Agency tax-exempt bond financing of such developments.

(f) The rental of Special Multiple Family Units, irrespective of the income levels of tenants therein, shall not be considered the rental of units to low and moderate income families for purposes of meeting Federal and State requirements to provide a certain percentage of units for those of low and moderate income, pursuant to N.J.A.C. 5:80-8.3.

5:80-8.5 Recertification of income

The Agency will adopt reasonable procedures regarding the certification or recertification of income which may include but is not necessarily limited to requiring tenants to provide copies of Federal income tax returns and other documents. If the tenant fails to provide information required by the Agency or otherwise fails to comply with procedures established by the Agency to determine income eligibility, the tenant may be subject to eviction or the imposition of surcharges in the same manner and rate as those imposed on tenants with excess income pursuant to N.J.S.A. 55:14K-8(b).

## ENVIRONMENTAL PROTECTION

### (a)

#### DIVISION OF COASTAL RESOURCES

#### Wetlands Maps in Ocean County

#### Adopted Amendment: N.J.A.C. 7:7-2.2

Proposed: July 15, 1985 at 17 N.J.R. 1710(a).

Adopted: June 16, 1986, by Michael F. Catania, Deputy Commissioner, Department of Environmental Protection.

Filed: June 16, 1986 as R.1986 d.262, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

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

Effective Date: July 7, 1986.

Expiration Date: May 7, 1989.

DEP Docket No. 035-85-06.

#### Summary of Public Comments and Agency Responses:

The Department held a public hearing concerning the proposed amendments in Toms River, New Jersey on August 14, 1985. An additional public hearing was held on August 19, 1985 in Manahawkin, New Jersey in order to provide further opportunity to anyone desiring to comment on the proposal. Transcripts of these hearings are available for review at the offices of the Division of Coastal Resources, Bureau of Planning and Project Review, Labor and Industry Building, Room 702, Trenton, New Jersey. The comment period for this proposal ended on August 23, 1985. Oral comments were received from approximately 70 people who attended the public hearings. These comments came from the owners of property within the affected areas.

COMMENT: It is unfair to refuse to permit a property owner to build on land because of restrictions under the Wetlands Act when an existing house is standing on property immediately adjacent to it.

RESPONSE: The Wetlands Act of 1970, (N.J.S.A. 13:9A-1 et seq.), was intended to regulate activities within wetlands as of the date of its enactment. It was not intended to require the restoration to wetlands of already developed properties.

COMMENT: An existing dwelling is surrounded by wetlands. Can this dwelling be sold?

RESPONSE: A house that was built on filled wetlands prior to adoption of wetlands maps could be sold; however, the wetlands portion of the lot may not be filled or developed.

COMMENT: Can an owner of an existing home in the wetlands area install aluminum siding and a new roof or do other repairs without a wetlands permit?

RESPONSE: Yes, but improvements involving any building which expands into the wetlands area will require a permit.

COMMENT: Can a house that was destroyed by fire, hurricane, etc. be rebuilt if it was located on wetlands?

RESPONSE: That portion of the existing house located outside of the wetlands is not subject to the Wetlands Act at all and could be rebuilt without a Wetlands permit. Any development within the wetlands area would require a permit and compliance with the applicable standards found in N.J.A.C. 7:7 and N.J.A.C. 7:7E.

COMMENT: Does mowing of regulated wetlands require a permit?

RESPONSE: Mowing of regulated wetlands, either manually or mechanically would require a permit from the Division of Coastal Resources.

COMMENT: The accuracy of the proposed changes to the upper wetlands boundary located on Edison Road in Barnegat Township was questioned.

RESPONSE: Upon field verification of the above referenced map by the Bureau of Coastal Enforcement and Field Services and a meeting with many of the concerned residents of this area, it has been found that the proposed revisions to Map #336-2130 are accurate and will be promulgated as proposed.

COMMENT: Several witnesses requested that their properties, located within the area depicted by Map #301-2124 not be considered as wetlands.

RESPONSE: Upon field verification of the above referenced map and meeting with many of the concerned residents of this area, it has been found that the proposed revisions to the wetlands boundaries in Map #301-2124 are accurate and will be promulgated as proposed.

COMMENT: The Mallard Island is a special case and should be dealt with as such.

RESPONSE: The State's Wetlands Law of 1970 does not distinguish any areas that should be dealt with in a special way. The law calls for protection of all wetlands as defined by the law, without any references to wetlands productivity and quality. All wetlands on Mallard Island are currently regulated by the U.S. Army Corps of Engineers. Therefore, in addition to the State Wetlands Permit requirement, the Army Corps of Engineers will require a permit for any activity conducted within this area.

COMMENT: The owners of certain lots were notified about the public hearing, however, these lots (Lots 170 to 184, Block 208-3) were never classified as wetlands.

RESPONSE: The Department agrees. An error was made in matching the lot and block number from the tax books with the property ownership address. These owners should not have been notified about the wetlands hearing.

COMMENT: Concerns were expressed regarding the proposed revision to the upper wetland boundary line in Map #301-2124.

RESPONSE: The fringe of wetlands on the waterward edge of this property has been regulated as wetlands since January 10, 1973. The only revision which concerns the subject lot is the clarification that the remainder of the parcel, upland of the wetlands fringe, is not wetlands.

COMMENT: Permits are required from the Department of Environmental Protection to fill or to build on proposed wetlands once they are adopted in addition to the Army Corps of Engineers permit.

RESPONSE: The comment is a correct interpretation of the rules.

COMMENT: How does the Department justify the taking of property under the Constitution of the United States, which says that if property is taken, it must be paid for by the state.

RESPONSE: The State is not "taking" property, but is regulating it. It is true that part of the property that contains wetlands may suffer a reduction of real estate value, but this reduction should be compensated for by a reduction in property taxes. The property still has an economic value in that all uses are not prohibited.

COMMENT: The Department should have provided some better means prior to the hearing by which property owners could have been made to more fully understand the technical terms relating to the proposal.

RESPONSE: Although the maps were available at the County Tax Office three weeks prior to the hearing, the Department finds that the county staff was not able to properly address questions regarding the proposed changes. In the future, the Department will publish a date when staff people will be at a specific location prior to a public hearing to answer any specific questions. In this case, the Department addressed this issue by providing a second hearing before adoption.

COMMENT: One witness stated that he personally did not receive a letter inviting him to this public hearing, and asked if this meant that he was not affected by the proposed changes.

RESPONSE: That is correct. In some cases, however, the letters announcing the public hearing were returned to the Department stamped, "addressee unknown." The Department contacted the municipal tax of-

ice to obtain the recent address and the letters were immediately re-mailed. In a few instances, the tax office could not provide the proper owner's address.

COMMENT: How often do these changes to the wetlands maps take place?

RESPONSE: The original maps were adopted in years from 1973 to 1976. This is the first set of comprehensive changes to be made on a countywide basis.

COMMENT: The wetlands map should be distributed to the appropriate local agencies of each of the townships within 24 hours after the adoption.

RESPONSE: No funds have been appropriated by the Legislature to send copies of the maps to each affected municipality. However, copies were sent upon request to interested parties.

COMMENT: One witness asked if the State would have any interest in purchasing three lots along Parkertown Creek in their present open, unspoiled wetlands conditions at their assessed value or a reasonable fraction of that.

RESPONSE: The State is not in position to purchase any wetlands areas. This comment has been referred to the Office of Natural Lands Management at 109 West State Street, Trenton, New Jersey.

COMMENT: Two witnesses stated that they are in favor of preserving the wetlands for the protection of the wildlife. The marshes and the islands of Barnegat Bay and Little Egg Harbor Bay should remain as they are and be protected.

COMMENT: Four witnesses stated concerns regarding revisions to the upper wetland boundary line in the area of the Maps #259-2112 and 252-2112.

RESPONSE: The upper wetlands boundary lines on both of the referenced maps as drafted incorporated the January 9, 1980 surveyed line of the Army Corps of Engineers and State regulated wetlands, which was field checked and approved by the Division of Coastal Resources on December 1, 1981 and June 28, 1983. To further insure the accuracy of the subject delineation, the actual 1980 survey was submitted to the Bureau of Planning and Project Review. Upon field verification of the above referenced maps, it has been found that the proposed revisions were mapped incorrectly and the maps have been revised accordingly.

COMMENT: Eight witnesses requested a review of specific proposed changes on Maps #266-2088, 266-1094, 280-2124, 259-2112, 329-2154, 399-2124, 385-2148 and 357-2136.

RESPONSE: Upon field verification of these maps, it has been found that the proposed revisions are accurate and will be promulgated as proposed.

In addition to the comments and responses set forth above, several witnesses presented questions and concerns regarding specific properties and permit applications. These issues were all addressed by the Department at the time of the hearings.

In response to the comments presented at the hearings, minor changes were made to the position of wetlands boundaries which are set forth in two Ocean County wetlands maps. These are Map No. 252-2112 and Map No. 259-2112.

Full text of the adoption follows (physically altered maps are shown in italic *thus*; new maps are shown in boldface **thus**; changes upon adoption are shown with asterisks \**thus*\*).

7:7-2.2 Wetlands

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

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

1.-2. (No change.)

3. Ocean County:

245-2088	252-2106	*259-2112*
245-2094	<b>*252-2112*</b>	259-2118
245-2100	259-2070	266-2070
245-2106		266-2076
252-2076	<b>259-2076</b>	266-2082
252-2088	259-2082	266-2088
252-2094	259-2088	
252-2100	259-2094	
	259-2100	
	259-2106	
266-2094	322-2148	406-2118
266-2100	329-2124	406-2124

266-2106	329-2130	406-2130
266-2112	329-2136	406-2148
266-2118	329-2142	406-2154
273-2076	329-2148	406-2160
273-2088	329-2154	413-2118
273-2094	336-2124	413-2148
273-2100	336-2130	413-2154
273-2112	336-2142	413-2160
273-2118	336-2148	420-2142
273-2124	336-2154	420-2148
280-2088	343-2130	420-2154
280-2094	343-2148	420-2160
280-2100	343-2154	420-2166
280-2106	343-2160	427-2142
280-2112	350-2130	427-2148
280-2118	350-2136	427-2154
280-2124	350-2148	427-2160
280-2130	350-2154	434-2148
287-2094	359-2160	434-2154
287-2100	357-2124	434-2160
287-2106	357-2130	434-2166
287-2112	357-2136	441-2148
287-2124	357-2142	441-2154
287-2130	357-2154	441-2160
294-2100	357-2160	441-2166
294-2106	364-2130	441-2172
294-2112	364-2136	448-2142
294-2118	364-2142	448-2148
294-2124	364-2160	448-2154
294-2130	371-2136	448-2160
294-2136	371-2142	448-2166
301-2112	371-2148	448-2172
301-2118	371-2160	455-2154
301-2124	378-2142	462-2166
301-2130	378-2148	462-2154
301-2136	378-2160	462-2172
301-2142	385-2142	469-2154
308-2118	385-2148	
308-2124	385-2160	
308-2130	392-2136	
308-2136	392-2142	
308-2142	392-2148	
315-2124	392-2154	
315-2130	392-2160	
315-2136	399-2124	
315-2142	399-3130	
315-2148	399-2136	
322-2124	399-2142	
322-2130	399-2148	
322-2136	399-2154	
322-2142	399-2160	
4-11. (No change.)		

(a)

**DIVISION OF WATER RESOURCES**

**Water Supply Management  
Water Allocation Permit Fees**

**Adopted New Rules: N.J.A.C. 7:19-3**

Proposed: April 21, 1986 at 18 N.J.R. 789(a).

Adopted: June 16, 1986 by Michael F. Catania, Deputy

Commissioner, Department of Environmental Protection.

Filed: June 16, 1986 as R.1986 d.263, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:1A, specifically 58:1A-11.

Effective Date: July 7, 1986.

Expiration Date: April 15, 1990.

DEP Docket No. 015-86-03.

**Summary of Public Comments and Agency Responses:**

A public hearing was held on the proposed rules on May 21, 1986 and written comments were received until May 28, 1986, as announced at the

hearing. All comments received are described below, followed by the response of the Department of Environmental Protection (Department).

COMMENT: The Summary of the rule in the notice of proposal published on April 21, 1986 indicated that the funds generated by the proposed water allocation permit fees would be used to pay costs of the Department's activities associated with coordinating the development of alternative water supplies to replace present reliance on depleted or threatened ground water and to pay for study and analysis of water use in the State to ascertain if modifications of water use patterns is needed. It is not proper or legal for these fees to pay such costs.

RESPONSE: The text of the rule states that the fees will only be used for payment of the cost of the water allocation permitting program and the critical area program. The Department does not intend to use the funds for other purposes. This does not imply that the Department agrees that the fees authorized by the Water Supply Management Act could not be used for other legal purposes. However, costs associated with the other activities described in the proposal Summary are intended to be funded under other statutory authority, pursuant to rules now being developed by the Department.

COMMENT: The Department should collect delinquent fees before proposing to increase fees.

RESPONSE: As of May 1986, there are only about two percent of water allocation permit fees due and unpaid, and enforcement actions are planned for their collection.

COMMENT: The funds of the water allocation program should be audited every year, and the results published in the New Jersey Register, including a list of purveyors which are delinquent. A related comment suggested that the Department increase fees annually if a surplus is indicated.

RESPONSE: Since delinquency in payment of fees is not a significant problem, listing delinquent accounts appears unwarranted. During the preparation of the annual budget, the water allocation fees are reviewed to meet program needs. As specified in the rules (N.J.A.C. 7:19-3.5(a)), any revision of the fee schedule will be proposed as a regulatory amendment. The costs of administering the programs to be funded by these fees are unlikely to vacillate significantly from one year to the next. In fact, if the costs do change, it is more likely that they will increase, rather than decrease.

COMMENT: The rule discriminates against regional water purveyors, as opposed to municipal water purveyors, since municipal water purveyors are allowed to have one permit for any number of wells within the municipal boundaries, whereas other purveyors are only allowed to group permits within a square two miles on a side.

RESPONSE: Under the proposed rules, regional purveyors may also group permits within a single municipality, as well as grouping permits across municipal boundaries within a square two miles on a side. This does not appear inequitable or discriminatory.

COMMENT: The proposed fees should not apply to agricultural or horticultural users of water.

RESPONSE: Under the Water Supply Management Act, agricultural and horticultural users are required to obtain "certifications", not "permits". These fees do not apply to certifications and therefore do not apply to agricultural or horticultural users.

COMMENT: N.J.A.C. 7:19-3.8(g)5 appears to be inequitable by requiring that "If any ground water diversion is included in a permit, the fee schedule shall be that for the ground water diversion".

RESPONSE: The rule does encourage an interpretation which was not intended by the Department. This provision is therefore modified to state: "If any ground water diversion is included in a permit, the fee shall be computed using the ground water schedule for the total quantity of withdrawals from all sources." This allows an applicant to pay one fee, rather than separate fees, for each category of withdrawal. This approach best approximates the actual costs of administering these types of permits.

COMMENT: The fees should be lower for non-consumptive water users, due to the lower administrative costs associated therewith.

RESPONSE: The rule sets fees which are significantly lower for "waters returned undiminished to the source". This includes those non-consumptive uses which have lesser costs relating to the permit processing.

COMMENT: The Delaware River Basin Commission collects fees for water use permits, thus creating duplicative charges for similar permits.

RESPONSE: The Department agrees that duplicative charges of this sort by sister agencies should be minimized where possible. The Department is discussing alternative arrangements with the Commission.

COMMENT: The term "modification" in the fee schedule in N.J.A.C. 7:19-3.9 should be defined.

RESPONSE: Though the Department does not intend to include minor changes in a permitted activity within the category of "renewal fees with modification", it is the Department's intent to include within this category all cases where there are substantive modifications of permitted activity.

COMMENT: How will the Department determine what qualifies as "waters returned undiminished to the source" under the fee schedule?  
RESPONSE: In cases where it is not clear, the applicant will be obliged to justify their inclusion within this fee category.

COMMENT: Fees for permittees which are golf courses should be adjusted downward during periods of water emergency, since they are mandated to reduce their water usage.

RESPONSE: Fees are calculated on the basis of costs associated with administering the various permits involved. These costs remain the same, regardless of the existence of a water emergency.

COMMENT: These fees should not pay for the entire water supply management program of the Department; some of these costs should be borne by the general taxpayer.

RESPONSE: As discussed above, these fees are not to be used to pay for the entire water supply management program, but rather only the costs of administering the water allocation permitting program.

COMMENT: What is the basis for the proposed fee structure?

RESPONSE: The preamble to the notice of proposal discusses the basis for the fee schedule in detail. The fees were set, based upon an evaluation of the actual costs of the specific activities associated with each permit type, plus expected increases for next year.

COMMENT: Why are permit fees for diversions requiring hearings twice as high as permit fees for diversions not requiring hearings?

RESPONSE: The hearing process generates staff demands and other costs which are, on the average, double those where hearings are not held.

COMMENT: Fees should only be charged for projects which are actually completed.

RESPONSE: The fees are charged to pay the Department's costs of reviewing the permit applications and renewals. These costs are essentially the same, whether or not the project is implemented.

Full text of the new rules appears in the New Jersey Administrative Code at N.J.A.C. 7:19-3.

Full text of the adopted amendments to the new rules follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***).

7:19-3.5 Establishment of fee schedule

(a) The Department shall review the fee schedules set forth in this subchapter prior to March 1 of each year. If the Department determines that the existing fee schedule exceeds the cost of the water supply management activities funded thereunder, the fees will be reduced accordingly and a notice to that effect shall be published in the New Jersey Register.

7:19-3.8 Fees

(a) All applicable fees shall be paid in accordance with fee schedule established pursuant to N.J.A.C. 7:19-3.9.

(b) Each applicant for a permit, including those not previously subject to fees pursuant to this subchapter and those with privileges previously allowed pursuant to lawful legislative or administrative action, shall pay the appropriate fee prior to issuance of the permit plus:

1. The total annual fee, if the permit is issued during the first quarter of the fiscal year; or

2. Three-quarters of the annual fee, if the permit is issued during the second quarter of the fiscal year; or

3. One-half of the annual fee, if the permit is issued during the third quarter of the fiscal year; or

4. One-quarter of the annual fee, if the permit is issued during the fourth quarter of the fiscal year.

(c) In addition to the annual fee, which shall be paid prior to August 1 of each year, a permittee renewing his or her permit shall pay the appropriate renewal fee at the time of renewal.

(d) Any applicant who fails to complete necessary forms, fails to comply with other permit processing requirements or who fails to provide information within the time frame(s) established by the Department, shall pay the annual fees which would have been due if the forms, information and processing had been completed in a timely manner, except where the Department grants an extension of time prior to an associated due date.

(e) Each permittee shall pay the annual fee each year during the term of its permit, based upon the classification for that permittee, as set forth in (f) below. Permits for which the hearing process is required may be reclassified as not requiring the hearing process, after five years have elapsed from the date of the initial hearing. If, at any time, the Department determines that additional hearings should be held, such reclassification is automatically withdrawn for another five year period.

(f) An applicant for a permit shall be placed in the appropriate class below based on the size of the allocations approved:

1. Class 1: 0.1 mgd to less than 0.5 mgd;
2. Class 2: 0.5 mgd to less than 1.0 mgd;
3. Class 3: 1.0 mgd to less than 2.0 mgd;
4. Class 4: 2.0 mgd and above; and
5. Class 5: 0.01 to less than 0.1 mgd for groundwater in critical areas, see N.J.A.C. 7:19-6.

(g) For the purpose of assessing fees under this subchapter the following shall apply:

1. A plant site or group of contiguous properties under common ownership will be entitled to a single permit.

2. For a water system supplying or servicing a single municipality only, all surface and ground water diversions may be treated as a single permit. Each dewatering contract or project shall require a separate permit.

3. For systems supplying or servicing more than a single municipality, each group of surface and ground water diversions and each group of dewatering diversions which either lie within a single municipality or lie within a square of two miles on each side will be treated as a single permit.

4. In the event that grouping of diversions under 2 or 3 above results in a diversion of less than 100,000 gallons per day, the groups shall be combined with other group(s) so that each permitted withdrawal will amount to 100,000 gpd or more.

5. If any groundwater diversion is included in a permit, **\*[the fee schedule shall be that for groundwater diversions]\* **\*the fee shall be computed using the groundwater schedule for the total quantity of withdrawals from all sources\*****.

(h) Annual fees or initial fees, which were due between August 1, 1985 and the effective date of these rules, shall be paid on or before August 1, 1986.

7:19-3.9 Fee schedule

(a) Fees shall be charged for permits, as applicable, pursuant to the following schedules:

1. Initial fees for new applications:

	Class 1	Class 2	Class 3	Class 4	Class 5
i. Surface water diversions not requiring hearing process	\$ 800.	\$ 900.	\$1160.	\$2000.	-
ii. Surface water diversions requiring hearing process	\$1200.	\$1350.	\$1730.	\$3000.	-
iii. Groundwater diversions not requiring hearing process	\$1000.	\$1120.	\$1450.	\$2500.	\$480.
iv. Groundwater diversions requiring hearing process	\$2000.	\$2250.	\$2900.	\$5000.	\$960.
v. Dewatering: groundwater diversions not requiring hearing process	\$ 625.	\$ 700.	\$ 905.	\$1560.	-
vi. Dewatering: groundwater diversions requiring hearing process	\$1245.	\$1405.	\$1810.	\$3120.	-

vii. Ground and surface water diversions in which waters are returned undiminished to the source	\$ 480.	\$ 640.	\$ 800.	\$ 960.	\$240.
2. Renewal fees without modification:					
i. Surface water diversions not requiring hearing process	\$ 400.	\$ 450.	\$ 580.	\$1000.	-
ii. Surface water diversions requiring hearing process	\$ 600.	\$ 670.	\$ 870.	\$1500.	-
iii. Groundwater diversions not requiring hearing process	\$ 500.	\$ 560.	\$ 730.	\$1250.	\$240.
iv. Groundwater diversions requiring hearing process	\$1000.	\$1120.	\$1450.	\$2500.	\$480.
v. Ground and surface water diversions in which waters are returned undiminished to the source	\$ 240.	\$ 320.	\$ 400.	\$ 480.	\$120.
3. Renewal fees with modifications:					
i. Surface water diversion not requiring hearing process	\$ 560.	\$ 630.	\$ 810.	\$1400.	-
ii. Surface water diversion requiring hearing process	\$ 840.	\$ 940.	\$1220.	\$2100.	-
iii. Groundwater diversion not requiring hearing process	\$ 700.	\$ 780.	\$1020.	\$1740.	\$360.
iv. Groundwater diversion requiring hearing process	\$1400.	\$1580.	\$2020.	\$3500.	\$720.
v. Ground and surface water diversions in which waters are returned undiminished to the source	\$ 240.	\$ 320.	\$ 400.	\$ 480.	\$120.
4. Annual fees for permits:					
i. Surface water diversions not requiring hearing process	\$ 800.	\$ 900.	\$1160.	\$2000.	-
ii. Surface water diversions requiring hearing process	\$1200.	\$1350.	\$1730.	\$3000.	-
iii. Groundwater diversions not requiring hearing process	\$1000.	\$1120.	\$1450.	\$2500.	\$480.
iv. Groundwater diversions requiring hearing process	\$2000.	\$2250.	\$2900.	\$5000.	\$960.
v. Dewatering: groundwater diversions not requiring hearing process	\$ 625.	\$ 700.	\$ 905.	\$1560.	-
vi. Dewatering: groundwater diversions requiring hearing process	\$1245.	\$1405.	\$1810.	\$3120.	-
vii. Ground and surface water diversions in which waters are returned undiminished to the source	\$ 480.	\$ 640.	\$ 800.	\$ 960.	\$240.

(a)

**DIVISION OF FISH, GAME AND WILDLIFE**  
**Bureau of Shellfisheries**

**Atlantic Coast Harvest Season**

**Adopted New Rule: N.J.A.C. 7:25-19**

Proposed: October 21, 1985 at 17 N.J.R. 2494(a).

Adopted: June 13, 1986 by Richard T. Dewling, Commissioner,  
Department of Environmental Protection.

Filed: June 17, 1986 as R.1986 d.273, **without change.**

Authority: N.J.S.A 13:1B-3, 13:1B-4 and 50:1-5.

Effective Date: July 7, 1986.

Expiration Date: February 18, 1991.

DEP Docket No.: 055-85-09

**Summary of Public Comments and Agency Responses:**

Comments were received only at the meeting of the Atlantic Coast Section of the Shell Fisheries Council. All comments favored adoption of the proposed new rule.

Full text of the adoption follows.

**SUBCHAPTER 19. ATLANTIC COAST HARVEST SEASON**

**7:25-19.1 Scope**

This subchapter shall constitute the rules governing the method and season for harvest of oysters from the Reef, Fitney Bit, Turtle Island, Oyster Bed Point beds in Great Bay; the Mullica River above Deep Point; the Great Egg Harbor River, the Tuckahoe River, and the Middle River on the Atlantic Coast.

**7:25-19.2 Purpose**

The purpose of these rules is to regulate the harvest of oysters from the beds enumerated at N.J.A.C. 7:25-19.1.

## 7:25-19.3 Construction

These rules shall be liberally construed to permit the department to effectuate the purposes of N.J.S.A. 50:1-5.

## 7:25-19.4 Definitions

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

"Commissioner" means the Commissioner of Environmental Protection.

"Division" means the Division of Fish, Game and Wildlife.

"Seed oysters" means all oysters planted on the beds listed at N.J.A.C. 7:25-19.1.

## 7:25-19.5 Method and season of harvest

(a) No person shall catch or take oysters or clams by any means from the Reef, Fitney Bit, Turtle Island, Oyster Bed Point beds in Great Bay; the Mullica River above Deep Point; the Great Egg Harbor River, the Tuckahoe River and the Middle River except with hand tongs during the harvest season.

(b) The harvest season for these oyster beds shall be determined by the size of the seed oysters planted, the time of planting, and the growth and survival rate of the seed oysters.

(c) Based upon the data referred to in (b) above, the harvest season for these oyster beds shall be established by the commissioner or his designee in the Division of Fish, Game and Wildlife, pursuant to N.J.S.A. 50:1-5, with the advice of the Atlantic Coast Section of the Shell Fisheries Council, except that no harvesting shall be permitted between June 30 and September 1 of any year.

(d) Nothing contained herein shall prevent or prohibit the harvest of oysters by mechanical power from any of the leased oyster grounds within the boundaries of the beds enumerated in (a) above by the lessee or his substitute harvester.

(e) Nothing contained herein shall prevent or prohibit the appropriate State authorities from conducting oyster management programs during the closed harvest season.

**(a)****DIVISION OF WASTE MANAGEMENT****Restrictions of Land Disposal of Hazardous Waste****Notice of Correction: N.J.A.C. 7:26-7.4, 8.3, 8.15, 9.2, 10.6 and 10.8**

**Take notice** that errors appear in the April 21, 1986 issue of the New Jersey Register at 18 N.J.R. 841(b) concerning restriction of land disposal of hazardous waste, N.J.A.C. 7:26-7.4, 8.3, 8.15, 9.2, 10.6 and 10.8. The operative date for these rules begins 180 days from the adoption date of March 28, 1986. The notice appearing at 18 N.J.R. 841(b) should have indicated an operative date of **September 25, 1986** for N.J.A.C. 7:26-7.4, 8.3, 8.15, 9.2, 10.6 and 10.8. Also, in the text of the rules at N.J.A.C. 7:26-7.4(a)10 and 7:26-9.2(d), "as of **September 25, 1986**", rather than "as of (180 days from adoption)" should have been emphasized.

**Take notice** that the text of N.J.A.C. 7:26-7.4(a)10, Hazardous waste generator responsibilities, and N.J.A.C. 7:26-9.2(d), General prohibitions, in the New Jersey Administrative Code should appear as follows:

10. As of **September 25, 1986**, no generator shall offer for final land disposal in New Jersey acute hazardous waste (H), as listed in N.J.A.C. 7:26-8.15(e), and toxic waste (T), as listed in N.J.A.C. 7:26-8.15(f), except in accordance with the following:

i.-ii. (No change in text.)

11.-12. (No change in text.)

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

## 7:26-9.2 General prohibitions

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

(d) As of **September 25, 1986** final land disposal of acute hazardous waste (H), as listed in N.J.A.C. 7:26-8.15(e), and toxic waste (T), as listed in N.J.A.C. 7:26-8.15(f), is prohibited by any person unless:

1.-2. (No change in text.)

**Take further notice** that the operative date of September 25, 1986 applies to the provisions relating to the land disposal wastes listed in N.J.A.C. 7:26-8.15(e) and (f), and therefore pertains solely to the adopted T and H hazardous waste provisions at N.J.A.C. 7:26-7.4, 8.3, 9.2, 10.6 and 10.8. Until the operative date of September 25, 1986, the text of the rules, as they existed prior to the adoption of these amendments, continue in effect.

**HEALTH****(b)****DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT****Certificate of Need: Standards and Criteria for the Demonstration of Extracorporeal Shock Wave Lithotripsy (ESWL) Services****Adopted Amendments: N.J.A.C. 8:33B-1.3****Adopted New Rule: N.J.A.C. 8:33B-1.12**

Proposed: April 21, 1986 at 18 N.J.R. 798(a)

Adopted: June 13, 1986 by J. Richard Goldstein, M.D.,

Commissioner, Department of Health (with Approval of the Health Care Administration Board)

Filed: June 13, 1986, as R.1986 d.259, **without change**.

Authority: N.J.A.C. 26:2H-1 et seq.

Effective Date: July 7, 1986.

Expiration Date: October 7, 1990.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adoption follows.

## 8:33B-1.3 Demonstrations

(a) The Commissioner of Health will establish a lithotripter demonstration period during which three applications will be approved State-wide.

(b) (No change.)

(c) Once the demonstration approvals, three units Statewide, are issued, the Department of Health shall not process any other applications for lithotripters until the conclusion of the demonstration period, not to exceed two years, beginning with the date of operation of the first lithotripter demonstration.

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

## 8:33B-1.12 Reimbursement

(a) In establishing reimbursement to applicants who have been approved as demonstration sites for ESWL services, the Department shall develop a Statewide technical fee for ESWL treatment based on reasonable costs for the provision of ESWL treatment services.

**HOSPITAL REIMBURSEMENT****(c)****Procedural and Methodological Regulations Graduate Medical Education****Adopted Amendment: N.J.A.C. 8:31B-3.31**

Proposed: April 21, 1986 at 18 N.J.R. 795(b)

Adopted: June 13, 1986 by J. Richard Goldstein, M.D.,

Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: June 13, 1986 as R.1986 d.260, **without change**.

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

Effective Date: July 7, 1986.

Expiration Date: October 15, 1990.

**Summary of the Public Comments and Agency Responses:**

**COMMENT:** Kennedy Memorial Hospitals commented that priority should be given to the "core" affiliates when transfers are proposed since these hospitals serve as the primary sites for teaching programs.

**RESPONSE:** The comment is contrary to the stated intent of the proposed regulation. The regulation is proposed to provide limited flexibility for hospitals during a period of state-wide restraints on increased residency positions. Priority to transfer for "core" affiliates would limit this flexibility to no apparent educational benefit. Nor is particular specialty or geographic maldistribution claimed.

COMMENT: Warren Hospital believes that it is the only hospital in 1986 that will be eligible to move to a more intensive peer group as a result of a transfer of residents. The hospital requests that the Department produce a list of all hospitals that would be eligible for reclassification. Further, the hospital states that the Department's action is arbitrary and capricious.

RESPONSE: The comment is not relevant. The information requested is non-existent. The intent of the regulation is, by its explicit language, limited to transfers in which at least one hospital reduces the number of previously approved positions and another appeals to increase the number for purely educational purposes. Such educational purposes could be specialty or geographic maldistribution of residency training programs.

COMMENT: Kennedy Memorial Hospitals stated that the appeal for the transferred resident positions should be kept separate from the annual process because of timing problems.

RESPONSE: The Department observes that transfers involve changes in rates and the Hospital Rate Setting Commission is the appropriate body under regulation to approve changes in rates. The respondent is directed to language which would limit transfers of approved costs to those hospitals in which an increase is accompanied by a decrease in approved resident costs in other hospitals.

COMMENT: The New Jersey Medical Association and Community Memorial Hospital commented that, since the Hospital Rate Setting Commission will be required to approve a hospital's appeal for the transfer of residents and associated costs, adequate safeguards are already in place.

RESPONSE: The explicit limitation of transfer for bonafide educational purposes and prohibition of transfer resulting in increase of peer grouping for rate setting purposes are necessary because the Hospital Rate Setting Commission would otherwise lack the explicit regulatory statement of intent which these limitations provide. Nor do the pre-existing regulations contemplate this type of flexibility.

COMMENT: Warren Hospital and Newark Beth Israel Medical Center commented that the restriction on appeals violates the hospital's statutory right of appeal.

RESPONSE: This regulation, as proposed, creates a new appeals opportunity by permitting a transfer of approved costs between hospitals. The addition of an appeal item may properly be of a limited nature, as this one is. There is no violation of pre-existing regulations.

COMMENT: The New Jersey Hospital Association, Community Memorial Hospital, and Warren Hospital commented that an increase in resident positions should permit a hospital to change to a higher teaching status peer group.

RESPONSE: The intent of this regulation was to provide additional flexibility for hospitals which were addressing specific specialty training maldistribution. No increase in patient rates is intended. The AGMEC report has indicated that there are sufficient residency positions to meet New Jersey's projected needs. It is noted that there may be some geographic and specialty maldistribution in the State. A few hospitals have claimed that some programs must expand to meet these geographic and specialty needs. The Department is seeking to ensure through this provision that if such programs make such a case for additions which is accompanied by reduction in other approved residency programs, only increases due to bonafide educational reasons will be approved by the Commission. Raising a hospital to a higher peer group would result in other than the very limited intended result of this offer of flexibility. The Department would withdraw the proposed regulation if it is not to be adopted without the safeguards against further increasing the cost of medical care.

COMMENT: The Department of Human Services commented that the proposal, with its restrictive limitations, is cost effective and has the support of this Department.

RESPONSE: The Department agrees that the limited transfer opportunity is cost effective.

COMMENT: The Health Insurance Institute of America commented that the Department should be lauded for its efforts to be consistent with the findings of AGMEC. The new regulations restrict the costs of residents while recognizing the need for flexibility.

RESPONSE: The Department agrees with the comment.

Full text of adoption follows (deletions from proposal shown in brackets \*[thus]\*).

8:31B-3.31 Commission adjustments and approvals

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

(c) The Commission may approve hospital appeals to transfer Com-

mission approved resident positions and associated costs between hospitals. A hospital must conditionally accept or not accept in order to appeal for additional resident positions by transfer. A hospital may appeal under any option to reduce the number of resident positions by transfer. An addition of resident positions by transfer may not result in a change to a higher teaching status peer group. A reduction of resident positions by transfer may result in a change to a lower teaching status peer group. The approved costs associated with a transferred resident position\*[s]\* may not increase solely as a result of the transfer.

(d) The Hospital Rate Setting Commission shall decide the hospital to which approved resident positions and associated costs may be transferred.

(a)

**DIVISION OF HEALTH FACILITIES EVALUATION**

**Alcoholism Treatment Facilities**

**Standards for Licensure**

**Readoption: N.J.A.C. 8:42A**

Proposed: April 21, 1986 at 18 N.J.R. 796(a).

Adopted: June 12, 1986 by J. Richard Goldstein, M.D.,

Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: June 12, 1986 as R.1986 d.257, **without change.**

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

Effective Date: June 12, 1986.

Expiration Date: June 12, 1991.

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. 8:42A.

(b)

**DRUG UTILIZATION REVIEW COUNCIL**

**Interchangeable Drug Products**

**Adopted Amendment: N.J.A.C. 8:71**

Proposed: July 15, 1986 at 17 N.J.R. 1733(a).

Adopted: May 30, 1986 by the Drug Utilization Review Council, James Perhach, Chairman.

Filed: June 6, 1986 as R.1986 d.251, **with portions** of the proposal **not adopted** and **portions** not adopted but still **pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: July 7, 1986.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

**No comments received.**

Full text of the adoption follows.

The following products and their respective manufacturer were **adopted**:

**Methyl dopa tabs 250, 500 mg** Zenith

The following products were not adopted but are still **pending**:

Ethavrine Hcl tabs 100 mg Sidmak

Isometheptene mucate 65 mg, dichlorophenazone 100 mg, acetaminophen 325 mg caps Central

Phenylephrine HCl ophth soln 2.5% Pharmafair

Phenylephrine HCl ophth soln 10% (viscous) Pharmafair

Phentermine HCL caps 30 mg Duramed

Dipyridamole tabs 25, 50, 75 mg Zenith

Thioridazine HCl tabs 10, 15, 25, 50 mg Cord

Deserpidine/methylclothiazide tabs 0.5/5 mg Zenith

Fluphenazine HCl tabs 5 mg Zenith

Ibuprofen tabs 300, 600 mg Zenith

Meprobamate 200 mg with aspirin 325 mg tabs Zenith

Methyl dopa 250 mg/HCTZ 15 mg and 250 tabs mg/25 mg Mylan

Propranolol HCl tabs 10, 20, 40, 60, 80, 90 mg  
Propranolol HCl tabs 40 mg

Zenith  
Mylan

(a)

**Interchangeable Drug Products  
Adopted Amendment: N.J.A.C. 8:71**

Proposed: March 17, 1986 at 18 N.J.R. 537(a).  
Adopted: May 30, 1986 by the Drug Utilization Review Council,  
James Perhach, Ph.D., Chairman.  
Filed: June 6, 1986 as R.1986 d.252, with portions of the proposal  
not adopted and portions not adopted but still pending.  
Authority: N.J.S.A. 24:6E-6(b).  
Effective Date: July 7, 1986.  
Expiration Date: April 2, 1989.

**Summary of Public Comments and Agency Responses:**

**COMMENT** regarding thioridazine: Chelsea Laboratories commented extensively on their proposed thioridazine products, stating that the Drug Utilization Review Council had rejected these products in the past, while accepting other companies' products which were actually not as close to the brand, Mellaril, as were the Chelsea products.

**RESPONSE:** The Council agreed and thereby adopted the Chelsea thioridazines.

**COMMENT** regarding trazodone: Mead Johnson objected to this proposed product, stating that the federal Food and Drug Administration (FDA) had not yet approved such products.

**RESPONSE:** The Council agreed and will not act on any trazodone until the FDA has approved it.

**COMMENT** regarding prednisone: Upjohn stated that the FDA rates prednisones as "BX"—unresolved bioequivalency problems—thus prednisones should not be added to the generic formulary.

**RESPONSE:** The Council points out that the stated FDA policy is changing; however, the prednisones were not yet acted on by the Council and, therefore, remain pending.

**COMMENT** regarding Carisoprodol compound: Carter-Wallace provided assay information which cast doubt on the quality of the Bolar Company's generic substitute for Carter-Wallace's brand, Soma Compound.

**RESPONSE:** The Council deferred action; the Department of Health will assay samples of both the generic and the brand to ascertain their quality.

**COMMENT** regarding allopurinol and SMZ/TMP suspension: Burroughs-Wellcome asked whether these products contain tartrazine, a dye associated with adverse reactions.

**RESPONSE:** It was determined that they do not, but decisions on these two products were not yet reached and remain pending.

**COMMENT** regarding temazepam: Quantum Pharmaceuticals pointed out that the small differences between their generic and the brand should not be considered statistically or clinically meaningful.

**RESPONSE:** The Council deferred action on this product.

**COMMENT** regarding chlorzoxazone/acetaminophen: McNeil objected to this proposed addition to the formulary on the basis that the Council has, in the past, decided that such generics must provide bioequivalency data. McNeil asks that the Council continue to act on this basis.

**RESPONSE:** The Council deferred action on this issue.

Full text of the adoption follows.

The following products and their respective manufacturers were adopted:

Acetazolamide tabs 250 mg  
Acetic acid 2%, hydrocort. 1% otic soln  
Acetic acid otic solution 2%  
Aminophylline 105 mg/5 ml  
Aspirin/Butalbital/caffeine caps  
Aspirin/butalbital/caffeine tabs  
B Complex vits. (Berocca substitute)  
B-complex plus vits (Berocca Plus sub.)  
Betamethasone valerate cream 0.1%  
Betamethasone valerate oint 0.1%  
Butabarbital sodium tabs 15, 30 mg  
Diazepam tabs 2, 5, 10 mg

Danbury  
Thames  
Thames  
NPC  
Superpharm  
Superpharm  
Amer. Ther.  
Copley  
Thames  
Lemmon  
West-Ward  
Mylan

Diethylpropion HCl tabs 25 mg  
Diphenoxylate/atropine tabs 2.5/0.025 mg  
Doxycycline hyclate caps 50 mg  
Erythromycin Topical soln 1.5%  
Folic acid tabs 1 mg  
Folic acid tabs 1 mg  
Furosemide tabs 20 mg, 40 mg  
Furosemide tabs 80 mg  
Hydrocort/ neomycin/ polymyxin ophth susp  
Hydrocortisone cream 2.5%  
Hydrocortisone oint 1%  
Indomethacin caps 25, 50 mg  
Indomethacin caps 25 mg  
Iodochlorhydroxyquin 3%/HC 0.5% & 1% crm  
Lorazepam tabs 0.5 mg, 1 mg, 2 mg  
Methocarbamol tabs 500 mg, 750 mg  
Metoclopramide HCl tabs 10 mg  
Multivitamins/Flouride/FE drops 0.5 mg  
Multivits/F 0.25 mg drops  
Nystatin 100000/triamcinolone 1 mg oint  
Nystatin 100MU/Triamcinolone 1 mg/g oint  
Nystatin 100MU/triamcinolone 1 mg/g crm  
Nystatin vaginal tabs 100,000 units  
Potassium chloride powder 25 mEq/packet  
Potassium chloride powder 20 mEq  
Sulfasalazine tabs 500 mg  
Thioridazine HCl tabs 10, 15, 25, 50 mg  
Thioridazine HCl tabs 10, 25, 50, 100 mg  
Triamcinolone acetone oint. 0.1%

Lemmon  
West-Ward  
West-Ward  
NPC  
Pioneer  
Barr  
Watson Labs  
Watson  
Pharmafair  
Thames  
Thames  
Lemmon  
Watson  
Thames  
Barr  
Pioneer  
Biocraft  
NPC  
NPC  
Lemmon  
Clay-Park  
Lemmon  
Sidmak  
Upsher-Smith  
Copley  
VIP  
Chelsea  
Mylan  
Thames

The following products and their respective manufacturers were not adopted:

Chloroquine phosphate tabs 250 mg  
Lithium citrate syrup, 8 mEq/5 ml  
Quinidine SO4 tabs, 200 mg, 300 mg

West-Ward  
Roxane  
Roxane

The following products were not adopted but are still pending:

Allopurinol tabs 10 mg, 300 mg  
Aminophylline oral soln 105 mg/5 ml  
Aminophylline tabs 100 mg, 200 mg  
Carisoprodol 200/Aspirin 325 mg tabs  
Chlorothiazide tabs 250 mg  
Chlorzoxazone 250 mg/Acetaminophen 300 mg  
Clofibrate capsules, 500 mg  
Clonidine HCl tabs 0.1, 0.2, 0.3 mg  
Doxepin caps, 10, 25, 50, 100 mg  
Ergoloid mesylates oral tabs 1 mg  
Flurazepam HCl caps 15 mg, 30 mg  
Flurazepam HCl caps 15, 30 mg  
Flurazepam HCl caps, 15 mg, 30 mg  
Furosemide tabs 20 mg  
Hydrochlorothiazide tabs 25 mg, 50 mg  
Ibuprofen tabs 400, 600 mg  
Indomethacin caps 50 mg  
Isosorbide dinitrate oral tabs 20 mg  
Lithium carbonate caps and tabs, 300 mg  
Lorazepam tabs 0.5 mg, 1.0 mg, 2.0 mg  
Methyclothiazide tabs 2.5, 5 mg  
Methyldopa tabs 125, 250, 500 mg  
Methyldopa tabs 250, 500 mg  
Methyldopa/HCTZ 250/150, 250/250 mg  
Methyldopa/HCTZ 250/25, 500/30, 500/50 mg  
Metoclopramide tabs 10 mg  
Oxazepam caps 10, 15, 30 mg  
Prednisone tabs 5, 20 mg  
SMZ/TMP Susp. 200 mg + 40 mg/5 ml  
Spironolactone/HCTZ 25 mg/25 mg  
Sulfasalazine tabs 500 mg  
Temazepam caps 15, 30 mg  
Tolazamide tabs 250, 500 mg  
Tolazamide tabs, 250 mg  
Trazodone HCl tabs 50, 100 mg  
Trazodone tabs 50 mg, 100 mg  
Valproic acid caps 250 mg  
Verapamil tabs 80 mg, 120 mg

Barr  
Roxane  
Roxane  
Bolar  
West-Ward  
Amer. Ther.  
Chase  
Par  
Chelsea  
Barr  
Mylan  
West-Ward  
Pharm. Basics  
Barr  
PFI  
Superpharm  
Watson  
West-Ward  
Roxane  
Amer. Ther.  
Par  
Par  
Superpharm  
Par  
Par  
Chelsea  
PFI  
Naska  
Purepac/Kali  
Superpharm  
Quantum  
Superpharm  
Mylan  
Pharm. Basics  
Chelsea  
Chase  
Chelsea

(a)

**Interchangeable Drug Products**

**Adopted Amendment: N.J.A.C. 8:71**

Proposed: December 2, 1985 at 17 N.J.R. 2842(a).  
Adopted: May 30, 1986 by the Drug Utilization Review Council,  
James Perhach, Ph.D., Chairman.  
Filed: June 6, 1986 as R.1986 d.253, with portions of the proposal  
**not adopted** and portions not adopted but still **pending**.  
Authority: N.J.S.A. 24:6E-6(b).  
Effective Date: July 7, 1986.  
Expiration Date: April 2, 1989.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the adoption follows.

The following products and their respective manufacturers were  
**adopted:**

**Phenylbutazone caps 100 mg** **Barr**  
The following products and their respective manufacturers were **not**  
**adopted:**

Methyl dopa 250/hydrochlorothiazide 25 mg tabs Cord  
Phenylbutazone tabs 100 mg Barr  
Sulfipyrazone tabs 100 mg & caps 200 mg Par

The following products were not adopted but are still **pending:**

Procainamide tabs slow-release 250, 750 mg Danbury  
Tolbutamide tabs 500 mg Purepac  
Hydralazine/Hydrochlorothiazide caps 25/25, 50/50 Superpharm  
Isosorbide dinitrate oral tabs 5, 10, 20 mg Superpharm  
Indomethacin caps 25, 50 mg Superpharm  
Spironolactone tabs 25 mg/hydrochlorothiazide 25 mg Superpharm  
Chloropheniramine maleate 8 mg/pseudoephedrine  
HCl 120 mg caps, slow-release Graham  
Procainamide HCl tabs, slow-release, 500 mg Copley  
Temazepam caps 15, 30 mg PharmBasic  
Spironolactone tabs 25 mg P-D  
Spironolactone 25 mg/hydrochlorothiazide 25 mg tabs P-D  
Diazepam tabs 2, 5, 10 mg Par  
Methyl dopa 250/hydrochlorothiazide 25 mg tabs Cord  
Methyl dopa 500/hydrochlorothiazide 50 mg tabs Cord  
Methyl dopa 500/hydrochlorothiazide 30 mg tabs Cord  
Ibuprofen tabs 400, 600 mg Danbury  
Ergoloid mesylates oral tablet 1 mg Superpharm  
Ergoloid mesylates SL tabs 0.5, 1.0 mg Superpharm  
Diazepam tabs 2, 5, 10 mg Superpharm  
Metoclopramide tabs 10 mg Chelsea  
Disopyramide caps 100, 150 mg Chelsea  
Carbamazepine tabs 200 mg PharmBasic  
Methyl dopa tabs 250, 500 mg Cord  
Diazepam tabs 2, 5, 10 mg Barr  
Disopyramide phosphate caps 100, 150 mg Barr  
Flurazepam caps 15, 30 mg Barr  
Nalidixic acid tabs 250, 500, 1000 mg Barr  
Oxytriphyllyne tabs 100, 200 mg Barr  
Propranolol tabs 10, 20, 40, 60, 80 mg Barr  
Tolazamide tabs 100, 250, 500 mg Barr

**HIGHER EDUCATION**

(b)

**STUDENT ASSISTANCE BOARD**

**Student Assistance Programs  
Foreign Nationals**

**Adopted Amendment: N.J.A.C. 9:7-2.3**

Proposed: January 6, 1986 at 18 N.J.R. 19(a).  
Adopted: June 10, 1986 by Student Assistance Board, Joseph  
Streit, Chairman.  
Filed: June 10, 1986 as R.1986 d.254, with substantive changes not  
requiring additional public notice and comment (see N.J.A.C.  
1:30-4.3).  
Authority: N.J.S.A. 18A:71-26.5, 18A:71-26.8, 18A:71-47(a) and  
18A:71-48.

Effective Date: July 7, 1986.  
Expiration Date: April 13, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

While no public comments were received, there were comments and  
questions from the Student Assistance Board at the time the proposed  
amendment was presented to them. After Higher Education Department  
staff consulted with staff of Region II of the United States Department  
of Education, changes were made to further clarify the immigration status  
of certain foreign nationals. (see N.J.A.C. 9:7-2.3(a)2, 3, and 4.)

**Full text** of the adoption follows (additions to proposal shown in  
boldface with asterisks **\*thus\***; deletions from proposal shown in brackets  
with asterisks **\*[thus]\***).

9:7-2.3 Foreign nationals

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

1. Be the holder of an Alien Registration Receipt Card for I-151 or  
I-551; or
2. Be the holder of an Approval Notice from the Immigration and  
Naturalization Service **\*form I-181\*** stating that the non-citizen has ap-  
plied and met the requirements for Permanent Resident status; or
3. Be the holder of an Arrival Departure Record form I-94 endorsed  
by the Immigration and Naturalization Service showing one of the follow-  
ing:
  - i. Parole **\*[Edition]\* \*Indefinite/Humanitarian\***: Paroled pursuant to  
Sec. 212(d)(5) of the Immigration and Naturalization Act; or
  - ii. Refugees: Admitted as a refugee pursuant to Sec. 207 of the Immi-  
gration and Naturalization Act **\*[.]\* \***; or
  - \*iii. Granted Asylum: Asylum status granted pursuant to Sec. 208 of the  
Immigration and Naturalization Act; or\***
  - \*iv. Cuban-Haitian Entrant: Status pending; or\***
  - \*v. Conditional Entrant: Admission into this status through March 31,  
1980.\***

**\*4. The Arrival Departure Record form I-94 for persons in the foremen-  
tioned categories must be updated for each award year as required by the  
Immigration and Naturalization Service.\***

(b) Foreign Nationals with Student Visa Status, F1 or F2 Exchange  
Visitor Visa and J1 or J2 even when stamped "employment authorized"  
or holders of form I-94 with one of the endorsements: "adjustment  
applicant", "245", "245 applicant", "applicant for permanent residence",  
"voluntary departure", and "deferred action", are considered to be in  
the United States for **\*[the sole purpose of obtaining an education]\***  
**\*temporary reasons\*** and are therefore not eligible for student assistance.

**HUMAN SERVICES****(a)****DIVISION OF MENTAL HEALTH AND HOSPITALS  
Interim Assistance Procedures Manual  
Readoption with Amendments: N.J.A.C. 10:38**

Proposed: April 21, 1986 at 18 N.J.R. 802(a).

Adopted: May 28, 1986 by Geoffrey S. Perselay, Acting  
Commissioner, Department of Human Services.Filed: May 28, 1986 as R.1986 d.239, **without change.**

Authority: N.J.S.A. 30:4-107.

Effective Date for Readoption: May 28, 1986.

Effective Date for Amendments: July 7, 1986.

Expiration Date: May 28, 1991.

**Summary of Public Comments and Agency Responses:**

Written comments from the Public Advocate were received on May 21, 1986. Due to the nature of the issues raised and the imminence of the rule's expiration, it was readopted as proposed. The Division of Mental Health and Hospitals anticipates it will propose amendments after the Public Advocate's comments have been fully analyzed. Following is a summary of the comments and the Division's preliminary response:

**COMMENT:** It was asserted that the provisions permitting the return of a client on Trial Placement status do not satisfy the requirements of Due Process.

**RESPONSE:** The legal, clinical and programmatic issues will be reviewed to determine how the procedures might be adjusted without resulting in private residential providers simply choosing not to initially accept clients.

**COMMENT:** It was requested that clients not be asked to complete the form assigning their initial SSI benefits until all other criteria for interim assistance have been fulfilled.

**RESPONSE:** It appears that the request is consistent with current practice, and therefore, the rule will be amended to reflect same.

**COMMENT:** It was requested that clients with personal funds be assisted in spending same so as to insure that the client's wishes and needs are met consistent with SSI eligibility requirements.

**RESPONSE:** It appears that the request is consistent with current practice, and therefore, the rule will be amended to reflect same.

**COMMENT:** It was suggested that the proposal indicated a shifting of responsibility for the initial determination of interim assistance eligibility to the Social Security Administration.

**RESPONSE:** The proposal was not designed to shift such responsibility and the language will be amended to clarify that the changes are mechanical and that current practice reflects what was requested.

**COMMENT:** It was requested that interim assistance be expanded to include clients in county hospitals.

**RESPONSE:** County hospitals are owned and operated by the counties themselves. The Division of Mental Health and Hospitals clearly supports the creation of interim assistance programs at county hospitals and is available to assist in their development.

**COMMENT:** It was requested that interim assistance be expanded to include clients returning to their home or family.

**RESPONSE:** The Division of Mental Health and Hospitals has been exploring the many issues related to such an expansion and expects to determine the feasibility in the near future.

**Full text** of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:38.

**Full text** of the amendments to the readoption follows.

**10:38-4.4 The Bureau of Transitional Services**

(a) The Bureau of Transitional Services will play a major role in several areas, specifically:

1. Receive and process referrals for community placement and financial assistance;

2. Render eligibility decisions for Interim Assistance based on information received from the Social Security Administration;

3.-8. (No change.)

(b) (No change.)

(c) The Bureau of Transitional Services will, within five working days of receipt of a referral:

1. Submit an initial query to the Social Security Administration to assist in determining clients eligibility for Interim Assistance;

2. Obtain from hospital social service staff form SSA-787, Medical Officer's Statement;

3. Make an assessment of the client's potential Supplemental Security Income eligibility based on available documents and information. This evaluation will result in one of the following decisions:

i.-ii. (No change.)

(d) The Bureau of Transitional Services will, for a client assessed as eligible for Interim Assistance:

1.-10. (No change.)

11. Keep the case active for as long as the client remains on Interim Assistance to ensure that Personal Needs Allowance and maintenance payments are being received and properly utilized.

12.-14. (No change.)

**10:38-5.4 Trial placement status processing**

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

(c) The Bureau of Transitional Services will:

1. Follow procedures outlined under sections 10:38-4.4(b) through (e);  
2. Meet with the client within five working days after Interim Assistance eligibility has been determined and provide him/her with an explanation of trial placement status and the requirements of the Interim Assistance Program.

3.-4. (No change.)

**(b)****DIVISION OF PUBLIC WELFARE****Public Assistance Manual  
Social Security Numbers; Responsibilities of the  
CWA/CSP Unit****Adopted Amendments: N.J.A.C. 10:81-11.3 and 11.9**

Proposed: October 21, 1985 at 17 N.J.R. 2516(b).

Adopted: June 2, 1986 by Geoffrey S. Perselay, Acting  
Commissioner, Department of Human Services.Filed: June 3, 1986 as R.1986 d.243, **with a substantive change**  
not requiring additional public notice and comment (see  
N.J.A.C. 1:30-4.3).Authority: N.J.S.A. 44:7-6 and 44:10-3; 26 U.S.C. 6103, 45 CFR  
232.10(a)-(b) and Deficit Reduction Act of 1984 (P.L. 98-369).

Effective Date: July 7, 1986.

Operative Date: August 1, 1986.

Expiration Date: October 15, 1989.

**Summary of Public Comments and Agency Responses:**

Comments were received from a county Legal Aid Society staff attorney.

**COMMENT:** The commenter stated that at N.J.A.C. 10:81-11.3(c)2i, the time frame for submission of Form SS-5, Application for Social Security Number, for newborn children, seems to conflict with the time frame for verification of eligibility in AFDC presumptive eligibility cases.

**RESPONSE:** This amendment does not preclude granting of assistance on presumptive eligibility basis for applicant families. The prescribed time period for the county welfare agency (CWA) to validate all applicable eligibility requirements for presumptive eligibility remains the same, that is, two months following the month in which assistance was initially granted. However, in order to avoid any misunderstanding, the completion time for the SS-5 is changed from the first to the last day of the second month after the birth of the child.

**COMMENT:** The commenter added that at N.J.A.C. 10:81-11.3(c)2ii, the requirements that a birth certificate or a signed certified hospital document containing the same information as a birth certificate for the purpose of completing Form SS-5, appears to conflict with regulations regarding verification of eligibility for AFDC. Federal regulations regarding verification of eligibility for AFDC permit verification from documentary and non-documentary sources. With regard to issuance of Social Security cards, Federal regulations do not require that proof of age, identity or citizenship be limited to a birth certificate or signed certified hospital document.

**RESPONSE:** Social Security Administration instructions regarding Form SS-5 state that the best, most credible evidence of birth, for purposes of applying for a Social Security number (SSN) is a birth

certificate or certified hospital document, and emphasize that applicants for SSNs should provide that documentation. In the case of newborn children, such documentation is readily and immediately available from the hospital or the municipality in which the child was born. Eligibility for AFDC is based upon certain criteria such as age, relationship, and residence. Federal regulations require that all applicants/recipients for AFDC who do not have a SSN must apply for one as a condition of eligibility. The documentation required in this amendment on behalf of newborn children is limited, by the very nature of the situation, to a birth certificate or signed certified hospital document in order to comply with Federal instructions regarding applications for Social Security numbers and in no way conflicts with regulations regarding verification of eligibility for AFDC.

COMMENT: Finally, commenter expressed opposition to the amendment at N.J.A.C. 10:81-11.3(f) which requires that an applicant or recipient of Medicaid benefits furnish a valid SSN as a condition of eligibility, and that the regulations at N.J.A.C. 10:81-11.3(b)-(e) be applied to Medicaid recipients. It was observed that this regulation serves as an impediment to continued receipt of Medicaid coverage and conflicts with Federal statute, namely the Deficit Reduction Act of 1984.

RESPONSE: As directed by the United States Department of Health and Human Services, Health Care Financing Administration, this regulation is being adopted in compliance with Federal statute, Section 2651 of the Deficit Reduction Act of 1984 (P.L. 98-369). The requirement applies to all individuals receiving Medicaid, including AFDC-related Medicaid Only cases, adult Medicaid Only cases and Medicaid Special cases.

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

10:81-11.3 Social Security numbers

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

(c) Obtaining a Social Security number: The CWA shall obtain a supply of Social Security Form SS-5, sufficient to accommodate all AFDC applicants and eligible individuals who do not already have Social Security numbers. Upon application the applicant shall be required to sign as many SS-5 forms as needed for the eligible unit. The IM worker shall complete Form SS-5 on the basis of information provided by the applicant. Completed forms shall be forwarded to the Social Security Administration; Enumeration Branch; 38 Courtright Street; Wilkes-Barre, Pennsylvania 18705. A copy of the SS-5 form shall be retained in the case record, and a copy given to the client if so requested.

1. (No change.)

2. Failure to obtain Social Security number: If any applicant refuses to provide or apply for the appropriate Social Security number(s), the CWA shall declare such person ineligible. The needs of that individual shall be deleted in accordance with N.J.A.C. 10:82-2.4.

i. For a "new born" child, whose birth certificate may not be readily available, the completion time for the SS-5 is extended to the \*[first]\* \*last\* day of the second month after the birth of the child.

ii. A signed and certified hospital document may be accepted in lieu of a birth certificate, provided that it contains the same information that would appear on a birth certificate, that is, child's name, date of birth, place of birth, mother's name, mother's residence, and father's name.

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

(f) Social Security numbers and Medicaid: Every applicant for and recipient of Medicaid benefits is required to furnish a valid Social Security number to the CWA as a condition of eligibility for Medicaid. Any applicant or recipient who does not already have a Social Security number shall be required to apply for same by completing Form SS-5. In addition, (b) through (e) above shall apply to Medicaid recipients.

10:81-11.9 Responsibilities for the CWA/CSP Unit

(a)-(g) (No change.)

(h) Collection of delinquent child support payments through offset of Federal income tax: Federal income tax refunds shall be offset when court ordered child support payments owed to county welfare agencies are delinquent.

1.-9. (No change.)

10. Restriction of information to IV-A units: The IV-D units shall not release address information obtained from IRS through the Tax Refund Offset Program to IV-A units.

(i)-(j) (No change.)

## CORRECTIONS

(a)

### DIVISION OF ADULT INSTITUTIONS

#### Adult County Correctional Facilities Medical Examinations

#### Adopted Amendments: N.J.A.C. 10A:31-3.12 and 3.15

Proposed: October 7, 1985 at 17 N.J.R. 2343(a), 2955(b).

Adopted: May 29, 1986 by William H. Fauver, Commissioner, Department of Corrections.

Filed: June 2, 1986 as R.1986 d.241, with substantive changes not requiring additional notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1-15 and 30:1B-10.

Effective Date: July 7, 1986.

Expiration Date: February 4, 1990.

#### Summary of Public Comments and Agency Responses:

The Department of Corrections held a public hearing concerning this proposal on January 21, 1986. Approximately 30 persons attended, most associated with county jails as wardens, doctors and medical staff persons. The Public Advocate was represented by its Office of Inmate Advocacy, which offered the testimony of two medical doctors from other states.

Written comments received during the public comment period, which closed on November 6, 1985, became part of the administrative record. These include testimony of the Public Advocate, officials and professional staff persons from Bergen County, Somerset County and Hudson County. Written comments from private individuals include a physician on the staff of the UMDNJ and one prison inmate. A number of commenters recommended specific modifications to the proposal. Others indicated that the proposal would have no impact on their procedures as presently followed. A copy of the Department's complete file is available for inspection at the Department. Highlights of these comments and agency responses thereto are provided below.

ORAL COMMENT: One commentator appeared at the hearing representing the Department of Corrections. Her oral testimony endorsed the Department's proposal with one suggested modification. In place of the requirement that inmates merely be "scheduled" for a physical examination, the commentator suggested that the rule should be reworded to state that the physical examination shall be "performed" prior to the inmate's placement in the general population or housing area. The commenter explained that the medical screening and physical examination referred to in the proposal provides a framework within which the responsible county physician is free to exercise medical judgment, and to establish appropriate policy and procedures for testing in any specific area. She pointed out that counties should already be aware that N.J.S.A. 26:4-49.8 requires examination for venereal disease of any person confined to a county jail for more than seven days. The proposal is substantially similar to the Department's standard governing admissions screening in the State's correctional system. It is believed that the proposal provides sufficient direction to county jail administrators, while vesting an appropriate degree of discretion in the facility's physician.

RESPONSE: The change in language suggested above has been adopted. This requirement is consistent with language presently found in N.J.A.C. 10A:31-3.15.

ORAL COMMENT: A medical doctor from Monmouth County agreed with one of the Public Advocate's doctors that medical screening is important and that it should be performed by a medically trained staff person. He disagreed with the Public Advocate's doctor as to who should determine what tests are to be given. He felt that the local jail doctor is the person best qualified to make such decisions, based on symptoms or conditions noted during the screening process. He questioned the usefulness of several of the tests recommended by the Public Advocate's doctors. He did not agree that blanket testing should be done on everyone for every particular problem. Problems are reflective of what is happening in the local community, and this is what the local doctor looks for. He recommended that PPD tests be done for TB.

RESPONSE: The Department agrees with the doctor from Monmouth County, and prefers to allow county physicians to determine the types of tests to be given, according to the needs of each local community.

ORAL COMMENT: A corrections official from Essex County stated that it is virtually impossible to isolate new inmates until testing is done. This is due to the gross overcrowding of the jail.

RESPONSE: The Department believes that public health considerations require that new inmates receive medical screening and those tests which the doctor believes are needed, before placement in general population. Counties should take steps to address this requirement as soon as possible.

ORAL COMMENT: A pharmacist from Cumberland County testified as to his concern for proper use of medications. He recommended that "medical screening" be strictly defined, and performed by a trained medical person. He also suggested that PPD tests be done.

RESPONSE: The Department's regulations do presently list the components of screening. These include seven categories of problem areas plus anything else noted by the physician. The screening shall be performed by a nurse or medical technician. See the following Comment and Response as to PPD tests.

ORAL COMMENT: A nursing supervisor from Union County related her experience with PPD testing. She found that much of the testing was not useful, because many inmates were transferred out of the jail before the results were obtained.

RESPONSE: The Department agrees that this is one of the problems counties must face in determining which tests are appropriate and when. The county physician will determine policy regarding PPD tests.

ORAL COMMENT: A commenter from the Bureau of County Services asked whether money was a factor in determining medical services or staffing.

RESPONSE: The Department cannot determine whether financial considerations are a factor in each county. It can only formulate reasonable basic minimum standards from which each county can develop its own practice and procedure for dealing with jail health needs.

ORAL COMMENT: A nursing supervisor from Somerset County Jail stated that the proposal is very acceptable and feasible. She agreed that the doctor can best determine what tests are to be done. The proposal is realistic in its approach.

RESPONSE: The Department agrees that the regulation is intended to be acceptable, practical and feasible.

WRITTEN COMMENT: One commenter expressed concern that the regulations be general enough in nature so as to allow for substantial differences in size, numbers of prisoners and available resources. He suggested that standards of the American Correctional Association (ACA) which can be so customized, be utilized by the counties to provide guidance for them on specific aspects of health care.

RESPONSE: The Department agrees that the rule be general enough to permit variations according to each county's perceived needs and resources. It is noted that the ACA standards, which are somewhat more detailed, are not offered as mandatory by the ACA, but rather, are suggested as essential. Counties are given discretion to adopt those which meet their needs.

WRITTEN COMMENT: A commenter urged that all incoming female inmates receive pregnancy testing on admission, because pregnancy is a high risk factor affected by various medications, diagnostic procedures and treatments. He stressed that a standard urine test is accurate and inexpensive.

RESPONSE: The Department agrees with the commenter but believes that the present rule, N.J.A.C. 10A:31-3.15(b)1i covers this subject, in that it requires screening as to "current illnesses and health problems, including *those specific to women*" (emphasis supplied). Pregnancy is thus only one of a number of conditions or illnesses which a responsible county physician will address.

WRITTEN COMMENT: A commenter objected to the deletion in N.J.A.C. 10A:31-3.12(b)1.iv regarding testing for infectious disease. He cited the risk created by contact of State and County inmates to such diseases as TB, sexually transmitted diseases and diseases spread by intravenous drug use.

RESPONSE: The Department does not believe that counties will cease testing for infectious disease where such tests are appropriate and are recommended by the responsible county physician. The risk presented by presence of State inmates is exaggerated by the commenter, since all State inmates are screened and tested upon their admission to the State system. After admission, those who become ill receipt appropriate medical treatment.

WRITTEN COMMENT: A commenter stated that the deletion of the language "including tests for infectious diseases" will have no impact upon procedures followed at the jail. The routine examination of inmates

by a staff physician at the jail has in the past and will continue in the future to be a matter of diagnosis by that physician with any specific test for infectious disease being scheduled at his/her direction. The proposed amendment would, however, result in additional costs to the county, and the need to segregate those inmates awaiting tests would add to the existing overcrowding problem.

RESPONSE: The need to segregate inmates awaiting tests need not result in new costs, since the rule as presently written in N.J.A.C. 10A:31-3.15 requires that the medical screening be performed on all inmates upon admission to the facility and before their placement in the general population. This requirement is therefore not substantially changed.

WRITTEN COMMENT: One commenter stated that if specific screening tests are required, mandatory staffing, lab facilities and training are also indicated. Adequate staffing and development of workable medical departments should be given priority.

RESPONSE: The Department believes that the priority given to laboratory facilities and staffing needs is a matter for consideration by each county according to its perceived needs and availability of resources.

WRITTEN COMMENT: One commenter stated that the failure of counties to test for infectious diseases would ultimately have a negative impact on State prison inmates, when the county prisoner is transferred to a State facility. Concern was expressed particularly for Tuberculosis testing, and infectious diseases transmitted by sexual contact and intravenous drug use.

RESPONSE: The commenter assumes that counties will fail to examine or test for infectious disease. This assumption is incorrect, because the rule requires such tests as are determined to be necessary by the physician. In addition, all county inmates who are subsequently transferred to State facilities receive medical screening and examination upon admission.

COMMENTS OF THE PUBLIC ADVOCATE: The Public Advocate presented recommendations from a number of medical doctors from whom he had gathered information and opinions. He urged that the Department define and establish minimum standards which would ensure uniformity and limit the need for enforcement through litigation. He objected to the language which requires that examinations be "scheduled" rather than "performed", before the inmate is placed in general population. He recommended that only medically qualified staff persons perform the screening procedures. He listed specific tests which he believed essential to medical screening. These tests include laboratory tests for infectious diseases, urinalysis, blood, hypertension, pregnancy and chest x-rays. He urged that a full physical examination be performed, to include visual inspection, medical and family history and mental health assessment.

RESPONSE: The Department agrees with two recommendations offered by the Public Advocate: 1. The medical screening and examination shall be performed, rather than merely scheduled prior to an inmate's placement in the general population; and 2. The medical screening must be done by a nurse or medical technician and the physical exam by a licensed medical doctor. The Department agrees that medical histories, physical exams and testing for diseases and pregnancy are desirable. It is believed, however, that differences in populations, facilities and resources require that some latitude be given each county to develop its policy according to its individual needs.

ORAL/WRITTEN COMMENT: A physician from New York, appearing on behalf of the Public Advocate submitted his oral statement in written form. He recommended that intake screening and examination be performed as soon as possible, by a trained practitioner, in a suitable location affording privacy. He suggested use of a form which requires specific information, depending on local community epidemiology, and tests appropriate thereto. In addition, he recommended testing for PPD (Tuberculosis) and venereal disease, syphilis especially. He feared that local medical staffs would not develop adequate policies for screening unless mandated to do so by written rules.

RESPONSE: The Department agrees that medical screening must be performed by medically trained staff persons before an inmate is placed in general population. It disagrees with the doctor's view that jail physicians should not be permitted to decide which specific tests to administer. The county physician is best equipped to know what kinds of medical problems exist in the outside community which may affect the local prison population. He/she may also rely on symptoms evident at the physical exam conducted on admission, to indicate a need for further testing.

ORAL AND WRITTEN COMMENT: A medical doctor from Cook County Hospital, Illinois, who is also Chairperson of the Jail Health Services, appeared at the invitation of the Public Advocate. He submitted

his oral testimony in written form, which contained the following specific recommendation: 1. Intake screening should be performed by qualified, trained health staff; 2. This screening should include: (a) Medical and surgical history; (b) Psychiatric screening; (c) Visual inspection; (d) Physical examination (including vital signs); (e) Testing for TB, syphilis and gonorrhea; (f) Examination for scabies and lice; (g) Pregnancy screening; and (h) Assessment of high risk for AIDS group. All the regulations governing medical screening should be mandatory to insure uniformity.

RESPONSE: The Department presently utilizes and requires a form for taking medical and surgical histories. The psychiatric screening, visual inspection and physical exam are all presently routinely performed and required. Assessment for AIDS is part of the doctor's examination. The Department believes that laboratory testing for infectious diseases and pregnancy are desirable, but prefers to defer to the expertise of local county physicians regarding specific needs therefor.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).

10A:31-3.12 Reception, orientation, release and property control

(a) (No change.)

(b) The standards pertaining to reception, orientation, release, and property control shall provide that:

1. Procedures for admitting new inmates shall include, but not be limited to the following:

i.-iii. (No change.)

iv. Medical screening as detailed in N.J.A.C. 10A:31-3.15 Medical, dental and health service care;

v.-xiv. (No change.)

2.-9. (No change.)

10A:31-3.15 Medical, dental and health service care

(a) (No change.)

(b) The standards pertaining to medical, dental, and health service care shall provide the following:

1.-10. (No change.)

11. Upon admission, all inmates shall **\*[be medically screened and scheduled for a physical examination]\* \*receive medical screening by a nurse or medical technician, and a physical examination by a licensed medical doctor,\*** and any tests determined to be necessary by the facility's responsible physician. The medical screening **\*and physical examination\*** shall be performed on all inmates prior to their placement in the general population or housing area. The findings shall be recorded on a printed screening form approved by the responsible physician. Suggested screening should include inquiry into the following:

i.-vii. (No change.)

12.-34. (No change.)

(a)

**Adult County Correctional Facilities  
Work Release Program**

**Adopted New Rules: N.J.A.C. 10A-31-6**

Proposed: April 7, 1985 at 18 N.J.R. 604(a).

Adopted: June 11, 1986 by William H. Fauver, Commissioner,  
Department of Corrections.

Filed: June 16, 1986 as R.1986 d.261, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:8-44.

Effective Date: July 7, 1986.

Expiration Date: February 4, 1990.

**Summary of Public Comments and Agency Responses:**

On April 7, 1986 the Department of Corrections published proposed new rule N.J.A.C. 10A:31-6 WORK RELEASE PROGRAM for Adult County Correctional Facilities. Comments were solicited from the public through May 7, 1986. Formal written comments were received from the Warren County Prosecutor.

COMMENT: The commenter pointed out an apparent inconsistency between N.J.A.C. 10A:6.5(a) and 6.5(d). If the inmate is placed on Work Release at the time of sentencing, then there is no provision for input from the County Work Release Administrator prior to placement. The rule should make it clear that the statute permits placement at the time

of sentencing (if the Judge so orders) or at any time thereafter (on recommendation of the Work Release Administrator and Order of Judge).

RESPONSE: The Department agrees with the commenter that the language creates ambiguity. The rule has been clarified to comport with perceived statutory intent as set forth in N.J.S.A. 30:8-44.

In addition to the specific modifications set forth above, there are a number of minor changes in wording or grammatical corrections which do not affect the procedures being described. These are set forth in the text as additions or deletions.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

CHAPTER 31

ADULT COUNTY CORRECTIONAL FACILITIES

SUBCHAPTER 6. WORK RELEASE PROGRAM

10A:31-6.1 Authority

N.J.S.A. 30:8-44 authorizes the operation of a County Work Release Program in the counties in which the Board of Freeholders has approved the establishment of this type of program.

10A:31-6.2 Responsibility for designating County Work Release Administrator

(a) Upon adoption of a resolution to implement a Work Release Program, the County Board of Freeholders shall designate a County Work Release Administrator who may be the Sheriff, Warden or other person who shall be responsible for administering the Program.

(b) The Board of Freeholders shall promptly notify the Commissioner of the Department of Corrections of its action and the name of the designated County Work Release Administrator.

10A:31-6.3 Placement in program

A person convicted and sentenced to a county jail may be placed in a Work Release Program by order of the court in which such person was convicted, or by the assignment judge of the county in which the sentence was imposed **\*at the time such person is sentenced or at any time thereafter during the term of the sentence\*.**

10A:31-6.4 Inmates inappropriate for program participation

(a) The following circumstances shall make an inmate inappropriate for participation in the Program.

1. Untried detainees for criminal offenses or immigration detainees;

2. Current convictions involving sex or arson offenses;

3. Previous convictions for sex or arson offenses, even if the current conviction is for an offense(s) other than sex or arson; or\*[.]\*

4. Current convictions for sale and/or distribution of controlled dangerous substance (CDS) solely for profit.

10A:31-6.5 Application for admission to the \*[program]\* **\*Work Release Program\***

(a) An inmate placed in Work Release, released to vocational training or released to meet family needs **\*[at the time of sentencing by the court,]\*** shall be required to complete Form CWR-1 APPLICATION AND AGREEMENT FOR ASSIGNMENT UNDER THE WORK RELEASE PROGRAM and submit it to the County Work Release Administrator.

(b) An inmate sentenced by the court to a county correctional facility who desires an opportunity to participate in the Work Release Program shall be required to submit a Form CWR-1 APPLICATION AND AGREEMENT FOR ASSIGNMENT UNDER THE WORK RELEASE PROGRAM to the court through the County Work Release Administrator.

(c) The County Work Release Administrator shall be responsible for advising county sentenced inmates that they may submit an application to him or her for submission to the court for approval to participate in the Program.

(d) The County Work Release Administrator shall review and evaluate the information collected on each application and make a recommendation to the court concerning admission to the Program. The basic information shall include, but is not limited to:

1. Prior criminal history;

2. Detailed information concerning present offense;

3. Detailed information regarding untried criminal charges pending and the current status of these charges;

4. Psychological and psychiatric evaluations;

5. Record of violent or assaultive conduct;

6. Record of violation of financial or public trust;

7. Data on family relationships including responsibility to assist in family maintenance;
8. Work history;
9. Personal health;
10. Record of substance abuse; and
11. Information on Job opportunities or vocational programs to meet the inmate's needs.

(e) The following facts and circumstances shall be viewed as negative factors when considering an inmate's application for Work Release:

1. Record of association with organized crime;
2. Record of serious emotional or personality defects;
3. Record of violent or assaultive behavior;
4. Previous violations of financial or public trust;
5. A high degree of public notoriety which would cause adverse reaction if the inmate were released;
6. Indications that release would be contrary to punitive intention of sentence; and
7. A history which indicates a record of convictions for CDS.

#### 10A:31-6.6 Job site evaluation

(a) The County Work Release Administrator shall be responsible for evaluating all prospective places of employment **\*[for] \*of\*** inmates.

(b) Whenever possible, work release employment shall be related to prior vocational training, work experience and/or the institutional training of the inmate.

(c) The following shall initially be taken into account when evaluating the job site:

1. Working conditions of **\*[the employec] \*employees\***;
2. Potential hazards to health of employees;
3. Credibility of the employer;
4. Verification of a fair rate of pay, not less than minimum wage;
5. Coverage by an appropriate workers' compensation plan;
6. Availability of transportation;
7. Duration of the offered employment and benefits; and
8. Proximity to the institution.

(d) Inmates shall not be placed in Work Release assignments which will result in the displacement of workers employed in the community.

(e) Representatives of local union central bodies or similar labor union organizations shall be consulted about the placement of inmates with an employer, **\*[if necessary] \*when appropriate\***.

(f) If suitable private outside employment cannot be found for an inmate, he or she may be employed by the county at a fair wage and reasonable hours of work.

#### 10A:31-6.7 Notice to inmate

Form CWR-2 NOTIFICATION OF ADMISSION TO WORK RELEASE WITH SPECIFIED CONDITIONS shall be used by the County Work Release Administrator to notify the inmate of the court's decision on his or her application.

#### 10A:31-6.8 Work release plan

(a) The County Release Administrator and the inmate shall prepare a detailed work release plan (Form CWR-3 APPROVED WORK RELEASE PLAN). The plan shall include information concerning the job, transportation and a statement authorizing the County Work Release Administrator to make disbursements from earnings.

(b) The information concerning the job placement shall include, but is not limited to:

1. Name of employer;
2. Address of employer;
3. Telephone number of employer;
4. Location of work site;
5. Hourly or other rate of pay;
6. Work days and hours;
7. **\*[The plan] \*Plan\*** for overtime or shift work, if necessary; and **\*[.]\***
8. Evaluation of the job offer by the County Work Release Administrator.

(c) Each work release plan shall contain written detailed information regarding transportation. This information shall include, but is not limited:

1. Time of departure from correctional facility;
2. Time of return to correctional facility;
3. Time of arrival at job;
4. Time of departure from job;
5. Method of transportation (for example, correctional facility **\*vehicle\***, public, private conveyance);
6. Daily cost of transportation;

7. Routes of travel; **\*and\***

8. Procedure to be used when there are unexpected changes in travel arrangements (for example, extended work conditions, delays caused by breakdowns, etc.).

(d) If the transportation plan calls for the use of a private conveyance as the method of transportation, the County Work Release Administrator should insure that the appropriate licensing, vehicle registration and insurance coverage are provided. Copies of these documents shall be contained in the inmate's file.

(e) The transportation plan should be flexible so as to allow for normal problems anticipated in daily travel. Generally, travel time to and from a job should not exceed one hour each way.

(f) The final section of the work release plan shall include information on the disbursement of wages.

(g) When the plan is completed and reviewed by the Work Release Administrator, the inmate shall be asked to read and indicated his or her acceptance of the provisions of the plan by signing it **\*[.] \*.\***

(h) The employer shall receive a copy of the approved work release plan by certified mail, return receipt requested, along with a copy of the court's order placing the inmate in outside employment. The inmate shall also receive a copy of the plan.

#### 10A:31-6.9 Disbursement of wages

(a) **\*An\* \*[Inmates] \*inmate\*** participating in the **\*Work Release\*** Program shall submit his or her salary, wages or stipend, in the form that it is paid (cash or check), to the County Work Release Administrator who shall make payments from these earnings for:

1. Money advances made to purchase or redeem work clothes, travel clothes, and/or work tools. Every effort shall be made to secure full payment of advances as promptly as possible. Except in the most unusual situations, full repayment shall be obtained no later than the second full pay;

2. Cost of work transportation and cash advanced for miscellaneous daily expenses while outside the correctional facility;

3. Payment of cost for board which shall be charged for each day that the inmate is participating in this program. Such daily per capita rate shall not include any part of the costs arising from the administration of this Program;

4. Court costs and fines;

5. Legally ascertained support of dependents after written notice to the appropriate welfare board; **\*and/or\***

6. Payment on debts and legal obligations acknowledged by the inmate in writing and filed with the County Work Release Administrator on such forms as he or she shall specify.

(b) Any balance of earnings that shall remain after payment **\*of\*** items in (a) above shall be retained as required by N.J.S.A. 30:8-49(4), and paid to the inmate when he or she **\*[shall specify] \*is discharged\***.

(c) Each county shall develop a written system whereby each inmate participating in the **\*[program] \*Work Release Program\*** shall pay a fair percentage of his or her earnings for board.

#### 10A:31-6.10 Statement of disbursements

(a) The work release inmate shall receive a statement on Form CWR-4 STATEMENT OF DISBURSEMENTS itemizing deductions made from each pay check within two weeks of the county's receipt of the pay check.

(b) The statement shall report all income and expenses and accurately reflect the statement of the inmate's account for the period covered.

#### 10A:31-6.11 Vocational training release plan

(a) A detailed vocational training release plan (CWR-5 VOCATIONAL TRAINING RELEASE PLAN) shall be prepared by the County Work Release Administrator. A copy shall be sent to the inmate and a copy shall be sent to the training agency by certified mail, return receipt requested. The plan shall include the following:

1. Name and address of training agency;
2. Location where training will take place;
3. Hour and days of leaving and returning to **\*[institution:] \*correctional facility\***;
4. Hour of arrival and departure from the training site;
5. Mode of transportation; and **\*[.]\***
6. Other pertinent data including responsibility for payment of costs (for example, transportation, meals, etc.).

#### 10A:31-6.12 Family need release plan

(a) A detailed family need release plan (CWR-6 FAMILY NEED RELEASE PLAN) shall be prepared by the County Work Release Administrator with a copy to the inmate outlining the following:

1. Nature of need;
2. Location of where family need is to be served;

3. Hour and days of leaving and returning to the correctional facility;
4. Hour of arrival and departure from the family need site;
5. Mode of transportation; and
6. Other pertinent data including responsibility for paying costs (for example, transportation, meals, etc.).

10A:31-6.13 Notification of local police departments

(a) N.J.S.A. 30:4-91.3A requires that the local police departments be notified when the county intends to place an inmate in the respective municipality for the purpose of a visit, study, work or residence.

(b) Whenever an inmate is being considered for placement into the work release, vocational training release, or family care release programs the local police departments shall be notified in writing.

10A:31-6.14 Custody status

Inmates approved for outside employment, family care or vocational training under a Work Release Program shall be classified as minimum custody and housed separately from other prisoners serving terms in ordinary confinement, if possible.

10A:31-6.15 Orientation

(a) When the inmate has been accepted into the **\*Work Release\*** Program and the appropriate applications and plans have been completed, the County Work Release Administrator shall provide an orientation to the inmate.

(b) This orientation shall insure that the inmate is made aware of and has a clear understanding of the rules, regulations and conditions governing the program.

(c) The County Work Release Administrator or his or her designate shall also insure that the employer is made aware of the rules and regulations and of his or her responsibilities concerning the Work Release Program.

(d) The County Work Release Administrator shall make periodic evaluations of the extent of family needs and of job and vocational training sites to insure that the rules and regulations governing the **\*[program]\* \*Work Release Program\*** are not being violated.

10A:31-6.16 Review of status—termination

(a) The County Work Release Administrator may hold the inmate in confinement pending judicial review of his or her status, when there is cause to believe that the inmate has:

1. Violated the rules of the **\*Work Release\*** Program; or,
2. Been charged with the commission of an offense.

(b) The County Work Release Administrator shall submit a written report to the court which will include the reason(s) for holding the inmate in confinement and a request that the court review the inmate's status in the Program.

(c) The County Work Release Administrator shall implement the court's decision.

(d) No inmate may be removed from the Work Release Program without an order from the court authorizing such a removal.

10A:31-6.17 Escape

(a) An inmate shall be deemed an escapee if he or she:

1. Fails to return to the correctional facility within the prescribed time or has not notified the correctional facility within the one hour grace period that he or she is in the process of returning; or\*[,]\*
2. Fails to notify the correctional facility that he or she has been detained (that is, hospitalized, arrested, etc.); or\*[,]\*
3. Fails to obtain authorization to leave his or her place of employment.

(b) If the inmate contacts the county correctional facility within the one hour grace period and is given a reasonable time limit within which to return to the facility but fails to do so, the inmate shall be declared an escapee if there are no extenuating circumstances or verified legitimate reasons for the inmate's failure to return within the time limit.

(c) In all cases of escape, the County Release Administrator shall arrange for immediate notice to the :

1. County jail warden;
2. Local police;
3. State police; and
4. Court.

10A:31-6.18 Monthly reports

(a) The County Work Release Administrator shall be responsible for preparing a written monthly report which shall be submitted to the sentencing court and the County Board of Freeholders.

(b) The monthly report shall contain the following information on each participant in the **\*Work Release\*** Program:

1. Name of inmate;
2. Identification number of inmate;

3. Place of employment or vocational training;
4. Hours of employment;
5. Earnings (including disposition);
6. Date of expected Program termination;
7. Prospects for future employment;
8. Description of unusual incidents;
9. Method of transportation; and\*[,]\*
10. Other information deemed relevant.

(c) The monthly report shall also contain a general summary of **\*Work Release\*** Program information, which includes, but is not limited to, the following:

1. Total number of participants in **\*[program]\* \*Program\***;
2. Total number of admissions to **\*[program]\* \*Program\***;
3. Total number of terminations from **\*[program]\* \*Program\***;
4. Total number of revocations for violations of conditions; and\*[,]\*
5. Total number of removals because of illness or death.

10A:31-6.19 Quarterly report

(a) The County Work Release Administrator shall be responsible for preparing a quarterly report (Form CWR-9 QUARTERLY REPORT OF WORK RELEASE) which shall be submitted to the County Board of Freeholders and the New Jersey Department of Corrections.

(b) The quarterly report shall **\*also\*** contain other summary information on numbers of inmates in the **\*Work Release\*** Program and facts as may be requested by the County Board of Freeholders and the New Jersey Department of Corrections.

10A:31-6.20 Arrangements with other counties

(a) An inmate may be housed in another county for the purposes of work release when the court, issuing the release placement order, authorizes the County Work Release Administrator to arrange with the County Work Release Administrator of another county for the employment of an inmate within that county.

(b) The inmate shall be in the custody of the other county and subject to the commitment and all applicable regulations while the inmate is participating in the **\*Work Release\*** Program.

(c) Agreements between cooperating counties shall include a statement of financial arrangements.

10A:31-6.21 Time credits

(a) Pursuant to N.J.S.A. 30:8-50, an inmate participant may be granted a reduction of not more than one quarter of his or her term if the inmate's conduct, diligence and general attitude merit such reduction.

(b) Form CWR-7 DIMINUTION OF TERM shall be used to notify the appropriate person in the county jail as to the number of days to be credited in reduction of an inmate's sentence.

## INSURANCE

### (a)

#### DIVISION OF ADMINISTRATION

**Adopted New Rules: N.J.A.C. 11:1-20 and 22**

**Adopted Repeal: N.J.A.C. 11:1-20**

Proposed: March 3, 1986 at 18 N.J.R. 457(b).

Adopted: June 16, 1986 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: June 16, 1986 as R.1986 d.272, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22-6.14a1, 2 and 3, 17:29C-1 et seq., 17:29A-1 et seq., 17:29AA-1 et seq., and 17:29B-4.

Effective Date: July 7, 1986.

Operative Dates: Repeal of existing N.J.A.C. 11:1-20.1, 3, 4, 5 and 6: July 7, 1986. Repeal of existing N.J.A.C. 11:1-20.2 and 7: July 28, 1986. Adoption of N.J.A.C. 11:1-20.1, 2, 3, 5, 6 and 8: July 7, 1986. Adoption of N.J.A.C. 11:1-20.4 and 7: July 28, 1986. Adoption of N.J.A.C. 11:1-22: July 7, 1986.

Expiration Date: July 7, 1988.

#### Summary of Public Comments and Agency Responses:

The Department received several written comments concerning the proposed repeal of N.J.A.C. 11:1-20 and promulgation of two new rules

to be cited as N.J.A.C. 11:1-20 and 22. Submissions were made by insurers, agents, an agents trade association, several non-profit organizations and the Department of Human Services. The commentary included both general observations and criticism or questions regarding specific provisions of the proposed rules.

Several writers, most notably those commenting on behalf of insurers, but also certain agents and the agent's association as well, commended the Department's proposal. One writer, for example, considered the replacement regulations a balanced approach to policyholder protection which would restore a degree of normalcy to the marketplace.

Nonetheless, certain insurers, while viewing the proposal as a step in the right direction, continued to object to the rules. In particular, these writers contended that the rules provide insufficient flexibility with respect to nonrenewal activity and, as such, will continue to exert a dampening effect on insurers' willingness to actively write New Jersey business. Many of the writers offered specific recommendations for additional revisions to the rules which, they argued, would restore insurer confidence and foster a return to normal market conditions. These specific concerns are addressed below.

The Department received several comments, principally from non-profit organizations, objecting to the proposed repeal of N.J.A.C. 11:1-20 and promulgation of replacement regulations. These writers argued that, although the current regulation does not control premium increases, it at least ensures that necessary liability coverage is available in most instances. These commenters, therefore, urged that the Department maintain the existing rule until such time as the state and federal governments have acted to control the liability insurance crisis.

The Department of Human Services also voiced concern regarding the proposal's impact on the ability of various human service providers to maintain adequate levels of coverage. While acknowledging that the replacement regulations preserve some of the salient features of the existing rule, the agency pointed out that a number of essential safeguards have been eliminated or substantially relaxed.

In particular, the Department objected to the following changes: (1) Insurance carriers would not be obligated to offer a renewal policy containing the same terms and conditions as the expiring policy; (2) Insurers would not be prohibited from changing the terms of a policy or from increasing premiums midterm, provided the insured agrees to such changes or the changes are approved by the Commissioner; and (3) Insurers would not be obligated to minimize marketplace disruption or arrange for alternate sources of coverage, whenever, pursuant to the Commissioner's approval, they are permitted to terminate entire lines or classes of insurance.

The Department of Human Services also took note of the fact that the proposed replacement regulations provide for a **voluntary** Market Assistance Plan (MAP) designed to address insurance availability problems. Although agreeing that such a plan is an ideal to strive for, the Department contended that implementation of a MAP does not obviate the need for strong regulatory review of cancellation and nonrenewal practices. Further, it questioned the ability of the insurance industry to self-police its members, particularly in light of continuing complaints from its licensees alleging violations of the existing regulation.

The Insurance Department recognizes the importance of adequate liability insurance to the functioning of human service providers and acknowledges the concerns expressed by these commenters. However, the Department does not agree that the replacement regulations remove most of the protections now afforded to policyholders.

It is true the certain standards, for example, those pertaining to renewal coverage offers, have been relaxed. The Department views such modifications as providing insurers with reasonable flexibility to respond to changing market conditions, such as loss of or substantial changes in reinsurance. The relaxation of these requirements should foster a return to more normal market conditions, particularly with respect to the writing of new business.

At the same time, the adopted replacement regulations retain many of the essential protections afforded by N.J.A.C. 11:1-20 and incorporate elements of clarifying bulletins issued by the Department subsequent to the emergency promulgation of that rule. These protections include standards for the form, content and mailing of termination notices and requirements applicable to block cancellations and nonrenewals. Other modifications to the rule, such as the required submission of underwriting guidelines, provide a viable yet less administratively burdensome alternative to the prior approval mechanism contained in the existing rule.

Coupled with the implementation of the MAP, the replacement regulations are expected to alleviate availability problems and strike a proper balance between adequate protection of policyholder rights and fair and reasonable regulation of the insurance industry.

The MAP is designed to aid in the placement of certain commercial liability insurance coverages for residents of this State for which there exists a severe availability problem. The Plan includes the following coverages: (1) municipality liability insurance; (2) insurance coverage for day care centers; and (3) liquor law liability coverages. Other commercial lines coverages also may be included under the MAP where the Commissioner has found after consultation with the Plan's Board of Governors, that severe availability problems exist with respect to such lines.

If the MAP proves successful, the elimination or relaxation of certain of the rule's current requirements will be of negligible impact on insureds. In the event the MAP does not achieve its goals, however, the Department will, of course, consider reinstatement of any requirements necessary to protect policyholders from arbitrary, capricious or unfairly discriminatory terminations.

In light of the comments made by the Department of Human Services, the Department has amended N.J.A.C. 11:1-22.2(a) to eliminate midterm premium increases or reductions in coverage which are effected with the insured's consent. As adopted, the rule specifies that such changes can only be implemented with the prior written approval of the Commissioner.

Upon review, it is apparent that merely requiring the consent of the insured to midterm modifications of premium or coverages will not assure that such changes will be made only where clearly warranted and, therefore, may be subject to abuse. The Department recognizes, however, that in certain unique situations, such as those impacting on insurer solvency, consideration of midterm adjustments to premium charges or to the type or level of coverage afforded under the policy may be justified. These situations can be readily accommodated by permitting the insurer to make application to the Commissioner for relief.

The Department also wishes to respond to comments concerning the impact of these rules on premium increases. Both existing N.J.A.C. 11:1-20 and the adopted replacement regulations address the issue of premium increases, but only with respect to mid-term increases. With regard to renewal increases, it should be noted that the Department recently submitted its report to the Legislature on the implementation and effect of the Commercial Insurance Deregulation Act of 1982. This report explores the current insurance availability and affordability crisis and sets forth proposed amendments to the law which are designed to enhance the Department's effectiveness in monitoring commercial insurance rates.

Specific comments on the proposal follows:

**COMMENT:** The Department received one comment objecting to the proposed removal of personal lines coverages from the scope of the regulations. An insurance agent complained that cancelled agents will experience difficulty in replacing coverage.

**RESPONSE:** The Department does not anticipate an adverse impact of the personal lines market as a result of this action. In general, personal lines have not experienced availability problems comparable to those found in the commercial market. Therefore, securing alternate coverage may not be as problematic as suggested by the commenter.

With respect to automobile insurance, a personal lines coverage which has experienced tight market conditions, the renewal obligations of the insurer are specifically addressed in N.J.A.C. 11:3-8. Further, it is the Department's position, in general, that an insurer must be able to demonstrate that "agency termination" in and of itself constitutes a valid basis for discontinuing policyholder coverage in accordance with applicable statutory standards, including N.J.S.A. 17:22-6.14a1, 2 and 3.

**COMMENT:** An insurer recommended that the scope of the rule be amended to exclude credit insurance. The commenter explained that this coverage indemnifies a seller for obligations arising from goods sold on account for which the buyer fails to pay. Apparently, this commenter felt that the regulation prevents an insurer from cancelling coverage with respect to a defaulting buyer in a timely fashion.

**RESPONSE:** Based upon a review of this comment, it would not appear that the time frames set forth in this rule for notice of cancellation establish requirements which are unduly burdensome. In fact, it must be recognized that the required minimum 30 days notice of cancellation specified in N.J.A.C. 11:1-20 is also set forth in N.J.A.C. 11:1-5.2, a rule originally promulgated by the Department in 1977 which applies to all property/casualty insurance, other than accident and health. Removal of credit insurance from the scope of the adopted regulations would, therefore, not relieve insurers from the notice requirements set forth at N.J.A.C. 11:1-5.2. At this time, the Department cannot accept the recommendation of this commenter.

**COMMENT:** Several writers recommended that various other lines of insurance or types of risks be specifically excluded from the rule's scope. Two writers recommended that commercial automobile policies be exempted from the regulation. It was argued that there is no crisis, in

general, in the commercial auto market and that the Commercial Automobile Insurance Procedure of the Automobile Insurance Plan serves as a source of required coverage for those risks unable to secure voluntary coverage. Any perceived problem with a particular type of commercial auto coverage should be specifically addressed by the rules rather than through the inclusion of commercial auto within their scope. In the event that commercial auto policies remain subject to the rules, a commenter provided a suggested definition of the term.

Two commenters contended that excess and umbrella policies should be exempted from the requirements of N.J.A.C. 11:1-20 and 22. They argued that while excess and umbrella coverages are important to the insurance buying public, primary coverage is more critical. It was also suggested that application of the same regulatory standards to primary and excess coverages reduces the availability and increases the cost of primary insurance and reduces the incentive to write new business. Further, the potentially catastrophic nature of losses incurred under excess and umbrella policies, and consequent negative impact on company results, underscores the necessity of maximum underwriting flexibility.

One commenter argued that all multistate location risks should be exempted from the rule's scope. The proposed N.J.A.C. 11:1-20.1, with certain exceptions, excludes multistate location risks if such risks do not have their principal headquarters in New Jersey.

Two writers recommended that large commercial risks, such as those generating annual premiums in excess of \$1,000,000 or those employing persons who are engaged substantially in full-time insurance buying or risk management activities be exempted from the rule's scope. Typically, it was argued, such insureds are of sufficient sophistication and bargaining power to eliminate the need for their inclusion under the rule.

RESPONSE: The recommendation made by these commenters and the rationals offered in connection therewith appear to reflect an ongoing perceptual problem with existing N.J.A.C. 11:1-20 and with the Department's subsequent proposals modifying its requirements. The Department does not share the view that availability of alternate coverage is the prime indicator of whether specific standards pertaining to the cancellation and nonrenewal of coverage are necessary. While the emergency promulgation of N.J.A.C. 11:1-20 occurred in response to an insurance availability crisis, its fundamental purpose was to protect basic policyholder rights with respect to cancellations and nonrenewals. These rights must be upheld regardless of the availability of alternate coverage and their continued protection is ensured through the adoption of the replacement regulations.

Thus, the existence of the Commercial Automobile Insurance Procedure, a residual mechanism providing a market of last resort to those unable to secure voluntary coverage, in no way removes the Department's responsibility to prohibit unlawful terminations. For similar reasons, the Department also rejects the notion that the size or level of sophistication of the insured eliminates their need for the types of protections afforded by these rules.

The Department also does not concur that the adopted regulations place unwarranted restraints upon an insurer's ability to underwrite its risks. An objective of both repealed N.J.A.C. 11:1-20 and the adopted replacement regulations is to ensure that an insurer exercises its underwriting judgment in a manner consistent with statutory standards. There is simply no rational basis to conclude that requiring verification of the legitimacy of terminations will somehow undermine necessary underwriting flexibility. Further, the adopted regulations provide a framework for accomplishing this objective which is, in the Department's view, both less intrusive and administratively burdensome.

COMMENT: An association representing insurance agents requested clarification regarding N.J.A.C. 11:1-20.2(c) which sets forth time frames for notice to the insured of renewal premium payments and changes in contract terms. The association interpreted the provision to permit the notice to be sent by the insurer to the policyholder's agent rather than directly to the policyholder.

RESPONSE: The Association's interpretation of this provision is incorrect. The Department previously has enunciated its position on this issue in response to public comments on the original promulgation of N.J.A.C. 11:1-20. In view of the importance of adequate prior notice to the continuity of insurance coverages, notice to the insured is superior to notice to an agent or broker. Of course, the regulation does not prohibit the insurer from sending duplicate notice to the agent or broker, which is common practice in the industry.

COMMENT: An insurer requested that N.J.A.C. 11:1-20.2(c) be amended to require notice of any "material" changes in contract terms.

RESPONSE: The Department rejects this recommendation. The in-

sured should be fully apprised of all changes affecting the terms of the insurance contract rather than allowing the insurer the discretion to specifically disclose only those changes it deems "material".

COMMENT: A commenter requested clarification of N.J.A.C. 11:1-20.2(c) concerning changes in coverage upon renewal. Specifically, the writer sought confirmation that the provision permits an insurer to offer increased or decreased limits or, in the case of excess policies, higher or lower attachment points.

RESPONSE: The commenter is correct in his interpretation of the provision.

COMMENT: One insurer requested that the rule be amended to allow insurers to increase premium or cancel coverage when, after issuing an Estimated Premium and Binder on renewal, the insurer determines that the premium must be increased, or the policy cancelled based on subsequently developed underwriting information.

RESPONSE: The Department rejects this recommendation. The purpose of requiring that an insurer provide adequate prior notice of the renewal premium charge and any changes in contract terms is to ensure that the policyholder is fully apprised of the conditions attendant to the renewal of coverage prior to the expiration of the current policy. The insurer, therefore, must complete its underwriting review and establish the appropriate premium charge prior to the expiration of the current policy term.

Although the commenter has characterized the insurer's action as the issuance of a "binder", the company has, in fact, offered renewal coverage. Permitting the insurer to subsequently increase the renewal premium, except as may be authorized by the rule or to cancel the renewal coverage circumvents this purpose and is prohibited.

COMMENT: One commenter recommended that the definition of moral hazard set forth at N.J.A.C. 11:1-20.2(f)2 be amended to clarify that corporate and partnership insureds as well as individuals are subject to cancellation because of moral hazard.

RESPONSE: The definition in the adopted rule has been amended as suggested by the commenter.

COMMENT: An insurer suggested that N.J.A.C. 11:1-20.2(g), which requires that the insured be furnished with the reasons for termination and the supporting facts be amended to waive the requirement if the insurer notifies the insured that this information is available upon request. The insurer contended that in most instances the termination reasons and underlying facts are known to the insured; thus, requiring reiteration of this information in the notice only serves to increase the insurer's cost of doing business. Another writer argued that this provision should not apply where the insurer has given at least 120 days prior notice of cancellation since, in such cases, the insured will have sufficient time to obtain replacement coverage.

RESPONSE: The Department feels that the insured has the right to be specifically informed of both the underwriting standard utilized by the insurer as the basis for termination and relevant supporting acts applicable to the insured, as known to the insurer. Recitation of this information is mandated by statutory standards, specifically N.J.S.A. 17:22-6.14a1, 2 and 3. The Department does not consider provisions of adequate prior notice of termination a viable alternative to positively demonstrating that the termination is legitimate.

COMMENT: Two commenters criticized the requirement found at N.J.A.C. 11:1-20.2(i)2 that insurers maintain a copy of the termination notice that is "certified to be a true copy". They found the requirement to be a substantial administrative burden.

RESPONSE: The Department concurs with this view and has amended the rule accordingly. Of course, the Department assumes custody of the copy of the notice will be maintained in such a manner that it may be certified as a true copy at some future date.

COMMENT: One insurer suggested elimination of N.J.A.C. 11:1-20.2(j) which requires, where the insurer has failed to either issue a renewal policy or a valid notice of non-renewal, that coverage be continued at the terms and rates as the expiring policy until valid notice is given. It was asserted that the requirement could place the insurer in violation of the law if it no longer has the prior rates or forms approved for use.

RESPONSE: The Department does not concur with the conclusion drawn by this commenter. In the instant situation, the provision of coverage would be viewed as a continuation of the existing policy. As in the case of the approval of new rates or forms, required modifications would be implemented at renewal, and would not, ordinarily, affect inforce coverage.

COMMENT: An insurer recommended that N.J.A.C. 11:1-20.2(k), concerning terminations made at the request of the insured, be amended

to require that the insurer maintain documentation that termination was made at the request of the broker, agent or the insured. The commenter argued that since most insurers have little direct contact with the insured, proof of the termination request should include notice from the agent or broker.

**RESPONSE:** The adopted rule has been amended in a manner consistent with this suggestion to include a termination request made by an authorized representative of the insured.

**COMMENT:** Two writers offered comments and suggestions on various provisions of N.J.A.C. 11:1-20.3 concerning policy provisions relating to cancellation. One insurer requested that the period to cancel coverage without limitation, as set forth at N.J.A.C. 11:1-20.3(b), be extended from 60 to 90 days for primary insurers and to 120 days for excess and umbrella coverage. Extension of the time frame was considered necessary to afford insurers adequate time to underwrite a new risk. Without this extension, it was suggested that insurers may find it necessary to restrict the binding authority of producers.

**RESPONSE:** The Department must reject this recommendation because no evidence has been submitted supporting the notion that an extended period of time is needed to complete inspection or negotiate the terms of either primary or excess commercial coverage.

**COMMENT:** One writer complained that N.J.A.C. 11:1-20.3, which requires that policy forms set forth the insurer's reasons for cancellation, does not allow for the time required to obtain Departmental approval of revised forms. Amendatory language was offered which waived Departmental approval for policy forms containing the grounds specified in the section.

**RESPONSE:** The provision in question, N.J.A.C. 11:1-20.3, in effect, provides insurers with 45 days during which to obtain Departmental approval of forms revised to achieve compliance with the adopted rules. This time period appears to be adequate, particularly in view of the review requirements imposed by the Commercial Insurance Deregulation Act of 1982.

**COMMENT:** One writer argued that the list of cancellation reasons which must be included in policy forms should be made applicable to nonrenewals as well. The absence of adverse loss experience as an approved reason for termination was also criticized by one writer.

**RESPONSE:** The Department believes this comment has merit and will consider an appropriate amendment to the rule. In conjunction therewith, the Department will also consider inclusion of adverse loss experience as a reason for nonrenewal which must be set forth in the policy.

**COMMENT:** Several writers raised objections and concerns regarding N.J.A.C. 11:1-20.4 which establishes procedures for the submission and review of underwriting guidelines. One writer argued that the proposal provides little relief on the issue of nonrenewals and may actually be more troublesome than the requirements of the existing rule. Other concerns voiced by commenters included the following:

1. An insurer's underwriting guidelines are privileged information the dissemination of which could prove disastrous to an insurers' ability to compete. If submission of underwriting guidelines is retained in the adopted rule, the Department should ensure that adequate safeguards are developed to prevent release of this material without the insurer's prior written permission;

2. The 20-day time period set forth in the rule for submission of underwriting guidelines allows insufficient time for large insurers to assemble all guidelines. A 120 day period was suggested.

3. N.J.A.C. 11:1-20.4 provides no time period during which the Commissioner must make a determination as to whether a filed guideline is arbitrary, capricious or unfairly discriminatory. Commenters complained that the rule permits the Commissioner to disapprove a guideline which has been used by the insurer, perhaps for months, and the continued availability of which has been relied on by the insurer in binding and renewing risks during that period. One writer recommended that the Commissioner review and either approve or disapprove the guideline within 30 days of submission. Failure by the Commissioner to render a determination within that period would be deemed an approval.

4. A commenter noted that N.J.A.C. 11:1-20.4(b) apparently mandates a hearing for each guideline which is disapproved. The writer expressed concern over the administrative burden this imposes on the Department and recommended that a hearing be held only at the insurer's request.

5. One commenter complained that N.J.A.C. 11:1-20.4(b) neither requires the Commissioner to issue a written disapproval of a guideline nor to recite the reasons for the determination.

6. Finally, a commenter objected to a provision of subsection (b) permitting the Commissioner to require rescission of termination notices which have been issued, but which have not yet become effective. It was

argued that this requirement substantially undercuts predictability in the marketplace and, coupled with insurer's uncertainty regarding subsequent disapproval of filed guidelines, will result in a continued reluctance by insurers to participate in the New Jersey market.

**RESPONSE:** With respect to the first comment, it is the Department's position that implementation of this amendment constitutes a substantive modification to the proposal requiring reproposal and the opportunity for additional public comment. Further, while the Department believes the recommendation warrants further consideration, its merits must be reviewed in light of the requirements of New Jersey's Right to Know Law.

With regard to the criticism of the 20-day time period for submission of underwriting guidelines noted at item 2 above, no evidence has been furnished to the Department which documents that insurers will experience difficulty in achieving compliance. In fact, the Department has recently taken steps to ascertain, prior to the implementation of these adopted rules, what guidelines insurers are using in connection with cancellations and nonrenewals. Based upon responses received as of the date of adoption of this rule, it would appear that most insurers are utilizing the guidelines set forth in the Department's clarifying Bulletins. Compliance with the filing requirements of N.J.A.C. 11:1-20.4(a) would not, therefore, appear to impose an undue burden on insurers.

With respect to item 3 above, the Department finds insurer complaints concerning the absence of specific time frames for Departmental review of filed guidelines to be without merit. N.J.A.C. 11:1-20.4 provides the insurer with the opportunity for a hearing with respect to the disapproval of a filed guideline and permits the insurer to request that the hearing be conducted on an expedited basis. Further N.J.A.C. 11:1-20.4(a) provides that an insurer may obtain approval from the Commissioner for continued use, on a limited basis, of a guideline which has been disapproved pursuant to the procedures set forth in section 4. The Commissioner shall permit continued use of the guideline if the insurer can demonstrate that it will be significantly prejudiced by its inability to utilize the guideline on business written prior to the date of the Commissioner's preliminary order. The Department believes the mechanism established by the rule will ensure that an insurer will not suffer as a result of its reasonable reliance on a filed guideline which is subsequently disapproved.

Regarding item 4, the Department believes that the commenter has misinterpreted N.J.A.C. 11:1-20.4(b) which outlines hearing procedures in the event a filed guideline is disapproved by the Commissioner. It is the Department's interpretation of this provision that hearings will be held only at the request of any affected insurer.

Similarly, complaints noted at item 5 regarding the lack of specific language requiring issuance of a written order disapproving a filed guideline as well as explanation reasons therefor, reflect a misinterpretation of the rule. The issuance of a written order of disapproval specifying the reasons for the determination is, in the Department's view, implicit in the language of the subsection and consistent with accepted principals of due process.

With respect to the final comment on this section, the Department has previously pointed out that the rule sets forth a procedure whereby an insurer may continue to utilize a disapproved guideline based on a showing of significant prejudice. An insurer may, therefore, in accordance with this procedure, be relieved of burdens arising from its reasonable reliance on the guideline. Where significant prejudice cannot be demonstrated by an insurer, it cannot argue that the requirements of the rule impact on its operations in such a way as to foster reluctance to participate in the New Jersey market.

As a result of internal review of the proposal, N.J.A.C. 11:1-20.4(a) has been amended with respect to the time period within which amendments or modifications to existing underwriting guidelines must be filed with the Commissioner for review. Under the proposed rule, companies would be permitted to file amendments within 15 days following the use of the amended guideline. The purpose of this provision was to assure that insurers maintained the flexibility needed to implement new guidelines under unique, exigent circumstances. Upon review, it became apparent that the 15 day filing delay is unnecessary so long as companies may implement amendments on an immediate basis. Companies are now required to file amendments or modifications to previously filed underwriting guidelines as soon as they have determined to amend those guidelines.

**COMMENT:** One writer suggested that the terms "class or line of business" as set forth in subchapter 22 should be more clearly defined so that insurers may avoid possible violations.

**RESPONSE:** It would not appear that these terms require specific definition in this rule. They are terms of common usage in the industry.

COMMENT: One commenter suggested that N.J.A.C. 11:1-22.2(b) be amended to include a change in the financial condition of the reinsurer as a basis for block cancellation or nonrenewal.

RESPONSE: The Department agrees that an insurer should not be required to continue a relationship with a reinsurer that is in unsound financial condition and has amended the rule accordingly. Of course, the insurer must verify this condition as part of the certification required by N.J.A.C. 11:1-22.2(b).

Finally, as a result of internal review of the proposal, the Department has amended N.J.A.C. 11:1-20.3 and 11:1-20.4(a) to provide specific compliance dates.

Also, the Department, in order to avoid any possible gap with respect to the regulation of insurer underwriting guidelines and to facilitate orderly implementation of the new rules, has established delayed operative dates for two sections of the adopted repeal and new rules. Specifically, the repeal of N.J.A.C. 11:1-20.2 and 7 and the adoption of N.J.A.C. 11:1-20.4 and 7 become operative on July 28, 1986. Thus, implementation of the procedures set forth at N.J.A.C. 11:1-20.4 for review of insurer guidelines have been timed to coincide with Departmental receipt of underwriting guidelines.

Full text of the adopted new rules follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposals shown in brackets with asterisks \*[thus]\*).

## SUBCHAPTER 20. CANCELLATION AND NONRENEWAL OF COMMERCIAL INSURANCE POLICIES

### 11:1-20.1 Scope

(a) This subchapter shall apply to all commercial insurance policies which are in force, issued or renewed on or after the effective date of this subchapter by companies licensed to do business in this state except workers' compensation insurance, employers' liability, fidelity, surety, performance and forgery bonds, ocean marine and aviation insurance and accident and health insurance and any policy written by a surplus lines insurer. With the exception of N.J.A.C. 11:1-20.3 and 11:1-20.4(d), this subchapter shall not be applicable to multi-state location risks which do not have their principal headquarters in the state or policies subject to retrospective rating plans.

(b) These rules are not exclusive, and the Commissioner may also consider other provisions of statutes and regulations to be applicable to the circumstances or situations addressed herein. Policies may provide terms more favorable to policyholders than are required by these rules. The rights provided by these rules are in addition to and do not prejudice any other rights policyholders may have at common law, or under statutes and regulations.

(c) In addition to these rules, the Commissioner may implement a market assistance plan providing for a voluntary group of insurers in order to aid insureds in obtaining commercial insurance coverages specified therein.

### 11:1-20.2 Nonrenewal and cancellation notice requirements

(a) No policy shall be nonrenewed upon its expiration date unless a valid notice of nonrenewal has been mailed or delivered to the insured in accordance with the provisions of this subchapter. For the purpose of this subchapter, policies not having a fixed expiration date shall be deemed to expire annually on the anniversary of their inception.

(b) No notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured not more than 120 days nor less than 30 days prior to the expiration of the policy.

(c) With respect to payment of the renewal premium, notice of the amount of the renewal premium and any change in contract terms shall be given to the insured not more than 120 days nor less than 30 days prior to the due date of the premium and shall clearly state the effect of nonpayment of the premium by the due date.

(d) No cancellation, other than a cancellation based upon nonpayment of premium or for moral hazard as defined in (f) below, shall be valid unless notice is mailed or delivered by the insurer to the insured, and to any person entitled to notice under the policy, not more than 120 days nor less than 30 days prior to the effective date of such cancellation except, however, that failure to send such notice to any designated mortgagee or loss payee shall invalidate the cancellation only as to the mortgagee's or loss payee's interest.

(e) A policy shall not be cancelled for nonpayment of premium unless the insurer, at least 10 days prior to the effective cancellation date, has mailed or delivered to the insured notice as required in this subchapter of the amount of premium due and the due date. The notice shall clearly state the effect of nonpayment by the due date. No cancellation for

nonpayment of premium shall be effective if payment of the amount due is made prior to the effective date set forth in the notice.

(f) A policy shall not be cancelled for moral hazard unless the insurer, at least 10 days prior to the effective termination date, has mailed or delivered to the insured notice as required in this subchapter and the basis for termination conforms to the following definitions of moral hazard:

1. The risk, danger or probability that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. Any change in the circumstances of an insured that will increase the probability of such a destruction may be considered a "moral hazard"; and

2. The substantial risk, danger or probability that the \*character, circumstances or\* personal habits of the insured may increase the possibility of loss or liability for which an insurer will be held responsible. Any change in the character or circumstances of an \*individual, corporate, partnership or other\* insured that will increase the probability of such a loss or liability may be considered a "moral hazard."

(g) No nonrenewal or cancellation shall be valid unless the notice contains the standard or reason upon which the termination is premised and specifies in detail the factual basis upon which the insurer relies.

(h) All notices of nonrenewal and cancellation, except those for nonpayment of premium, must contain a statement which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention advising the insured that the insured may file a written complaint about the cancellation or nonrenewal with the New Jersey Department of Insurance, Division of Licensing and Enforcement, CN 325, Trenton, New Jersey 08625. The statement also shall advise the insured to contact the Insurance Department immediately, in the event he or she wishes to file a complaint.

(i) No nonrenewal or cancellation shall be valid unless notice thereof is sent;

1. By certified mail; or

2. By first class mail, if at the time of mailing the insurer has obtained from the Post Office Department a date stamped proof of mailing showing the name and address of the insured, and the insured has retained a duplicate copy of the mailed notice \*[which is certified to be a true copy]\*.

(j) For the purposes of this subchapter, if an insurer fails to send a notice of nonrenewal as required by this subchapter or fails to issue and deliver a policy replacing at the end of the policy period a policy previously issued and delivered by the insurer, or fails to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, the insured shall be entitled to continue the expiring policy at the same terms and premium until such time as the insurer shall send appropriate notice of termination under this subchapter. Nothing in this subchapter shall prohibit an insurer from replacing its policy with a policy issued by another insurer with which it is under common management and control, provided the insurer obtains its policyholder's consent to do so and maintains records of such actions.

(k) An insurer shall not be required to provide notice of nonrenewal or cancellation as specified in this subchapter if the insured has replaced coverage elsewhere or has otherwise specifically requested termination. The insurer must, however, maintain in its file properly documented proof that termination was made at the request of the insured. **\*Where the termination request is submitted by the insured's authorized representative, the insurer's file must contain documentation that the authorized representative has been specifically authorized by the insured to convey the termination request to the insurer.\***

### 11:1-20.3 Policy provisions relating to cancellation

(a) All commercial insurance policy forms issued or renewed on or after \*[45 days of the effective date of this subchapter]\* **\*August 21, 1986\*** must contain provisions that clearly state the grounds upon which the insurer will cancel coverage and that generally describe the types of conditions or circumstances under which the insurer will initiate cancellation. Such grounds shall include, but need not be limited to the following:

1. Nonpayment of premium;

2. Moral hazard;

3. Material misrepresentation or nondisclosure to the company of a material fact at the time of acceptance of the risk;

4. Increased hazard or material change in the risk assumed which could not have been reasonably contemplated by the parties at the time of assumption of the risk;

5. Substantial breaches of contractual duties, conditions or warranties that materially affect the nature and/or insurability of the risk;

6. Lack of cooperation from the insured on loss control matters materially affecting insurability of the risk;

7. Loss or substantial changes in applicable reinsurance;
8. Material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract; and
9. Loss of or reduction in available insurance capacity.

(b) Nothing in this subchapter shall prohibit an insurer from issuing a notice of cancellation with respect to any policy which has been in effect for less than 60 days at the time the notice is mailed or delivered, unless the policy is a renewal policy.

#### 11:1-20.4 Submission of underwriting guidelines

(a) **\*[Within 20 days of the effective date of this subchapter]\* \*On or before July 28, 1986\***, insurers shall submit to the Commissioner for review their current underwriting guidelines used for cancellation or nonrenewal of commercial lines coverage which are subject to the provisions of this subchapter. **\*[Any amendments or modifications to such guidelines must be submitted to the Commissioner for review no later than 15 days after such amendments are put in use.]\* \*Where an insurer determines to amend or modify previously filed guidelines notice of such amendment or modification shall be immediately furnished to the Commissioner.\***

(b) If the Commissioner finds that an underwriting guideline being utilized by an insurer is arbitrary, capricious or unfairly discriminatory, the Commissioner shall issue a preliminary order prohibiting the use of such a guideline and shall require such insurer to rescind any notice of cancellation or nonrenewal based on such underwriting guideline which has not yet become effective pending a hearing. Following the hearing, if the preliminary order is sustained, the Commissioner shall prohibit the further use of such guideline, except that, if the insurer can demonstrate to the Commissioner that it will be significantly prejudiced by disapproval of such guideline, the Commissioner shall permit the continued use of that guideline, with respect to policies written prior to the date of preliminary order during a reasonable run-off period to be specified by the Commissioner and not to exceed three years. If the preliminary order is not sustained, coverage which has been extended pending the hearing may be cancelled by the insurer in accordance with the provisions of N.J.A.C. 11:1-20.2.

(c) In the event that the Commissioner shall issue a preliminary order disapproving an underwriting guideline being used by an insurer pursuant to (b) above, the insurer may request an expedited hearing on the Commissioner's preliminary order.

(d) With respect to retrospectively rated risks and multi-state location risks with principal headquarters outside the state, insurers shall maintain records of those policies which are either cancelled or nonrenewed and the reasons upon which such termination was based.

**\*(e) This section shall apply to all notices of cancellation or nonrenewal issued on or after July 28, 1986.\***

#### 11:1-20.5 Policy provisions

No policy shall contain provisions which are inconsistent with the requirements of this subchapter.

#### 11:1-20.6 Separability

If any provision of this subchapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

#### 11:1-20.7 Penalties

**\*(a)\*** In addition to any other penalty authorized by law, the Commissioner may order the immediate reinstatement without lapse of any policy which has been cancelled in violation of the provisions of this subchapter and may, after notice and a hearing, impose penalties as prescribed by N.J.S.A. 17:29A-1 et seq., 17:29AA-1 et seq., 17:29B-7 and 11, 17:30C-1 et seq., 17:32-1 et seq. and 17:33-2.

**\*(b) This section shall apply to all notices of cancellation or nonrenewal issued on or after July 28, 1986.\***

#### 11:1-20.8 Duration

Unless earlier repromulgated by the Commissioner, this subchapter shall expire two years after it becomes effective.

### SUBCHAPTER 22. PROHIBITION OF CERTAIN CANCELLATION AND NONRENEWAL ACTIVITY

#### 11:1-22.1 Scope

(a) This subchapter shall apply to all commercial insurance policies which are in force, issued or renewed on or after the effective date of this subchapter by companies licensed to do business in this State except workers' compensation insurance and employers' liability, fidelity, surety, performance and forgery bonds, ocean marine and aviation insurance and

accident and health insurance and any policy written by a surplus lines insurer. This subchapter shall not be applicable to multi-state location risks which do not have their principal headquarters in the state.

(b) These rules are not exclusive, and the Commissioner may also consider other provisions of statutes and regulations to be applicable to the circumstances or situations addressed herein.

#### 11:1-22.2 Prohibitions

(a) The following acts or practices are specifically prohibited with respect to those policies subject to the provisions of this subchapter:

1. Effecting or attempting to effect a mid-term premium increase and/or a reduction in the amount or type of coverage provided under the policy **\*[without the insured's consent,]\*** unless prior written approval therefor has been obtained from the Commissioner.

2. Block nonrenewing entire lines or classes of insurance, except pursuant to a plan submitted to the Commissioner at least 60 days in advance of its implementation date which is not disapproved within 30 days after its filing with the Commissioner. For the purpose of this paragraph, the termination or attempted termination of an appointed agent solely to achieve the block nonrenewal of entire lines or entire classes of insurance shall be deemed a nonrenewal subject to this paragraph.

3. Block cancelling entire lines of insurance or classes of business except pursuant to a plan approved by the Commissioner. For the purposes of this paragraph, the termination or attempted termination of an appointed agent solely to achieve the block cancellation of entire lines of insurance or entire classes of business shall be deemed a cancellation subject to this paragraph.

(b) Notwithstanding (a)2 and (a)3 above, an insurer may cancel or nonrenew a line or class of business where such cancellation or nonrenewal is necessary because of loss or substantial changes in applicable reinsurance by filing a plan with the Commissioner pursuant to the requirements of this subsection. The insurer's plan must be filed with the Commissioner at least 10 days prior to the issuance of any notice of cancellation or nonrenewal. Any such plan shall contain a certification by an elected officer of the company:

1. That the loss or substantial change in applicable reinsurance **\*or the financial condition of the reinsurer\*** necessitates the cancellation or nonrenewal action;

2. That the insurer has made a good faith effort to obtain replacement reinsurance but was unable to do so due to either the unavailability or unaffordability of replacement reinsurance;

3. Identifying the category of risks, the total number of risks written by the company in that category, and the number or risks intended to be cancelled or nonrenewed;

4. Identifying the total amount of the insurer's net retention for the risks intended to be cancelled or nonrenewed;

5. Identifying the total amount of risk ceded to each reinsurer and the portion of that total that is no longer available;

6. Explaining how the loss of or reduction in reinsurance affects the company's risks throughout the entire line or category or insurance proposed for cancellation and/or nonrenewal;

7. Explaining why cancellation and/or nonrenewal is necessary to cure the loss of or reduction in available reinsurance; and

8. Explaining how the cancellations or nonrenewals, if approved, will be implemented with respect to individual risks and the steps that will be taken to ensure that the cancellation/nonrenewal decisions will not be applied in an arbitrary, capricious or unfairly discriminatory manner.

(c) Notwithstanding (a)2 and (a)3 above, an insurer may cancel or nonrenew a line or class of insurance based upon a material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract or loss of or reduction in available insurance capacity by filing a plan with the Commissioner pursuant to the requirements of this subsection. The insurer's plan must be filed with the Commissioner at least 10 days prior to the issuance of any notice of cancellation or nonrenewal.

(d) Notwithstanding (a)2 and (a)3 above, an insurer may nonrenew a line or class of insurance based upon agency termination by filing a plan with the Commissioner pursuant to the requirements of this subsection. The insurer's plan must be filed with the Commissioner at least 10 days prior to the issuance of any notice of nonrenewal.

#### 11:1-22.3 Penalties

In addition to any other penalty authorized by law, the Commissioner may order the immediate reinstatement without lapse of any policy which has been cancelled in violation of the provisions of this subchapter and may, after notice and a hearing, impose penalties as prescribed by N.J.S.A. 17:29A-1 et seq., 17:29AA-1 et seq., 17:29B-7 and 11, 17:30C-1 et seq.,

17:32-1 et seq. and 17:33-2.

11:1-22.4 Duration

Unless earlier repromulgated by the Commissioner, this subchapter shall expire two years after its effective date.

## LAW AND PUBLIC SAFETY

### (a)

#### STATE BOARD OF DENTISTRY

##### General Provisions

##### Announcement of Practice in Special Area of Dentistry

##### Patient Records

##### Adopted Amendments: N.J.A.C. 13:30-8.4 and 8.8

Proposed: April 21, 1986 at 18 N.J.R. 816(a).

Adopted: June 11, 1986 by State Board of Dentistry, Richard J.

VanSciver, D.D.S., President

Filed: June 16, 1986 as R.1986 d.269, **without change.**

Authority: N.J.S.A. 45:6-1 et seq.

Effective Date: July 7, 1986.

Expiration Date: April 15, 1990.

##### Summary of Public Comments and Agency Responses:

The only comment received in response to the proposal was an endorsement by the New Jersey Dental Association of the proposed redesignation of "pedodontics" to "pediatric dentistry."

Full text of the adoption follows.

13:30-8.4 Announcement of practice in a special area of dentistry

(a) (No change.)

(b) The following special areas of dentistry are hereby recognized as suitable for the announcement of limited dental practices:

1. Endodontics;
2. Oral surgery;
3. Oral pathology;
4. Orthodontics;
5. Pediatric dentistry (also called Pedodontics);
6. Periodontics;
7. Prosthodontics;
8. Public health.

(c)-(m) (No change.)

13:30-8.8 Patient records

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

(c) Upon receipt of the written request of a patient or a patient's legal guardian and within 14 days thereof, legible copies of the patient record including, if requested, duplicates of models and copies of radiographs, shall be furnished to the patient or another designated dentist. A reasonable charge may be made for this service, and the treating dentist may require that all outstanding balances for diagnostic services be paid prior to release of such records, provided, however, where treatment of a patient whose dental expenses are paid through Medicaid is discontinued by the dentist prior to the completion of the treatment, no charge for the above records shall be made or payment required.

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

### (b)

#### STATE BOARD OF PHYSICAL THERAPY

##### Agency Organization and Administration

##### Adopted New Rules: N.J.A.C. 13:39A-1

Proposed: October 7, 1985 at 17 N.J.R. 2355(a).

Adopted: June 10, 1986 by New Jersey State Board of Physical

Therapy, Helen M. Ransky, P.T., Chairman.

Filed: June 16, 1986 as R.1986 d.265, **with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).**

Authority: N.J.S.A. 45:9-37.18(f), N.J.S.A. 45:1-21 and N.J.S.A. 45:1-3.2.

Effective Date: July 7, 1986.

Expiration Date: July 7, 1991.

##### Summary of Public Comments and Agency Responses:

Of the many comments received by the Board concerning its proposed new rules, N.J.A.C. 13:39A-1 through 5, some eight raised concern with regard to subchapter 1. Several commentors challenged the fees set forth at Section 1.5 of the proposal. In reviewing the proposal, the Board has become aware that the fee categories set forth on the proposed schedule were not representative of past administrative practice, nor in strict conformance with categories utilized in formulating budgetary projections. Accordingly, the Board will be repropounding a schedule of fees reflective of long standing office practice and budgetary projections.

It should also be noted that two persons submitting comments in response to the proposed fee schedule had sought clarification of the nature of the charges. Specifically, one questioned whether the renewal fee of \$60.00 was an annual or biennial charge. Pursuant to N.J.S.A. 45:1-7, the fees set forth at Section 1.5 were intended to be collected on a biennial basis. One writer also sought clarification of N.J.A.C. 13:39A-1.5(a)9. The Board had set forth a charge for the certification of eligibility for examination. The writer had indicated that that certification was essentially evidenced by the issuance of a temporary license and thus a separate charge was unwarranted. It is contemplated that a limited number of applicants will seek such a certification without wishing to obtain at the time of their application a temporary license. Specifically, the Board sought to recognize that graduates of foreign training programs must demonstrate that they will be eligible to sit for an examination in order to be processed through the Department of Immigration. Since they are not yet in the country, however, they have no need for a temporary license. It was to this class of individuals that the Board sought to offer a service. Via the new proposal, the Board will endeavor to clarify these charges.

With respect to those portions of the subchapter which the Board is now adopting, the Board received several comments. One writer commented on the fact that the rules did not seem to preclude the Board chairman from serving in that capacity for more than one term. It was not the intention of the Board to impose such a restriction and accordingly no alteration in the rule seems appropriate.

In its comments, the New Jersey Hospital Association noted that "the proposed regulations do not address how Board rulings will be disseminated to interested parties, employees and licensees." It is contemplated that the Board will follow all the dictates of the Administrative Procedure Act in promulgating regulations and insofar as it may make rulings with regard to specific cases, they will be detailed in the minutes which will be made available to the public upon request. The Board sees no reason to amend the regulations to address this issue.

Finally, a comment was received from the Division of Consumer Affairs concerning the proposed N.J.A.C. 13:39A-1.3, in which the duties of the Executive Secretary were specifically articulated. The Board was informed that the Division has established guidelines regarding these duties, and the Division felt that the promulgation of this regulation was unnecessary. Accordingly, the Board voted to delete Section 1.3 in its entirety and will not be republishing another rule dealing with these matters.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*, deletions from proposal indicated in brackets with asterisks \*[thus]\*).

#### CHAPTER 39A STATE BOARD OF PHYSICAL THERAPY

##### SUBCHAPTER 1. AGENCY ORGANIZATION AND ADMINISTRATION

###### 13:39A-1.1 Election of officers

The membership of the New Jersey Board of Physical Therapy shall once each year elect a chairman, vice chairman and a secretary. The chairman shall have the responsibility to conduct all meetings unless, in his or her discretion, a delegation of that responsibility is made. In the absence of the chairman and an express delegation of responsibility, the vice chairman shall assume all of the duties of chairman.

###### 13:39A-1.2 Delegation of authority to act on emergent applications

The chairman shall be authorized to hear and decide emergent applications by the Attorney General made pursuant to N.J.S.A. 45:1-22 for the temporary suspension of any license. The chairman may also undertake such other interim action as may be required by circumstances

arising prior to the next meeting date of the Board, provided that said action is subsequently presented to the Board for its review and action (for example, giving tentative approval to the settlement of a matter about to be heard or during the pendency of a hearing at the Office of Administrative Law.) Any decision made by the chairman pursuant to this rule shall be placed on the agenda of the Board at its next regularly scheduled meeting for the purpose of its review. In so far as it is practicable, the Board shall be provided with a transcript of the record made before the chairman and the parties will be permitted to supplement the record with written submissions.

**\*[13:39A-1.3 Duties of the Executive Secretary**

(a) The duties of the Executive Secretary include, but shall not be limited to, the following:

1. To establish the content of agenda of each meeting of the Board and be responsible for disseminating the agenda and any documents relating to those agenda entries to Board members, the Attorney General and the Director of Consumer Affairs and to make copies of the agenda of the open public session of the Board meeting available to the interested parties;

2. To prepare and maintain the minutes of every regularly scheduled meeting of the Board as well as any scheduled meeting of any committee for which the Board has directed that minutes shall be maintained;

3. To be responsible for making arrangements for the conduct of any examination administered pursuant to the Physical Therapy Act;

4. To discharge the following functions, without the necessity of referral to and consideration by the Board:

i. To review and respond to correspondence and telephonic communications which seek information concerning the Physical Therapy Act, regulations promulgated thereunder, or any public records of the Board;

ii. To attempt, where appropriate, to resolve consumer complaints by making contact with a licensee to determine if any amicable resolution can be reached without Board action;

5. To refer to the Board for its review:

i. Any correspondence which seeks an interpretation of a statute or a regulation as applied to a particular fact situation;

ii. Any information which appears to disclose a violation of law;

6. To prepare and file the required notices in compliance with the Open Public Meetings Act;

7. To prepare and forward Uniform Penalty Letters (UPL), as appear at N.J.A.C. 13:27.51, at the direction of the Board or a committee thereof to licensees or other persons believed to have violated the Physical Therapy Act or the regulations promulgated thereunder.]\*

**\*[13:39A-1.4]\* \*13:39A-1.3\* Examination review procedure**

An applicant who has failed an examination shall be permitted a reasonable opportunity to review his or her test. The applicant shall be advised in writing that such a right to review exists and that the review may be conducted at the office of the Board during regular business hours. In no case, shall the Board be required to compromise the validity of a standardized examination for the purposes of making this review available.

**\*13:39A-1.4 (Reserved)\***

**\*[13:39A-1.5 Fees and charges**

(a) The following fees shall be charged by the New Jersey State Board of Physical Therapy.

1. Examination fee for Physical Therapist .....	\$125.00
2. Examination fee for Physical Therapist Assistant .....	\$110.00
3. Licensure by endorsement fee for Physical Therapist .....	\$100.00
4. Temporary License Fee .....	\$ 60.00
5. Renewal of Physical Therapist License .....	\$ 60.00
6. Renewal of Physical Therapist Assistant License .....	\$ 60.00
7. Restoration charge for lapsed license .....	\$ 60.00
8. Provision of duplicate license .....	\$ 10.00
9. Certification of eligibility for examination .....	\$ 25.00]*

**(a)**

**Authorized Practice**

**Adopted New Rule: N.J.A.C. 13:39A-2**

Proposed: October 7, 1985 at 17 N.J.R. 2356(a).

Adopted: April 30, 1986 by New Jersey State Board of Physical Therapy, Helen M. Ransky, P.T., Chairman.

Filed: June 16, 1986 as R.1986 d.266 with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:9-37.18(f), N.J.S.A. 45:1-21 and N.J.S.A. 45:1-3.2.

Effective Date: July 7, 1986.

Expiration Date: July 7, 1991.

**Summary of Public Comments and Agency Response:**

Of the five subchapters proposed by the Board, subchapter 2 clearly elicited the most comment from many sectors of the health care community. Some nineteen individual physicians, medical societies representing four counties (Atlantic, Camden, Essex and Union), administrators or representatives of the medical staff of numerous hospitals and representatives of a variety of medical associations, wrote expressing objections to the perceived expansion of the scope of practice by physical therapists. A recurrent theme in many of these letters was a concern that patient safety and care would suffer at the same time that medical costs would escalate. Many writers erroneously assumed that under the regulations, as proposed, physical therapists would be permitted to initiate treatment without physician diagnosis or involvement. Some physicians and physician groups objected to the Board's characterization of the physical therapist as an entry point into the health care system. While the Board, of course, shares a concern for the patient's safety and care, it feels that by permitting physical therapists to examine patients prior to the receipt of a physician direction, the patient and his or her physician, will have the benefit of a specialized review of the patient's particularized problem, along with a suggested plan of treatment. Physicians, of course, retain the right and the prerogative to require the patient to undergo a complete medical examination prior to giving the direction to initiate physical therapy treatment. Since physician review is provided, the Board is unpersuaded that allowing a physical therapist examination prior to physician direction will result in any significant delay in diagnosis of any organic medical condition, as the regulation's detractors suggest. The Board remains convinced that a positive benefit will accrue to the health care consumers by permitting physical therapists to engage in examination and instruction without physician direction.

The Board rejects the contention that its recognition of such practice is somehow violative of the legislature's intent, as has been asserted by the New Jersey Medical Society. At N.J.S.A. 45:9-37.13(b), a physical therapist is defined as

A person who is licensed to practice physical therapy pursuant to the provisions of this act. A physical therapist shall provide physical therapy treatment to an individual upon the direction of a licensed physician, dentist or other health care practitioner authorized to prescribe treatment.

Of all the activities recognized to be encompassed in the practice of physical therapy ("examination, treatment, or instruction to detect, assess, prevent, correct, alleviate and limit physical disability, bodily malfunction and pain from injury, disease or other physical condition" N.J.S.A. 45:9-37.14), treatment alone is expressly recognized to require a physician direction. The Board finds this language to be supportive of the regulation it herein adopts.

Perhaps the most strenuous objection voiced, concerned the Board's countenance of a physical therapist's modification of a treatment plan without physician direction (N.J.S.A. 13:39A-2.2(b)3). Many physicians felt that such authority would undermine their ability to treat and follow their patients in therapy. In view of these objections, the Board has determined to amend Section 2.2, to authorize the modification of a physical therapy treatment plan, only where the proposed modification is consistent with the initial physician direction. A revised proposal will be published to receive additional public comment. (Indeed, Section 2.2, in its entirety, will be repropounded. Accordingly, although this adoption does not include Section 2.2, the Board felt some discussion of the public comment which had been submitted relative to these provisions was in order.)

Additionally, in response to comment from a number of physicians, the New Jersey Society of Physical Medicine and Rehabilitation and the New Jersey Association of Electromyography and Electrodiagnosis, the Board has determined to amend Section 2.2(a) to require that a physician direction be received before a physical therapist may undertake to perform electromyographic testing. While the Board does not concur with the sentiment that E.M.G. testing should be done only by a physician, since many therapists have extensive training in such testing, it does recognize the invasive nature of the testing and the potential that such expensive technology may pose for abuse. Accordingly, adoption of Section 2.2(a) is deferred at this time.

By the instant adoption, the Board is promulgating the definitional section of Subchapter 2 (Section 2.1), as well as the provision identifying the scope of authorized practice by physical therapy assistants and the provision specifying the tasks that a physical therapist may delegate to a person who does not possess a license. Some clarifying language has been added to all of these sections in response to the obvious confusion which the original language had engendered. Because these changes do not significantly alter the scope of the regulations or their burdens, new notice and opportunity for comment are not required pursuant to N.J.A.C. 1:30-4.3(a) and (b).

Considerable confusion appears to have been generated by the definition of physical therapy instruction. One therapist recognized that "a fine line" has been drawn between treatment and instruction. To make clear what it had intended to recognize as permissible practice by physical therapists, the Board has qualified the language describing physical therapy instruction. The rule, as adopted, provides:

Physical therapy instruction shall not be construed to include activities designed to offer specific therapeutic effect or benefit to a specified person. To the extent that instruction may involve any hands-on contact between the physical therapist and the person receiving physical therapy instruction that contact shall be for demonstration purposes only.

The Board is hopeful that the inclusion of this language will serve to allay some of the fears held by commenting physicians that physical therapists would be able to initiate treatment under the guise of providing instruction.

The Board of Medical Examiners in its comment with regard to the definition of physical therapy instruction, objected to the use of language which would permit a physical therapist to provide "information to patients or groups of interested persons regarding the value of physical therapy agents and measures, in general, or with regard to specific physical conditions." The Board President noted that such practice would "smack of solicitation." While the Board is concerned with the propriety of advertising practices, it recognizes a public benefit which may be appropriately served through imparting information in this fashion.

Considerable comment was also elicited with regard to the Board's enumeration of health care practitioners in its definition of what would be recognized as an appropriate physician direction. In the proposed regulation, a physician direction was recognized to include a written prescription of a "licensed physician, dentist, or other authorized health care provider." Numerous therapists, including the President of the American Physical Therapy Association, urged the Board to define with greater specificity what licensees would be recognized as authorized health care providers. In the regulation, as adopted, the Board has added podiatrists to the list, with the caveat that the prescription issued must relate to the treatment within the scope of the podiatrist's permissible practice. Since N.J.S.A. 45:5-7 authorizes podiatrists to perform physiotherapy for ailments of the human foot, it appears clear that podiatrists can prescribe same.

Many writers sought a clarification as to whether chiropractors could issue prescriptions for physical therapy. Since the Board of Medical Examiners is entrusted with the responsibility of regulating chiropractors, and thus has the obligation of charting out the parameters of the practice of chiropractic, this Board will defer to the Board of Medical Examiners, to determine whether chiropractors should be deemed to be authorized health care practitioners within the meaning of N.J.S.A. 45:9-37.13 and N.J.A.C. 13:39A-2.1. The use of the term "authorized health care provider" in the regulation, thus allows for a measure of flexibility to address future legislative enactments and recognition of providers by appropriate regulatory agencies.

Another provision in Subchapter 2 which generated substantial public comment, appears at Section 2.3, wherein the scope of authorized practice by licensed physical therapist assistants, is set forth. Many therapists felt that the parameters set forth at Section 2.3 were too restrictive and that a physical therapist assistant's training should enable him or her to engage

in a more independent practice. This sentiment was shared by several physicians, who had objected to the regulation's prohibition on a physical therapist assistant practicing without physical therapist direct supervision. These physicians, as well as several hospital administrators and the New Jersey American Osteopathic Association, suggested that physical therapist assistants should be permitted to take direction from a physician without the intervention of a physical therapist. The Board rejects this suggestion since, by statute, a physical therapist is recognized to be a person "who assists a licensed physical therapist under his direct supervision." (The American Physical Therapy Association had suggested that this directive was unclear in the rule as proposed. The Board disagrees, but to the extent that clarification was sought, amendatory language has been inserted making the restriction evident.) Several writers noted that the limitation set forth at Section 2.3 posed a particular problem in the home health care setting and educational institutions for the developmentally disabled (that is, Woodbine). While the Board recognizes that these restrictions may place some burdens, it has endeavored to provide guidelines for safe practice. It cannot, in the context of these regulations, deal with every contingency or variant on a mode of practice. It will, of course, endeavor to address specific problems which licensees may be facing on a case-by-case basis.

Finally, some confusion seems to have been engendered by the original wording of Section 2.4, which was intended to delineate the tasks that a physical therapist could delegate to unlicensed persons in a practice setting. At subsection (b), the regulation articulates specific tasks which a physical therapist may not delegate to unlicensed persons. While some writers had objected to the substantive content of the list (in particular, several therapists objected to the inclusion of a prohibition against the attachment of electrodes to the skin), most commentators focused upon what was perceived to be a clash between this regulation and the Board of Medical Examiners' regulation, N.J.A.C. 13:35-6.14, which allows physicians, in certain circumstances, to delegate to unlicensed personnel the task of administering modalities. This confusion was typified by the comments received from the President of the Board of Medical Examiners and a representative of the New Jersey Hospitals Association. The provision, of course, does not impact in any way on the validity of N.J.A.C. 13:35-6.14. It is, in fact, a rule designed to address the identical issue in the context of the physical therapist's office or other practice setting. Nor was Section 2.4 intended to preclude a physical therapist from offering instruction to a patient or his or her family member concerning the home administration of modalities. The Board is hopeful that the clarifying language which has been added to Section 2.4, will make clear the original intent with regard to this section.

Of course, additional isolated comments were received as well. One writer asked the Board to address problems of insurance reimbursement, an area which the Board deems to be outside its purview. Another suggested the substitution of the term "joint articulation" for "joint mobilization", a substitution which was felt to be unnecessary, at least at this point in time. One commented on the omission of any reference to cardiac rehabilitative measures in the provision related to authorized practice. Another noted the omission of any reference to out-of-state referrals. Finally, one therapist suggested that the provision relating to physician direction should make some mention of the time frame during which the direction would remain valid. As the Board begins to implement the regulations it is now adopting, it may, in time, deem such suggestions to warrant inclusion and, of course, it appreciates the thoughtful and constructive suggestions submitted from all sectors of the health care community.

**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 2. AUTHORIZED PRACTICE

### 13:39A-2.1 Definitions

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

"Direct supervision", when in reference to physical therapist assistant, means the presence of the supervising physical therapist on site, readily available to respond to an emergency during any treatment procedure.

"Physical therapy examination" includes a taking of a patient's history of complaint, a hands-on evaluation or assessment of objective symptoms presented as well as the utilization of tests and measures to assist the physical therapist in the evaluation of the patient's objective signs and symptoms including, but not limited to, the use of tests to assess postural

alignment; joint mobility and function; muscle and nerve function, including electrophysiologic status; movement skill; gait; necessity for assistive devices; fit of orthoses and prostheses; cardiopulmonary\* [function] \*status\*; sensory and motor function, including related pain and tenderness; and performance of activities required in daily living; but does not include the examination of any person conducted for the purpose of diagnosing any disease or organic condition. Nothing herein is intended to preclude a physical therapist from conducting an examination within the scope of his practice, \*consistent with his education credentials\* or taking a history which is designed to ascertain if contraindications to therapy may be present and thus the referral to a plenary licensed physician is warranted.

"Physical therapy instruction" includes the provision of consultative, educational or other advisory services for the purpose of preventing or reducing the incidence and severity of physical disability, bodily malfunction or pain from injury, disease or other physical condition or for the purpose of providing information to patients or groups of interested persons regarding the value of physical therapy agents and measures in general or with regard to specific physical conditions. \*Physical therapy instruction shall not be construed to include activities designed to offer specific therapeutic effect or benefit to a specified person. To the extent that instruction may involve any hands-on contact between the physical therapist and the person receiving physical therapy instruction, that contact shall be for demonstration purposes only.\*

"Physical therapy practice" includes physical therapy treatment and physical therapy examination and instruction.

"Physical therapy treatment" includes the administration of physical therapy measures, activities, agents or devices, including but not limited to postural correction; joint mobilization; range of motion exercise; muscle and soft tissue stretching; muscle strengthening exercise; balance and coordination exercises; massage techniques; pre and post-natal exercises; growth and development programs; biofeedback techniques; perceptual training; electrophysiologic tests and modalities; pulmonary hygiene treatment; breathing exercises; postural drainage; gait training; hydrotherapy and paraffin bath when used for preventative and therapeutic purposes to correct or limit physical disorders or dysfunctions.

"Physician direction" includes any of the following:

1. Written prescription of a \*plenary\* licensed physician, \*or a\* dentist or \*a podiatrist, to the extent that the treatment prescribed is within the scope of his or her practice,\* or \*such\* other \*[authorized]\* health care \*[provider];\* \*practitioner authorized to prescribe treatment;\*

2. Documentation of physician clearance for the patient for treatment which may include a countersigning of the physical therapist's proposed plan of treatment;

3. Verbal prescription, in person or via telephone, which shall be memorialized by the prescriber in writing within two weeks. But, in no case, will physician direction be construed to have been provided on the basis of a patient's representation that he or she has obtained a physician's clearance.

13:39A-2.2 \*[Authorized practice by licensed physical therapist]\*  
\*(Reserved)\*

\*[(a) A licensed physical therapist may initiate physical therapy treatment, but only after having received physician direction.

(b) A licensed physical therapist may engage in the following activities and practices without physician direction:

1. Physical therapy examination;

2. Physical therapy instruction;

3. Modification of physical therapy treatment previously initiated upon physician direction.]\*

13:39A-2.3 Authorized practice by a licensed physical therapist assistant

(a) A licensed physical therapist assistant may initiate patient physical therapy treatment and engage in the practice of physical therapy at the direction of and under the direct supervision of a licensed physical therapist \*[who has received]\* \*pursuant to a\* physician direction\*[\*]\* \*given to the physical therapist.\* A licensed physical therapist assistant may not initiate physical therapy treatment upon the direction of a physician or other authorized health care provider \*without the direct supervision of a physical therapist.\*

(b) A licensed physical therapist assistant must document treatments given, but such documentation does not relieve the supervising physical therapist from the responsibility of reviewing entries and documenting the initial evaluation, countersigning monthly progress notes and documenting discharge summaries.

(c) A licensed physical therapist assistant may not perform a physical therapy examination, develop a treatment plan, modify a treatment plan,

or engage in physical therapy instruction, including, but not limited to, the recommendation of assistive devices and modifications of the patient's physical environment\*. \* \*[without the approval of the supervising therapist.]\*

13:39A-2.4 Delegation \*by a physical therapist\* to unlicensed persons

(a) Activities which may be delegated to unlicensed persons by physical therapists include routine tasks relating to the cleanliness and maintenance of equipment and the physical plant and the management of the business aspects of the practice and such other assignments with respect to patient care as may be specifically made by the physical therapist, including patient transport, positioning of the patient and undressing and dressing.

(b) \*A physical therapist shall not authorize or permit\* \*[An] \*an\* unlicensed person \*[shall not;]\* \*to engage in the following activities:\*

1. Advise, teach, or instruct patients concerning their condition or disability;

2. Carry out testing or evaluation procedures;

3. Make notations on a patient's permanent record;

4. Attach electrodes of any kind of the skin;

5. Administer any of the following modalities, or such other modalities as the Board may from time to time recognize, in light of developing technology;

i. Ultraviolet rays;

ii. Ultrasound;

iii. Electromagnetic ray;

iv. Laser;

v. Diathermy;

6. Vary exercise equipment parameters without direct licensed physical therapist supervision;

7. Provide therapeutic massage;

8. Assist in administering physical agents to a patient who has not had a direct initial evaluation by a licensed physical therapist.

### (a)

#### Unlawful Practices by Licensees

#### Adopted New Rules: N.J.A.C. 13:39A-3

Proposed: October 7, 1985 at 17 N.J.R. 2358(a).

Adopted: February 26, 1986 by New Jersey State Board of

Physical Therapy, Helen M. Ransky, P.T., Chairman.

Filed: June 16, 1986 as R.1986 d.267, with substantive changes not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:9-37.18(f) and N.J.S.A. 45:1-21.

Effective Date: July 7, 1986.

Expiration Date: July 7, 1991.

#### Summary of Public Comments and Agency Responses:

Section 3.3 of this subchapter as proposed clearly raised the most concerns in the medical community. Numerous individuals, as well as the Medical Society of New Jersey and the New Jersey Hospitals Association strenuously objected to Section 3.3(a)2 which precluded the offering of breast and pelvic examinations by a therapist "unless specifically related to the patient's diagnosis and physical therapy treatment." In view of the comments, the Board determined to delete the clause "unless specifically related to the patient's diagnosis and physical therapy treatment," so that the provision which will be republished will operate as a total bar to the performance of these examinations. One writer also objected to what he perceived to be the authorization for physical therapists to take X-rays. No such authorization was intended and the new proposal will remain unchanged in this regard.

With respect to the provision regarding unlawful practices, several writers noted the difficulties which practitioners in the educational or institutional setting may encounter in complying with the record keeping requirements. Others, in the hospital setting, noted that requiring a therapy discharge summary in addition to the medical discharge summary seemed unnecessary. The American Physical Therapy Association (APTA) also questioned whether the Board had envisioned that daily notes be required, or would check-marks or initials suffice. The Board deems the maintenance of a plan of treatment, daily progress notes and a discharge summary, to be consistent with good practice. It does, however, recognize that in some practice settings, adherence to requirement of intensive daily progress notes may be unduly burdensome. Similarly,

in the hospital setting, separate discharge summaries may be redundant. In all settings, however, the patient records should be complete enough for another health care provider or reviewer to be able to evaluate the patient's progress. The Board believes sufficient leeway exists in the regulation as drafted to permit practitioners in different settings to accommodate their individual concerns.

One writer objected to the requirement of posting notice of the Board's address; another praised the inclusion; and the APTA suggested that the Board mandate the size of such notice. The Board deems there to be a value to such notice; a value which will be adequately achieved through the posting in a conspicuous place. The APTA also suggested that the requirement contained at Section 3.1(a)12, that public communications relating to an entity rendering physical therapy services include a notice of ownership, be extended to all advertisement and brochures. Since the Board had intended public communication to be read to include such materials, an amendment seems unwarranted. The New Jersey State Physical Therapy Society objected to the provision making it unlawful to charge a fee for the filling out of insurance claim forms. It should be noted that, pursuant to N.J.S.A. 45:9-22.1 and 45:1-12, other health care providers are subject to the same restriction.

One writer suggested that the Board include in this provision a requirement that therapists obtain continuing medical education credits. While this suggestion clearly has value, the Board will assess the advisability of this course as time goes on. Another writer suggested that the Board legislate the designation indicating that a person is a licensed physical therapist, objecting to the apparent lack of consistency used across the state. While there may be some merit to consistency, the Board feels legislation in this regard is not warranted at this time.

Full text of the adoption follows (deletions from proposal indicated with brackets with asterisks \*[thus]\*).

### SUBCHAPTER 3. UNLAWFUL PRACTICES BY LICENSEES

#### 13:39A-3.1 Business practices

(a) The following acts or business practices shall be deemed to be professional misconduct in violation of N.J.S.A. 45:9-37.11 et seq. and N.J.S.A. 45:1-21(e):

1. Failure to maintain written, contemporaneous patient records which shall include:
  - i. Findings upon initial examination including the patient's significant past history and results of appropriate tests and measures;
  - ii. Documentation of physician direction and efforts taken to obtain memorialization of verbal orders;
  - iii. A plan of care indicating the goals of the treatment program, the type of treatment, and the frequency and expected duration of treatment;
  - iv. Dated and signed documentation of each treatment rendered;
  - v. Dated and signed progress notes;
  - vi. Documentation of any changes in the treatment program;
  - vii. Documentation of any contact with other health professionals relative to the patient's care;
  - viii. A discharge summary which includes the reason for discharge and outcome of physical therapy treatment and the status of the patient at the time of discharge;
  - ix. Any pertinent legal document such as patient release forms or chart access sheets.
2. Failure to provide copies of a patient's record of physical therapy treatment within 15 days of a written request by the patient or any person who the patient has designated to receive such records. Nothing herein, however, should be construed to prohibit a licensed physical therapist from charging a reasonable fee to the patient for the cost of reproduction of a medical record. The withholding or delaying of a record due to a patient's failure to pay a fee for services rendered is expressly prohibited;
3. Requiring a patient or a third party payor to pay a fee for the preparation of insurance claim form, except that nothing herein shall preclude a physical therapist from charging a patient a reasonable fee for the preparation of a written report;
4. Requiring a patient or a third party payor to pay interest on an unpaid account unless the patient has been notified of this policy, in writing, prior to the initiation of physical therapy treatment;
5. Requiring a patient or a third party payor to pay a full or partial fee for unkept appointments unless the patient has been notified of this policy, in writing, prior to the initiation of physical therapy treatment;
6. Requiring a patient or a third party payor to pay for any physical therapy examination, treatment or other services not documented in a patient chart in a manner consistent with N.J.A.C. 13:39A-4.1(a);
7. Failure to make available a written fee schedule to any interested

person upon a request;

8. Failure to include on all bills submitted to a patient or third party payor, the provider's current license number;

9. Failure to post in a conspicuous place a copy of a licensee's biennial renewal certificate;

10. Failure to post in a conspicuous place in any office or health care facility at which the practice of physical therapy is conducted a notice containing the name, mailing address and telephone number of the Board and the following statement:

#### NOTICE

(Names of licensee, license held) (is) (are) licensed to engage in the practice of physical therapy by the New Jersey State Board of Physical Therapists, 1100 Raymond Boulevard, Room 513, Newark, New Jersey 07102.

11. Use or participation in the use of any form of public communication regarding professional services, via print, electronic media or in-person solicitation, which contains a false, fraudulent, misleading, deceptive or unfair statement or claim. A false, fraudulent, misleading, deceptive or unfair statement includes but is not limited to any statement or claim which:

- i. Contains a misrepresentation of facts; or
- ii. Is likely to mislead or deceive because it fails to make full disclosure of relevant facts; or
- iii. Contains any testimonial or laudatory statement, or other statement or implication that the licensee's professional services are of an exceptional quality; or
- iv. Is intended or likely to create a false or unjustified expectation of favorable results; or
- v. Implies educational attainments or license in recognition not supported in fact; or
- vi. States or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of physical therapy, if this is not the case; or
- vii. Represents the professional services can or will be competently performed for a stated fee when this is not the case or makes a representation with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged; or
- viii. Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived; or
- ix. Uses techniques of communication which appear to intimidate, exert undue influence or undue pressure over a prospective patient; or
- x. Contains offers of gratuitous services or offers of services for a sum equivalent thereto; or
- xi. Contains offers of discounts for services without stating the usual and customary fee on which the discount will be taken and the period of time during which the offer can be accepted by a prospective patient.

12. Use or participation in the use of any form of public communication relating to a business entity offering physical therapy services which fails to include the name of the person holding an ownership interest in the advertising entity and the professional license held by each of those persons, except that if the entity is owned by more than four persons, the notice need only include the names of officers in that entity and the licenses they hold;

13. Charge a fee to a patient or a third party payor which when considered in the light of the following factors is excessive:

- i. The time and effort required;
- ii. The novelty and difficulty of the professional treatment;
- iii. The skill required to perform the treatment properly;
- iv. Any requirements or conditions imposed by the patient or by the circumstances;
- v. The nature and length of the professional relationship with the patient;
- vi. The experience, reputation and ability of the licensee performing the services;
- vii. The nature and circumstances under which the services were provided (for example, emergency, home visit).

14. Undertake to render treatment or to conduct testing which in light of the patient's history and findings are unwarranted and unnecessary;

15. Charge a fee to a patient or a third party payor for a treatment or other physical therapy service which is unwarranted and unnecessary pursuant to 14 above.

#### 13:39A-3.2 (Reserved)

\*[13:39A-3.3 Scope of physical therapy]\* \*(Reserved)\*

\*[(a) The following acts and practices shall be deemed to be outside the scope of physical therapy and upon proof that a licensee is engaging

in such conduct he or she may be subject to disciplinary action:

1. The initiation of treatment without the direction of a physician as defined at N.J.A.C. 13:39A-2.1;
2. The conduct of a breast or pelvic examination unless specifically related to the patient's diagnosis and physical therapy treatment;
3. The taking of radiological studies;
4. The representation of physical therapy treatment to be a cure or remedy for disease or organic condition unrelated to physical disability for which physical therapy services have been sought.]\*

### (a)

#### Unlicensed Practice

##### Adopted New Rules: N.J.A.C. 13:39A-4

Proposed: October 7, 1985 at 17 N.J.R. 2361(a).

Adopted: June 10, 1986 by New Jersey State Board of Physical Therapy, Helen M. Ransky, P.T., Chairman.

Filed: June 16, 1986 as R.1986 d.268, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:9-37.18(f), N.J.S.A. 45:9-37.10 and N.J.S.A. 45:1-21.

Effective Date: July 7, 1986.

Expiration Date: July 7, 1991.

#### Summary of Public Comments and Agency Responses:

Comments received relating to this subchapter reiterated three themes. Several therapists noted objection to the rules' recognition that M.D.'s, D.O.'s and D.P.M.'s (to a limited extent) could represent themselves to be eligible to practice physical therapy. Such comments failed to recognize that these persons by virtue of their licensure are permitted to engage in the practice of physical therapy and thus should be permitted to hold themselves out as eligible to do so.

Several commentators suggested that the Board should expand the list of health care providers who would be deemed eligible to hold themselves out as authorized to practice physical therapy. Specifically, several writers and counsel for the New Jersey Chiropractic Society asked that chiropractors be included. While the Board of Medical Examiners has recognized that chiropractors may utilize certain physical modalities preparatory to a chiropractic adjustment or treatment (N.J.A.C. 13:35-7.1) this Board is unaware of any authority which would allow a chiropractor to independently engage in the practice of physical therapy. Accordingly, the Board has concluded that the inclusion of chiropractors in section 4.1 would only engender confusion, since then chiropractors would be in a position to hold themselves out as eligible to practice physical therapy, not merely to use physical modalities as an adjunct to chiropractic treatment. Similarly, the Board was unpersuaded by the comments of the New Jersey Board of Nursing, that licensed nurses should be included on the list. The Board recognizes that licensed registered nurses in the past have been allowed to administer physical modalities under a physician's supervision in his office. But as with chiropractors, the Board knows of no authority which would permit nurses to represent that they can independently practice physical therapy. Finally, one writer remarked on the Board's omission with respect to dentists. At N.J.A.C. 13:39A-2.1, dentists are, of course, recognized to be health care providers authorized to direct the initiation of physical therapy treatment. To the extent that dentists themselves may be offering and rendering physical therapy treatments relative to dental problems, the Board may in time determine that their inclusion in N.J.A.C. 13:39-4.1 is required.

The third recurrent theme raised in comments relating to Subchapter 4 was voiced by numerous physicians who felt that this rule would represent an intrusion into the manner in which medicine is being practiced in their offices. Specifically it was felt that the subchapter 4 would preclude them from delegating to unlicensed aides the task of administering physical modalities in accordance with N.J.A.C. 13:35-6.14. Subchapter 4, however, does not preclude such delegation. It merely puts the delegating doctor and his unlicensed aide on notice that the services being rendered should not be advertised, offered or billed as physical therapy unless administered by the doctor or another health care provider.

Finally, one writer advocated the inclusion in subchapter 4 of a requirement that codes be used to differentiate between services provided by authorized health care providers and those provided by unlicensed aides. While such an idea may have merit, the inclusion of such a regulation

would seem to be beyond the Board's abilities or scope.

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks \*thus\*, deletions from proposal indicated in brackets with asterisks \*[thus]\*).

#### SUBCHAPTER 4. UNLICENSED PRACTICE

##### 13:39A-4.1 Acts amounting to unlicensed practice

(a) For the purpose of the Board's construction of N.J.S.A. 45:9-37.10, the following acts or practices shall be deemed to be the unlicensed practice of physical therapy:

1. Offering \*[by means of advertisement or solicitation]\* physical therapy examination instruction or treatment \*by means of advertisement or solicitation\* by any person who does not hold a license as a physical therapist, a physical therapist assistant, M.D., D.O. or D.P.M. (to the extent authorized by N.J.S.A. 45:5-7), even if that person has been instructed or directed to offer that treatment or render that treatment by a physical therapist, physical therapist assistant, M.D., or D.O. or D.P.M.

2. The use of the words physical therapy, physical therapist, physiotherapy, physiotherapist or such similar words or their related abbreviations in connection with the offering of physical therapy agents measures and services which are utilized in the rendition of physical therapy treatment by any person who does not hold a license as a physical therapist, a physical therapy assistant, an M.D., D.O., or D.P.M. even if that person has been instructed or directed to use such terminology by a physical therapist, physical therapist assistant, M.D., D.O. or D.P.M.;

3. Billing any patient or third party payor for "physical therapy" or "physiotherapy" in connection with the use of physical therapy agents, measures or services, if the individual who personally rendered the services does not hold a license to practice physical therapy medicine and surgery or podiatry;

4. \*[The o] \*O\*ffering \*[or advertisement of]\* physical therapy agents, measures or services \*by means of advertisement or solicitation\* by a limited licensee of the Board of Medical Examiners unless the context of such offering or advertisement reveals that such services are directly related to the practice authorized by the Board of Medical Examiners and the wording of the offering would not lead members of the general public to assume that the advertiser is authorized to practice physical therapy or physiotherapy without limitation.

##### 13:39A-4.2 Aiding and abetting unlicensed practice

It shall be unlawful for a licensee to aid or assist any person engaging in any of the practices identified at N.J.A.C. 13:39A-4.1.

### (b)

#### Credentialing of Applicants for Licensure as Physical Therapists and Physical Therapist Assistants

##### Adopted New Rules: N.J.A.C. 13:39A-5

Proposed: October 7, 1985 at 17 N.J.R. 2362(a).

Adopted: February 26, 1986 by New Jersey State Board of Physical Therapy, Helen M. Ransky, P.T., Chairman

Filed: June 16, 1986 as R.1986 d.270, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:9-37.18(f).

Effective Date: July 7, 1986.

Expiration Date: July 7, 1991.

#### Summary of Public Comments and Agency Responses:

Of the many written comments received by the Board regarding the proposed regulations 13:39A-1 through 5, few related specifically to Subchapter 5. Two writers found the endorsement provision to be confusing. The provision is intended to track the statute, N.J.S.A. 45:9-37.28 and allows the Board as a general rule to deny reciprocity to applicants who have previously failed the examination. It nevertheless does permit the Board to consider factors which might persuade it to alter its general policy with regard to a specific case.

Two commentators also remarked on the Board's failure to provide a "time frame" within which a failed examination must be retaken. One also noted the omission by the Board to make any reference to temporary licensure. Both of these omissions are addressed by new proposals which will be published shortly. Finally, one therapist suggested that a provision

be made for an oral examination. While such a suggestion might have merit, its inclusion would be administratively difficult at this time.

Full text of the adoption follows (additions in the proposal indicated in boldface with asterisks \*thus\*, deletions from proposal indicated in brackets with asterisks \*[thus]\*).

#### SUBCHAPTER 5. CREDENTIALING OF APPLICANTS

##### 13:39A-5.1 Educational credentials for \*[physical therapy]\* applicants \*for licensure as physical therapists\*

(a) Applicants for examination shall submit to the Board satisfactory proof of:

1. Graduation from a program in physical therapy which has been approved for the education and training of physical therapists \*[or physical therapist assistants]\* by an accrediting agency recognized by the \*[council]\* \*Council\* on Post-secondary Accreditation and the United States of Education, or;

2. With respect to foreign trained applicants \*for licensure as physical therapists\*, graduation from or successful completion of \*[a]\* \*an approved physical therapy\* program which shall have included 120 credits of which 60 or more shall be in courses relating to the practice of physical therapy and at least 45 of which shall be in courses of general academic study. \*English General College Equivalent A level courses will be accepted toward the necessary credits in general education.\*

##### 13:39A-5.2 \*[Examination standards for physical therapist applicants]\* \*(Reserved)\*

\*[Physical therapist applicants submitting satisfactory proof of educational attainment as set forth in N.J.A.C. 13:39-5.1 shall be admitted to take a written examination administered by the Board or such standardized examination as the Board may select pursuant to N.J.S.A. 45:9-37.25. Upon satisfactory passage of such examination, an applicant shall be deemed eligible for licensure. Satisfactory passage of the examination shall be attained upon receipt of a converted score of 70 percent, which corresponds to 1.5 standard deviations below the mean raw score on the national norm. Applicants may retake failed portions of the examination without being required to retake the entire examination.]\*

##### 13:39A-5.3 (Reserved)

##### 13:39A-5.4 (Reserved)

##### 13:39A-5.5 Endorsement

Applicants possessing a valid license issued by another state may be deemed eligible for licensure in New Jersey without the examination \*[as provided by N.J.A.C. 13:39A-5.2]\* if the criteria for licensure in that state are deemed by the Board to be substantially equivalent to those required in New Jersey and the applicant has not previously failed the examination administered by the Board. Nothing herein shall preclude the Board, in its discretion, from deeming an applicant, who possesses a license issued by another jurisdiction, who has failed the examination administered by the Board, to be eligible for licensure.

### (a)

#### BOARD OF VETERINARY MEDICAL EXAMINERS

##### Directory Listings

##### Advertising and Solicitation

##### Adopted Repeal: N.J.A.C. 13:44-2.3

##### Adopted Amendment: N.J.A.C. 13:44-2.11

Proposed: February 18, 1986 at 18 N.J.R. 399(a).

Adopted: April 30, 1986 by Board of Veterinary Medical

Examiners, David Eisenberg, D.V.M., President.

Filed: June 16, 1986 as R.1986 d.264, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:16-9.9.

Effective Date: July 7, 1986.

Expiration Date: August 20, 1989.

##### Summary of Public Comments and Agency Responses:

Although no public comments were received by the Board, the Board reconsidered its position regarding two sections of the rule. The Board determined to delete proposed N.J.A.C. 13:44-2.11(a)6, which would prohibit the advertising of offers to fee-split with veterinarians or to give or receive referral fees from veterinarians. The Board determined that

such advertisements were unlikely to be placed and that the true purpose of the rule was to bar the practice, not merely the advertising of it. Therefore, the Board decided to delete the provision from its advertising regulation and will instead propose a rule under an independent heading prohibiting the practice of giving or receiving referral fees.

Also, the Board voted to change proposed N.J.A.C. 13:44-2.11(a)2, to more precisely articulate its position that compliance with the emergency services facilities rule, N.J.A.C. 13:44-2.14, is required only when emergency services are offered during non-regular business hours. As originally proposed, the rule implied that compliance with N.J.A.C. 13:44-2.14 was required even when only non-emergency services were being offered during non-regular hours.

Full text of the adoption follows (additions shown in boldface with asterisks \*thus\*, deletions shown in brackets with asterisks \*[thus]\*).

##### 13:44-2.3 (Reserved)

##### 13:44-2.11 Advertising

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

(c) A licensee who engages in the use of advertising which contains the following, shall be deemed to be engaged in professional misconduct:

1. (No change.)

2. Any statement that emergency service is provided or any statement or implication that a facility is open and operating to provide \*emergency\* services during non-regular business hours unless the veterinary facility advertised meets the requirements of N.J.A.C. 13:44-2.14.

3. Any statement or implication that the licensee is a specialist or possesses special training in a specialty including such phrases as "special interest in" or the actual use of a title such as cardiologist, dermatologist, etc., where the licensee does not possess board certification or special training in the area of practice named.

4. Techniques or communications which tend to, or in fact, intimidate or exert undue pressure or influence over a prospective client.

5. The use of any personal testimonial attesting to the professional competence of a service or treatment offered by a licensee.

\*[6. Any offer to fee-split or offer to give to or receive from a veterinarian a fee or any other consideration for referral of a patient or client for whom professional services are to be rendered, or for the prescribing or utilization of any product.]\*

[7.]6. The use of any misrepresentation.

\*[8.]\* 7. Any statement which guarantees that a veterinary cure will result from the professional service offered, provided however that nothing herein shall prohibit an offer or statement guaranteeing a return of professional fees received or a repeat treatment in the event an owner is dissatisfied with services rendered.

\*[9.]\* \*8.\* The knowing suppression, omission or concealment of any material fact or law.

(d) (No change.)

(e) Advertising making reference to setting forth a fee shall be limited to that which contains a fixed or stated range of fees for a specifically described routine professional veterinary service.

1. A licensee who advertises fees shall disclose all the relevant variables and considerations which are ordinarily included in such a service so that the fee will not be misunderstood. In the absence of such a disclosure, the stated fees shall be presumed to include everything ordinarily required for such a service.

2. Offers of discounts or fee reductions shall indicate the fixed or stated range of fees against which said discount is to be made. Where an "across the board" discount is offered, such as "10% of all fees," the advertisement shall, at the least, include a list of the regular fees of common, representative services along with a statement that a complete list of veterinary services and the regular fees therefor is available for examination at the veterinarian's office.

3. (No change.)

(f)-(h) (No change.)

Redesignate (j)-(k) as (i)-(j) (No change in text.)

**PUBLIC UTILITIES****(a)****BOARD OF PUBLIC UTILITIES****Notification to Municipalities of Discontinuance of Gas and Electric Service to Residential Customers****Adopted Amendment: N.J.A.C. 14:3-7.15**

Proposed: March 3, 1986 at 18 N.J.R. 463(a).

Adopted: May 29, 1986 by Board of Public Utilities, Barbara A. Curran, President.

Filed: June 3, 1986 as R.1986 d.242, **without change.**

Authority: N.J.S.A. 48:2-12 and 48:2-13.

BPU Docket No. OX 8505531.

Effective Date: July 7, 1986.

Expiration Date: May 6, 1990.

**Summary of Public Comments and Agency Responses:**

**COMMENT:** A single comment was received. It was from a major utility affected by the amendment which stated it would be happy to supply a daily list of disconnected residential customers to local fire officials if there were agreement that the lists would be utilized and N.J.A.C. 14:3-7.15 presently provides for such lists. The commentator urged that the existing rule remain as is and at the time local fire officials wish to take action the existing rule will provide the necessary information.

**RESPONSE:** While the present rule might be construed to cover a request for such lists from local fire officials/agencies enforcing the Uniform Fire Code, it does not specifically cover them; it only refers to "municipalities" in general. The amendment will make clear that, upon request, the lists shall be sent to such officials/agencies, and implies that the lists will be sent to the address furnished by them, rather than to their local town hall which may have a different address. The amendment does not eliminate the requirement that the lists be requested. Presumably the lists will only be requested by those who intend to utilize them for municipal or fire prevention purposes.

**Full text of the adoption follows.**

14:3-7.15 Notification to municipalities of discontinuance of gas and electric service to residential customer

(a) All electric and gas public utilities shall annually notify all municipalities located within their service area that, upon request, they, and/or any enforcing agency enforcing the Uniform Fire Code (N.J.A.C. 5:18) within the municipality, will be sent a daily list of the residential customer of record and premises located within the municipality at which gas or electric service was discontinued involuntarily on the preceding day.

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

(e) Beginning on February 15, 1980, and on every August 15 and February 15 thereafter, all electric and gas utilities shall file with the Board a report containing the following information:

1. (No change.)
2. Those enforcing agencies referred to in (a) above enforcing the Uniform Fire Code which requested the list referred to in (a) above.
3. (No change in text.)

**STATE****(b)****DIVISION OF ARCHIVES AND RECORDS MANAGEMENT****Record Retention Rules****Adopted New Rules: N.J.A.C. 15:3**

Proposed: April 21, 1986 at 18 N.J.R. 820(b).

Adopted: May 22, 1986 by Jane Burgio, Secretary of State.

Filed: May 27, 1986 as R.1986 d.238, **without change.**

Authority: N.J.S.A. 47:3-15 et seq., specifically 47:3-20.

Effective Date: July 7, 1986.

Expiration Date: July 7, 1991.

**Summary of Public Comments and Agency Responses: No comments received.**

**Full text of the expired rules adopted as new rules appears in the New Jersey Administrative Code at N.J.A.C. 15:3.**

**TRANSPORTATION****TRANSPORTATION OPERATIONS****(c)****Speed Limits****Route 48 in Salem County****Adopted Amendment: N.J.A.C. 16:28-1.107**

Proposed: May 5, 1986 at 18 N.J.R. 932(a).

Adopted: June 6, 1986, by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

Filed: June 5, 1986 as R.1986 d.248 **without change.**

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

Effective Date: July 7, 1986.

Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the adoption follows:**

16:28-1.107 Route 48

(a) The rate of speed designated for State highway Route 48 described in this section shall be established and adopted as the maximum legal rate of speed thereat for both directions of traffic:

1.-2. (No change.)

3. In Carney's Point Township, Salem County:

i. 35 miles per hour School Speed Zone within the Penns Grove High School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours.

**(d)****Miscellaneous Traffic Rules****Route I-295 Rest Areas in Salem and Burlington Counties****Adopted Amendment: N.J.A.C. 16:30-11.1**

Proposed: May 5, 1986 at 18 N.J.R. 932(b).

Adopted: June 6, 1986 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

Filed: June 5, 1986 as R.1986 d.249, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-208.

Effective Date: July 7, 1986.

Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the adoption follows.**

SUBCHAPTER 11. REGULATIONS FOR THE CONTROL OF TRAFFIC AND PARKING IN REST AREAS UNDER THE JURISDICTION OF THE NEW JERSEY DEPARTMENT OF TRANSPORTATION

16:30-11.1 Route I-295 Rest Area

(a) Under the provisions of N.J.S.A. 39:4-208 the following regulations for the control of traffic upon the roadways of the Route I-295 Rest Area are hereby adopted:

1. In Carney's Point Township, Salem County:

i. No stopping or standing:

(1) No person shall stop or stand a vehicle at any time upon the roadways of the Route I-295 Rest Area except in designated areas, between the painted lines.

ii. Yield Intersection:

(1) The intersection of Ramp A and Ramp B-1, of the I-295 Rest Area is hereby designated as a Yield Intersection. A YIELD sign shall be installed on Ramp B-1 as shown on Site Plan 295 (MP 2.1 to 4.0) which is part of these regulations.

iii. One-Way Streets:

(1) All ramps and roadways within the Route I-295 Rest Area are hereby designated as One-Way Streets, in the direction indicated on Site Plan 295 (MP 2.1 to 4.0), which is part of these regulations.

iv. Handicapped Parking:

(1) Locations as indicated on Site Plan 295 (MP 2.1 to 4.0) which is part of this regulation, shall be for Handicapped Parking. All vehicles shall be properly identified.

2. In Springfield Township, Burlington County:

i. No stopping or standing:

(1) No person shall stop or stand a vehicle at any time upon the roadways of the Route I-295 Rest Areas, except in designated areas between the painted lines.

ii. One-Way Streets:

(1) All ramps and roadways within the Route I-295 Rest Areas are hereby designated as One-Way Streets, in the direction indicated on Site Plan 295 (MP 49.5 to 50), which is part of these regulations.

iii. Handicapped Parking:

(1) Location as indicated on Site Plan 295 (MP 49.5 to 50) attached to and made a part of this regulation, shall be for Handicapped Parking. All vehicles shall be properly identified.

(a)

**AERONAUTICS**

**Airport Safety Improvement Aid  
Classification of State Aid**

**Adopted Amendment: N.J.A.C. 16:56-4.1**

Proposed: May 5, 1986 at 18 N.J.R. 933(b).

Adopted: June 9, 1986, by James A. Crawford, Assistant

Commissioner for Transportation Services and Planning.

Filed: June 5, 1986 as R.1986 d.246 **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-44 and "Airport Safety Act of 1983" P.L. 1983, c.264.

Effective Date: July 7, 1986.

Expiration Date: June 4, 1989.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the adoption follows:**

16:54-4.1 Classification of State aid

(a)-(d) (No change.)

(e) State airport safety improvement grants are grants given or offered to an eligible recipient or local sponsor for the purpose of assisting in the funding of the improvement of the air transportation infrastructure or for the purpose of promoting air or flight safety. Grants for this purpose may be given or offered subject to the following parameters:

1. (No change.)

2. Airport safety improvement grants are limited to an annual \$50,000 maximum disbursement to any eligible recipient.

3. (No change.)

(f) (No change.)

(g) These shall be absolute upper limits to the aid disbursed under this chapter. The purpose of these limits is to help ensure that there are sufficient resources available for State aid to the greatest number of eligible airports and that State resources for any one year are not expended on a limited few airport projects. The absolute upper limit to aid disbursed in any one calendar year to an airport are as follows:

1. The limit of State Airport Safety Improvement Grant is \$50,000.

2. The limit on State Airport Safety Improvement Loan is \$90,000.

3. (No change.)

**OTHER AGENCIES**

(b)

**NEW JERSEY TURNPIKE AUTHORITY**

**Traffic Control on the New Jersey Turnpike  
Limitations on Use of Turnpike**

**Adopted Amendment: N.J.A.C. 19:9-1.9**

Proposed: May 5, 1986 at 18 N.J.R. 935(a).

Adopted: June 12, 1986, by New Jersey Turnpike Authority,

William J. Flanagan, Executive Director.

Filed: June 16, 1986 as R.1986 d.271, **without change.**

Authority: N.J.S.A. 27:23-29.

Effective Date: July 7, 1986.

Expiration Date: July 13, 1988.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the adoption follows.**

19:9-1.9 Limitations on use of turnpike

(a) Use of the New Jersey Turnpike and entry thereon by the following is prohibited:

1.-11. (No change.)

12. Vehicles or combinations of vehicles, including any load thereon, exceeding the following extreme overall dimensions or weights:

i.-iv. (No change.)

v. Notwithstanding the above limitations, a combination of vehicles designed, built and used to transport other motor vehicles may carry a load which exceeds 65 feet overall length, including load overhang. The overhang shall be limited to seven feet and may not exceed three feet at the front and four feet at the rear and that the overhang shall be above the height of the average passenger car;

13.-26. (No change.)

(b) (No change.)

(c)

**CASINO CONTROL COMMISSION**

**Accounting and Internal Controls  
Jobs Compendium**

**Adopted New Rule: N.J.A.C. 19:45-1.11A**

Proposed: November 18, 1985 at 17 N.J.R. 2747(a).

Adopted: May 29, 1986 by the Casino Control Commission,

Walter N. Read, Chairman.

Filed: May 30, 1986 as R.1986 d.240, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-70(j) and 99a(2) and (3).

Effective Date: July 7, 1986.

Expiration Date: April 7, 1988.

**Summary of Public Comments and Agency Responses:**

Comments were received from six casino licensees, the Atlantic City Casino Association (ACCA) and the Division of Gaming Enforcement. These comments and the Commission's responses are summarized below.

**Comments of casino licensees and the ACCA**

COMMENT: N.J.S.A. 5:12-99 requires job descriptions for only those jobs involved in casino operations. Departments of food and beverage, hotel operations, hotel sales and marketing, environmental services, transportation, and human resources do not impact upon the integrity of casino gaming or control of money and should be omitted from the requirements of the jobs compendium. The ACCA supports a submission limited to those jobs "directly related to gaming" as enumerated in N.J.S.A. 5:12-90(g).

RESPONSE: The Commission rejects these comments. The scope of regulation under the Casino Control Act is not limited to a review of gaming related or casino operations. The introductory language of N.J.S.A. 5:12-99(a) regarding internal controls submissions clearly states

that the requirements of -99(a)1 through 17 are not all inclusive. Section 99 together with other provisions of the Casino Control Act, specifically, section 70(j) grant the Commission the authority to prescribe "the procedures, forms and methods of management controls, including employee and supervisory tables of organization and responsibility . . ." This statutory requirement obviously intends the regulation of all casino-hotel employees and not merely those engaged in gaming operations. Moreover, experience here and in other jurisdictions demonstrates that funds can be diverted out of the business through the hotel side of the operation and that proper control over significant employees and positions demands review of all departments, not just those immanently involved with the games. In addition, fulfillment of affirmative action and equal employment opportunity goals can only be assessed against a comprehensive submission since these goals apply to the hotel as well as the casino. Thus, the Commission has always required each casino licensee to submit a jobs compendium which includes both casino and hotel employee positions. The published rule essentially codifies this requirement.

COMMENT: The casino industry believes that the 90 day prior Commission approval requirement concerning amendments to the jobs compendium restricts a casino's managerial discretion to reorganize its departments. The casino industry has suggested two alternatives: permit all changes to be made without prior approval or reduce the prior review period to 14 days. The ACCA has suggested a procedure of "notification" rather than prior approval.

RESPONSE: The Commission rejects these comments. Ninety day prior approval of casino related personnel matters is a statutory requirement found within N.J.S.A. 5:12-99. It should be noted that, historically, Commission approvals have normally been granted well in advance of the expiration of the statutory 90 day period. Moreover, the rule does not require advance approval of amendments which relate to the vast majority of casino hotel employee registrant positions.

COMMENT: The departmental table of contents is duplicative of the alphabetical index and should be eliminated.

RESPONSE: The Commission accepts this comment as valid and will eliminate this requirement. The table of organization required by N.J.A.C. 19:45-1.11A(b)2 provides relevant information regarding supervisory lines of authority and chain of command as required by N.J.S.A. 5:12-70(j) and -99(a)(3) and also fulfills the purpose of cross referencing the alphabetical index. Thus a departmental index is unnecessary and its elimination will not have any significant impact on the scope or meaning of the rule as published.

COMMENT: The requirement that the table of organization list the total number of positions approved creates unnecessary work and should be eliminated.

RESPONSE: The Commission rejects this comment. Having eliminated the need for a departmental table of contents, the table of organization serves as the only cross reference to the alphabetical listing. Thus, it must be complete and accurate in order to conform to statutory requirements.

COMMENT: The requirement that each job position be listed on a separate page of the submission should be eliminated because changes to one job description can require the renumbering of the entire compendium.

RESPONSE: The Commission rejects this comment. Listing each job description on a separate page reduces the overall labor required by the casino's staff when amendments are made to a particular job description. Numerous page numbering and indexing systems are available which will allow a licensee to modify individual pages without amending or reproducing the entire compendium.

COMMENT: The casino industry requests an exception to the requirement that each job description list the date of submission and the date of any prior job description it supercedes as proposed in N.J.A.C. 19:45-1.11A(b)4x for submissions that are not dated or would be too difficult to ascertain.

RESPONSE: The Commission does not believe an exception is necessary since this requirement will only be applied to compendiums, amendments or prior submissions made subsequent to the effective date of the regulation.

COMMENT: The number of copies of the jobs compendium required to be submitted has actually increased from six to eight, thus increasing the cost to casinos.

RESPONSE: The Commission accepts this comment as valid. The proposal has been modified upon adoption to require that six copies of the jobs compendium (an original and five copies) be filed.

COMMENT: The job description required by proposed N.J.A.C. 19:45-1.11A(b)4 should be simplified to exclude information such as salary range and number of employees in a particular position. The casino industry states that this requirement restricts managerial discretion.

RESPONSE: The Commission rejects this comment. A casino's salary structure is required to be submitted under N.J.S.A. 5:12-99(a)2. The requirement that the projected or actual number of job positions be listed derives directly from N.J.S.A. 5:12-99(a)(3) which states that "job descriptions" . . . shall be submitted . . . "identifying primary and secondary supervisory positions for areas of responsibility which areas shall not be so extensive as to be impractical for an individual to monitor" (emphasis added). Integrity of the casino industry depends, in part, upon the manner in which management and personnel functions are executed. Additionally, each job description must cross reference accurately to the table of organization. Inclusion of this information in the job description fulfills that requirement.

#### Comments of the Division of Gaming Enforcement

Comments were received from the Division of Gaming Enforcement which are in all respects supportive of the published rule. The Division's comments are in the nature of a response to the casino industry's comments. The Division views the submission of a jobs compendium which includes casino hotel positions in addition to casino positions as integral to the regulation of the casino-hotel complex. Thus, the jobs compendium submission serves an important law enforcement function. The submission also provides the Commission and the Division with the information required to satisfy each casino licensee's affirmative action obligations pursuant to N.J.S.A. 5:12-134 and 135. The requirement of ninety-day prior Commission approval for amendments to the jobs compendium arises out of the Casino Control Act. The Division states that all other information required to be included in the jobs compendium to which the casino industry objects is essential to the comprehensive and pervasive regulatory structure as established by the Casino Control Act.

The Commission made two additional changes to the proposal upon adoption which were not made as a result of comments received but rather as a result of an independent review of the proposal by the Commission. First, N.J.A.C. 19:45-1.11A(a) was amended to clarify that the Commission, in approving a jobs compendium, is only determining that the job descriptions and tables of organization contained therein conform to the licensing or registration and chain-of-command requirements of the Act and the Commission's regulations. Second, N.J.A.C. 19:45-1.11A(d)2, which required the preapproval of all amendments to casino hotel employee registrant positions which required access to premises authorized pursuant to N.J.S.A. 5:12-103g(1), is being eliminated since the positions covered by this paragraph, by definition, require casino employee licensure under the Act and regulations and all amendments to casino employee positions must be approved in advance.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from the proposal shown in brackets with asterisks \*[thus]\*).

#### 19:45-1.11A Jobs/Compendium/Submission

(a) Each casino licensee and applicant for a casino license shall, pursuant to N.J.S.A. 5:12-70(j) and -99a(2) and (3), prepare and maintain a jobs compendium consistent with the requirements of this section detailing job descriptions and lines of authority for all personnel engaged in the operation of the hotel and casino. Unless otherwise directed by the Commission, a jobs compendium shall be submitted to the Commission for approval at least six months prior to the projected date of issuance of a certificate of operation. The Commission shall review each jobs compendium and shall determine whether \*[it conforms to]\* the **\*job descriptions and tables of organization contained therein conform to the licensing or registration and chain-of-command\*** requirements of the Act and the Commission's regulations. If the Commission finds any insufficiencies, it shall specify the same in writing to the casino licensee or applicant, who shall make appropriate alterations. When the Commission determines a submission to be adequate \*[in all respects]\* **\*with respect to licensing or registration and chain-of-command,\*** it shall notify the casino licensee or applicant accordingly. No casino licensee shall commence gaming operations unless and until its jobs compendium is approved by the Commission.

(b) A jobs compendium shall include the following sections, in the order listed:

1. An alphabetical table of contents listing by position title each job description included in \*[ (b)4. ]\* **\*3.\*** below and the page number on which the corresponding job description may be found;

\*[2. A departmental table of contents listing by department each position title within the department in order of direct lines of authority and the page number on which the corresponding job description may be found.]\*

\*[3.]\*\*2.\* A table of organization for each department and division illustrating by position title direct and indirect lines of authority within the department or division. Each table of organization shall indicate the projected or actual number of persons to be employed in each position title and shall accurately correspond to the job description included in \*[b(4)]\*\*3.\* below;

\*[4.]\*\*3.\* A description of each employee position. Each position shall be listed on a separate page and shall accurately correspond to the position title as illustrated in the table of organization and as listed in the table\*[s]\* of contents. Each job description shall include the following:

- i. Position title and corresponding department;
- ii. Salary range;
- iii. Job duties and responsibilities;
- iv. Direct and indirect supervisory reporting lines;
- v. Positions supervised;
- vi. Detailed descriptions of experiential or educational requirements;
- vii. Projected number of employees in the position;
- viii. Equal employment opportunity class or subclass;
- ix. Proposed registration or license endorsement consistent with the requirements of the Act and the Commission's regulations; and
- x. The date of submission of each employee position job description and the date of any prior job description it supersedes.

(c) Except as otherwise provided in (d) below, any proposed amendment to a previously approved jobs compendium shall be submitted to and approved by the Commission before such amendment is implemented by the casino licensee. Unless otherwise directed by the Commission, any amendment required to be preapproved pursuant to this subsection shall be submitted to the Commission at least 90 days prior to the proposed effective date of the amendment and shall contain, at a minimum:

1. A detailed cover letter listing by department each position title to which modifications are being proposed and a brief summary of all changes which are being proposed to the jobs compendium since the last amendment submitted; and

2. The actual text of the proposed changes to the information required by (b)\*[1. through 4.]\* \*3.\* above contained on pages which may be used to substitute for those sections of the jobs compendium previously approved by the Commission.

(d) Amendments to casino hotel employee registrant position titles which report to casino hotel employee registrant position titles may be implemented by a casino licensee without the prior approval of the Commission. Such changes shall be immediately recorded in the jobs compendium maintained by the licensee on its premises, but do not have to be submitted to the Commission except as otherwise provided in (e) below or upon request. This subsection shall not apply to casino hotel employee registrant position titles which are\*[:

1. Departmental or divisional supervisory positions; or
2. Positions with duties requiring access to premises authorized for the sale or service of alcoholic beverages pursuant to N.J.S.A. 5:12-103g(1).]\*\*departmental or divisional supervisory positions.\*

(e) Notwithstanding any other requirement of this section, each casino shall submit a complete and up-to-date jobs compendium to the Commission 18 months after its receipt of a certificate of operation and every two years thereafter, unless otherwise directed by the Commission.

(f) Whenever required by this section, a casino licensee shall file \*[six]\* \*five\* copies of a jobs compendium or an amendment to a jobs compendium with the License Division of the Commission and \*[two copies]\* \*one copy\* with the Division of Gaming Enforcement. The cover shall indicate the name of the casino licensee, the date of the submission and shall be labeled "Jobs Compendium Submission" or "Jobs Compendium Amendment" as appropriate.

(a)

## EXECUTIVE COMMISSION ON ETHICAL STANDARDS

### Positions in State Government with Responsibility for Matters Affecting Casino Activity Adopted New Rule: N.J.A.C. 19:61-5.5

Proposed: May 5, 1986 at 18 N.J.R. 936(a).

Adopted: June 5, 1986 by Executive Commission on Ethical Standards, John G. Donnelly, Executive Director.

Filed: June 5, 1986 as R.1986 d.247, without change.

Authority: N.J.S.A. 52:13D-12, et seq.

Effective Date: July 7, 1986.

Expiration Date: July 7, 1991.

Summary of Public Comments and Agency Responses:  
**No comments received.**

Full text of the adoption follows.

19:61-5.5 Positions in State government with responsibility for matters affecting casino activity

(a) The Executive Commission on Ethical Standards has, in consultation with the Attorney General's Office, determined that the following positions in State government have responsibility for matters affecting casino activity and therefore are subject to the restrictions of the Casino Ethics Amendment (N.J.S.A. 52:13D-17.2):

1. Department of Environmental Protection; Division of Coastal Resources:

i. Bureau of Coastal Project Review (1 Chief and three Regional Supervisors classified as Supervising Environmental Specialists);

ii. Tidelands Resource Council (Members of the Council);

2. Department of Community Affairs (Division of Housing):

i. Bureau of Construction Code Enforcement (Chief; Assistant Chief; Supervisor, plans approval);

ii. Bureau of Housing Inspection (Chief; Supervisor, Housing Code Compliance Assistant Regional Supervisor, Housing Code Enforcement);

3. State Athletic Control Board (Commissioner; three Members).

(b) The list in (a) above is exclusive of the following persons identified in N.J.S.A. 52:13D-17.2(a) as being covered by the provisions of the Casino Ethics Amendment.

1. As used in N.J.S.A. 52:13D-17.2(a) "person" means any State officer or employee subject to financial disclosure by law or executive order and any other State officer or employee with responsibility for matters affecting casino activity; any special State officer or employee with responsibility for matters affecting casino activity; the Governor; any member of the Legislature or full-time member of the Judiciary; any full-time professional employee of the Office of the Governor, or the Legislature; members of the Casino Reinvestment Development Authority; the head of a principal department; the assistant or deputy heads of a principal department, including all assistant and deputy commissioners; the head of any division of a principal department; any member of the governing body, or the municipal judge or the municipal attorney of a municipality wherein a casino is located; any member of or attorney for the planning board or zoning board of adjustment of a municipality wherein a casino is located, or any professional planner, or consultant regularly employed or retained by such planning board or zoning board of adjustment.

## (a)

**CASINO REINVESTMENT DEVELOPMENT  
AUTHORITY****Project Eligibility, Contracts with Casino Licensees  
Affirmative Action and Debarment****Readopted New Rules: N.J.A.C. 19:65**

Proposed: April 21, 1986 at 18 N.J.R. 852(a).

Adopted: June 6, 1986 by Michael G. Cohan, Executive Director,  
Casino Reinvestment Development Authority.Filed: June 11, 1986 as R.1986 d.256, **without change**.

Authority: N.J.S.A. 5:12-144.1 and N.J.S.A. 5:12-161(f).

Effective Date: July 7, 1986.

Expiration Date: July 7, 1991.

**Summary of Public Comments and Authority Responses:**

Written comments were solicited until May 21, 1986 and comments were received from the Housing Authority & Urban Redevelopment Agency of the City of Atlantic City, New Jersey (hereinafter referred to as "ACHA") through Dennis M. Ricci, the Urban Renewal Supervisor.

The following summarizes the comments received in writing and provides the Authority's responses to those comments.

**COMMENT:** The ACHA suggested that a time period be specified in the regulations for the filing of an Application for Consideration of a proposed project by an Applicant instead of utilization of a general standard permitting an Application to be filed "at any time before the commencement of the project."

**RESPONSE:** The requirement of when an application must be filed is derived from the statute. The incorporation of a more specific time frame time for filing of applications for determination of project eligibility by the Authority would be unduly restrictive and could potentially eliminate from consideration projects which might otherwise meet all the criteria for eligibility. The filing of an application is merely the initial step an applicant must take to generate from the authority a preliminary determination of eligibility. A more specific time period for applications would be unnecessarily burdensome on applicants.

**COMMENT:** A definition of the term "commencement" was requested.

**RESPONSE:** The term "commencement" is defined in N.J.A.C. 19:60-2.2(d). Subsection (d) specifically states the factors which will not cause a project to be deemed to be commenced for purposes of Section 19:60-2.2. This is the same definition for "commencement" in the rules promulgated by the Casino Control Commission.

**COMMENT:** The ACHA questioned when a preliminary determination of eligibility might be made by the Authority. Also a preliminary review period of 45 days was suggested and a final review period of 45 days was suggested, with an allowance for extensions.

**RESPONSE:** The regulations do not specifically provide a specific time period during which the Authority must conduct its preliminary review or its final review. A specific time period would be unduly restrictive on the Authority and difficult to reasonably establish. Because of the varied nature of potentially eligible projects, some projects may necessitate longer review than other projects to effectively carry out the statutory purposes of the Authority.

**COMMENT:** In connection with the Authority's requirement that the applicant establish, among other things, as part of its approval criteria, that the site for a proposed project is under the control of an applicant or that a governmental or public body or agency has manifested its intent to permit the applicant to acquire control over the proposed site, a suggestion was made that if CRDA were to use its power of eminent domain in an attempt to aid an applicant in meeting this requirement, project sites containing occupied properties or properties worthy of rehabilitation should be excluded from consideration.

**RESPONSE:** The Authority has required in Section 19:60-2.6(b)4 that an applicant establish, as part of its approval criteria, with respect to projects outside Atlantic City, that the project will result in minimal displacement and, in cases where displacement may be necessary, that such displacement is consistent with the redevelopment plan known as "Inlet Community Redevelopment—A Balanced Community Concept and Strategy for Reinvestment, Atlantic City, New Jersey, October, 1983" approved and adopted by the New Jersey Casino Control Commission (and sometimes referred to as the "American Cities Plan"). By statutory mandate, the Authority is required to give priority to the American Cities

Plan, and such plan gives consideration to the rehabilitation of those buildings for which such approach is appropriate.

**COMMENT:** The ACHA questioned whether the Authority can exercise its power of eminent domain to assure control over a proposed project site (which is a criteria for approval of eligibility by the Authority).

**RESPONSE:** The legislature by statute granted to the Authority the right of eminent domain within the City of Atlantic City and the Authority believes this does not have to be covered by a rule.

**COMMENT:** In both the approval criteria and priorities sections, special emphasis is placed on the utilization of the American Cities Plan, on terms of displacement and project approval for Atlantic City. In the opinion of the commentator, the American Cities Plan is an unreliable source upon which to base project approvals within Atlantic City because in the view of the commentator, the plan relied heavily upon rehabilitating properties instead of rebuilding and gave no consideration to the city's infrastructure problems. Also, the commentator felt that the Authority should also give consideration to projects which do not fall within the Inlet boundaries, because the deterioration which was present in Atlantic City at the time of the American Cities Study, in the opinion of the commentator, has spread much further outside of its boundaries since its completion. It appears that because of the emphasis being placed by the Authority, in the opinion of the commentator, on the Inlet area and the American Cities Plan, that other blighted areas of Atlantic City are being ignored. The Authority's project priorities should reflect a comprehensive approach to the overall development of Atlantic City. Care must be taken in targeting the Inlet as an area of priority for redevelopment that the "balanced community" concept survives otherwise the "ghetto" may just move west.

**RESPONSE:** The Authority is required by the act to give priority to the American Cities Plan and to any other plan or project which is consistent with the standards of the act and is acceptable to the Authority. The Authority, in establishing its priorities in these regulations was bound by this statutory mandate and has promulgated its regulations accordingly. In Section 19:60-2.7(a)1i., the Authority has indicated its commitment to those projects in Atlantic City, which will lead to the establishment of a balanced community and the development of a comprehensive housing program for the City of Atlantic City. In addition, projects outside the Inlet area will not be excluded pursuant to the priorities established by the regulations. The rule includes projects which are part of a redevelopment plan which, in the opinion of the Authority, will have a significant positive impact on the creation of sound neighborhood conditions and the creation of affordable housing opportunities in the City of Atlantic City. The Authority's project priority list is not as narrowly drawn as the commentator suggests.

**COMMENT:** The ACHA indicated that purchases by a licensee of bonds issued by state housing authorities should be acceptable and should not be limited to bonds issued by the State and State authorities.

**RESPONSE:** N.J.A.C. 19:60-3.2 of the rules provides that the licensee may purchase through the Authority bonds or other obligations of the State, any political subdivision thereof, or any authority created by the State or any political subdivision thereof. Thus, under the rules, a licensee would be permitted to purchase through the Authority bonds or other obligations of a housing authority, if such housing authority was created by the State or any political subdivision thereof.

**COMMENT:** The discretion granted to the Authority in N.J.A.C. 19:60-7.11 to determine eligibility of projects for financial or other assistance or to contract or refrain from contracting with any person effectively negates the entire Subchapter 7.

**RESPONSE:** This provision indicates that, irrespective of whether the Authority is proceeding under Subchapter 7 in connection with debarment or suspension of any person, the Authority has discretion in its eligibility determination and may refrain from contracting with any person without proceeding under Subchapter 7. The Authority does not think this provision negates Subchapter 7, but is supplemental to the powers in the Subchapter.

Full text of the adoption follows.

## CHAPTER 65

## CASINO REINVESTMENT DEVELOPMENT AUTHORITY

## SUBCHAPTER 1. GENERAL PROVISIONS

## 19:65-1.1 Purpose and objectives

(a) The rules contained in this chapter are established to effectuate, and shall be applied so as to accomplish the general purposes of the Act, including, without limitation:

1. To assist in the development or redevelopment of political sub-

divisions within the State in the manner and priority set forth in the Act; and

2. To increase opportunities for gainful employment and to improve living conditions in such political subdivisions; and

3. To foster and promote the economy of the State generally.

#### 19:65-1.2 Definitions

As used in this chapter, the following words and terms shall have the following meanings unless a different meaning clearly appears from the context:

"Act" means P.L.1984, c.218, as amended, and as the same may be further amended from time to time.

"Applicant" means any person, entity, licensee, prospective licensee, government, governmental agency, municipality or political subdivision of the State permitted under the provisions of the Act or these rules to apply for review and approval and/or a determination of eligibility of or with respect to a project by the Authority under the Act and these rules.

"Application" means a fully completed and signed application submitted pursuant to the provisions of N.J.A.C. 19:65-2.3 in such form or forms as may be prescribed from time to time by the Authority.

"Approved project" means a project which satisfies the provisions of the Act and these rules and is approved by the Authority.

"Authority" means the Casino Reinvestment Development Authority.

"Bonds" means bonds, notes or evidences of Authority debt issued to licensees pursuant to the Act.

"Contract" means a written contract between the Authority and a Licensee to purchase Bonds pursuant to N.J.A.C. 19:65-3.

"Determination of eligibility" means a determination by the Authority that the applicant's project is an approved project.

"Executive director" means the Executive Director of the Authority.

"Initial contract" means the first contract entered into between the Authority and any licensee.

"Licensee" means the holder of a current and valid casino license issued by the New Jersey Casino Control Commission.

"Participant" means any person, entity, government, governmental agency, municipality, political subdivision of the State or Licensee participating or involved in any aspect of a project.

"Project" means any project presented to the Authority for its review, approval and determination of eligibility under the Act and these rules. Projects may be in the form of construction or rehabilitation; financing; contributions of real estate, cash or other property; loans, investments; guarantees; purchases of bonds or other obligations; direct investments by licensees or any other form as may be approved by the Authority consistent with the provisions of the Act.

"Prospective licensee" means a person who has applied for a license issued by the New Jersey Casino Control Commission to operate a casino.

"State" means the State of New Jersey.

"SBMWE Development Authority" means the New Jersey Development Authority for Small Business, Minorities and Women's Enterprises.

## SUBCHAPTER 2. APPLICATION, ELIGIBILITY, PRIORITY AND HEARING

### 19:65-2.1 Applications generally

(a) The Authority will act upon applications which involve projects that meet the requirements of the Act, these rules and the specific goals of the Authority as determined from time to time by the Authority.

(b) From time to time the Authority may issue guidelines outlining, among other things, the nature of the projects it intends to fund or approve and the approximate amounts available to fund such projects.

(c) In connection with applications seeking Authority determination of eligibility of projects composed of donations by licensees of property, the licensee shall include for the Authority's consideration, in addition to the other requirements of these rules, an appraisal of such property undertaken on a fair market value basis in form and substance, and by an appraiser satisfactory to the Authority.

### 19:65-2.2 Time for application

(a) Except as otherwise provided in these rules or in the Act, an applicant shall apply to the Authority for a determination of eligibility of its proposed project at any time before the commencement of the project.

(b) With respect to a project commenced by a licensee or prospective licensee prior to the effective date of these rules which such licensee or prospective licensee intends to qualify as an approved project, such person shall apply to the Authority for a determination of eligibility within 90 days of the date of the effective date of these rules.

(c) With respect to a project to be commenced after the effective date of these rules, an applicant shall apply to the Authority in accordance with the procedures set forth in these rules for a determination of eligibility before commencing such project, and shall not commence the project until the Authority makes a determination of eligibility.

(d) For purposes of this section, commencement of a project shall not be deemed to have occurred by mere acquisition of land or real property or by engagement of an architect, engineer or other consultant to draw plans or to determine feasibility, legality, costs or other such factors, or by negotiations with prospective sellers, contractors and investors, or by execution of agreements or contracts which are expressly conditioned upon a determination of eligibility by the Authority.

(e) Failure of an applicant to apply timely for a determination of eligibility as provided in this section shall render the project ineligible unless the applicant establishes to the satisfaction of the Authority that good cause existed for such failure in which case the Authority may waive the time provisions provided for herein.

### 19:65-2.3 Application

(a) An applicant shall file with the Authority an application, together with:

1. Such other information as the Executive Director and/or the Authority may require including, without limitation, the appraisal required by N.J.A.C. 19:65-2.1(c) if a donation of property is involved; and

2. The application fee(s) provided in N.J.A.C. 19:65-6.1.

### 19:65-2.4 Preliminary review

(a) The Executive Director shall review the application for completeness and prepare a summary as to potential eligibility of the project and forward the application and summary to the Authority.

(b) In the event the Authority preliminarily determines that the project is of the character and type which is eligible to be an approved project, the applicant shall thereafter submit such other information as the Authority from time to time may request in accordance with the provisions set forth in these rules.

(c) A preliminary determination of eligibility by the Authority pursuant to this Section shall in no event constitute a determination by the Authority that the project is an approved project.

### 19:65-2.5 Final review

(a) Within such number of days as the Authority may require after notification of a preliminary determination of eligibility as provided in N.J.A.C. 19:65-2.4, the applicant shall file with the Authority such other information as the Authority may require.

(b) The Authority in accordance with the provisions of the Act and these rules shall determine whether the project is an approved project, provided however, no such approval shall be final until a hearing is held pursuant to N.J.A.C. 19:65-2.8.

(c) In addition to considering information provided by the applicant, the Authority may utilize any relevant information or data which is within its knowledge or which is supplied by any Federal, State or local agency, or any other person, entity, group or association which has an interest in the project and which desires to provide such information to the Authority. Further, the Authority may approve a project with such modifications and conditions as it deems necessary and appropriate.

### 19:65-2.6 Approval criteria

(a) The Authority shall approve projects in accordance with the guidelines and criteria set forth in the Act.

(b) The Authority shall require that the applicant establish, among other things, the following:

1. In the case of projects involving construction, that the site for the proposed project is under the control of the applicant or that a government or public body or agency has manifested its intent to permit the applicant to acquire control over the site of the proposed project;

2. That the project is sufficiently feasible such that it has the minimum characteristics of an investment which has a degree of assurance that interest and principal payments can be made and other terms of such an investment be maintained over the period thereof such that a loan of the bond proceeds in connection therewith would qualify for a bond rating of "C" or better; and

3. That the applicant has the financial capability to undertake the project; and

4. That the project, with respect to projects not in Atlantic City, will result in minimal displacement of existing households; and with respect to projects in Atlantic City, in cases where displacement of commercial or residential facilities may be necessary, such displacement must be consistent with the Atlantic City Task Force on Housing and Community Development of March 24, 1983 and incorporated in the redevelopment

plan known as "Inlet Community Redevelopment—A Balanced Community Concept and Strategy for Reinvestment, Atlantic City, New Jersey, October, 1983" (sometimes referred to as the "American Cities Plan") approved and adopted by the New Jersey Casino Control Commission.

19:65-2.7 Priorities

(a) In considering whether to approve a project, the Authority shall be guided by and accord priority to projects which, among other things:

1. As to projects in Atlantic City:
  - i. Will lead to the establishment of a balanced community and the development of a comprehensive housing program for the city of Atlantic City;
  - ii. Addresses the housing needs of the persons and their families residing in the city of Atlantic City in 1983 and continuing such residency through December 19, 1984 and as set forth in the determination, from time to time, by the Authority as to the housing needs for Atlantic City made in consultation with the City of Atlantic City and specifically its zoning and planning boards;
  - iii. Are in accordance with any other comprehensive plan or project which is consistent with the standards set forth in N.J.S.A. 5:12-144.1f(3) and which is acceptable to the Authority pursuant to N.J.S.A. 5:12-173;
  - iv. Are located within the area designated for redevelopment under the redevelopment plan known as "Inlet Community Redevelopment—A Balanced Community Concept and Strategy for Reinvestment, Atlantic City, New Jersey, October, 1983" approved and adopted by the New Jersey Casino Control Commission (sometimes referred to as the "American Cities Plan"), and are found by the Authority to be consistent, in location, housing type, design, and other relevant criteria with the goals, objectives, and implementation strategy of that plan; or, a part of a redevelopment plan adopted in accordance with N.J.S.A. 55:14A-1 et seq., N.J.S.A. 40:55C-1 et seq., or similar laws and formally approved by the Authority on the basis of findings by the Authority that implementation of the plan will have a significant positive impact on the creation of sound neighborhood conditions and the creation of affordable housing opportunities in the city of Atlantic City;
  - v. Will further the development of Atlantic City in the ways specified by N.J.S.A. 5:12-160.

2. As to projects outside of Atlantic City, will lead to the revitalization of the urban areas of this State in the ways specified in N.J.S.A. 5:12-160. Those areas shall include, but not be limited to all municipalities qualifying for aid pursuant to N.J.S.A. 52:27D-178 et seq.

3. As to any project, the Authority will give consideration to the fact that the project utilizes sources of financial assistance in addition to assistance provided by the Authority.

19:65-2.8 Public hearing

(a) In considering whether a particular project shall be an approved project, the Authority shall conduct in the jurisdiction of the local government unit in which the project is located such hearings as may be necessary or appropriate to determine whether the project satisfies the standards, criteria and guidelines set forth in the Act and these rules. The Authority may conduct such hearings directly or the Chairman may designate one member of the Authority, the Executive Director or any Authority employee to preside at the hearing. Unless required by law, such hearings shall be conducted as non-adversarial, informational proceedings and shall not be considered "contested cases" within the meaning of P.L.1968, c.410, as amended (N.J.S.A. 52:14B-1 et seq.). The fees and costs of such hearings, including the cost of any transcript, shall be borne by the applicant.

(b) The Authority shall give notice of any hearing at least 15 days before the date of the hearing by publication in a newspaper of general circulation in the municipality in which the project will be located, by posting a notice at the Authority's office and by delivering a copy of the notice to the clerk of the municipality in which the project will be located, the applicant and any other interested party. The notice shall include the time and place of the hearing, the names and addresses of the parties involved in the project and a brief description of the project. The Authority shall not be obligated to provide notice of any adjournment or adjournments of any scheduled hearing so long as it gives notice, as provided by these rules, of the new hearing date.

SUBCHAPTER 3. CONTRACTS

19:65-3.1 Contract as requirement to credit

No Licensee shall be entitled to any investment tax credit provided by N.J.S.A. 5:12-144.1 resulting from the purchase of bonds unless and until such licensee has entered into a contract. No termination of any contract

shall be construed to in any way alter or diminish a licensee's tax obligations under the Act.

19:65-3.2 Contract provisions

(a) Contracts shall include, without limitation, the following terms and provisions:

1. Unless a licensee's remaining investment alternative tax obligation is for less than 10 years in which case the term of the contract will be for such remaining lesser period, a term of not less than 10 continuous years from the year in which a licensee's investment alternative tax obligation was first incurred or a previous contract has expired or terminated pursuant to N.J.A.C. 19:65-3.2(b) or 3.2(c), such 10 year period to end at the end of the tenth calendar year after the year of commencement of such contract or the expiration or termination thereof, during which period the contracting licensee shall be obliged to purchase bonds in annual purchase amounts which will constitute a credit against not less than 50 percent of such licensee's investment alternative tax obligation in any such year or years, subject to any investment options otherwise provided in the contract. For the purposes hereof, the year in which a licensee first incurred an investment alternative tax obligation shall mean the year in which a tax obligation was incurred under N.J.S.A. 5:12-144.1a(1) and for which the money representing the purchase price of bonds is available to the Authority.

2. Unless waived by the licensee, that the initial contract may be terminated:

i. At the sole discretion of the Authority at the written request of a licensee, at the end of the fifth calendar year from commencement provided the licensee provides the Authority with one year prior written notice of such request;

ii. At the election of the licensee at the end of the eighth calendar year from commencement (for example, at the end of calendar year 1991 if the year of commencement was 1984) and thereafter by the licensee at the end of subsequent calendar years, upon not less than three years prior written notice by the licensee in any case; or

iii. In any event at any time by the Authority upon not less than one year prior written notice to the licensee by the Authority.

iv. In exercising its discretion under the provisions of i. above, the Authority shall consider, in addition to such other matters it may deem relevant, whether such termination will violate any agreement or covenant or impair any financial obligation of the Authority.

3. Unless waived by the licensee, that, at the election of the licensee, contracts other than the initial contract may be terminated by the licensee at the end of the fifth calendar year from commencement and thereafter by the licensee at the end of subsequent calendar years, upon not less than three years prior written notice by the licensee in any case or, in any event at any time, the contract may be terminated by the Authority upon not less than one year prior written notice by the Authority.

4. That, upon establishment of the grounds set forth in the Act:

i. The obligation of the licensee to pay for and take delivery of bonds be deferred in any year, but no deferral shall occur for more than two years consecutively; and

ii. No deferral granted shall alter or reduce the total obligations to purchase bonds incurred by the licensee under the contract.

5. Such default and remedy provisions as the Authority shall deem appropriate including, without limitation, those set forth in the Act and all other cumulative remedies otherwise available at law or in equity.

6. That:

i. The licensee shall be obliged to purchase bonds as issued by the Authority without regard to the approved project for which the proceeds of such purchase shall be committed;

ii. Bonds available for purchase in any given year shall be allocated pro rata to licensees based upon the percentage that each licensee's contractual purchase obligation bears to the total available amount of bonds;

iii. Bonds pertaining to particular approved projects shall be allocated on a pro rata basis to each licensee without preference or priority; and

iv. To the extent the actual amount of bonds offered by the Authority in any year is less than the amount such licensee has agreed to purchase pursuant to its contract, such difference shall be paid by the licensee to the Authority and invested as permitted by N.J.S.A. 5:12-161(m) with interest on such investment payable to the licensee as provided therein.

7. That the bonds offered for sale by the Authority shall be issued to finance approved projects and shall otherwise have the attributes for bonds set forth in N.J.S.A. 5:12-162(d).

8. That each licensee shall continue to pay to the State Treasurer on a quarterly basis the amount imposed by N.J.S.A. 5:12-144.1, such funds to be placed in an escrow account as provided by N.J.S.A.

5:12-144.1(a)(2).

9. That, if approved by the Authority, the licensee may purchase through the Authority bonds or other obligations of the State, any political subdivision thereof, or any authority created by the State or any political subdivisions thereof in lieu of purchasing bonds as may be otherwise required by its contract for any period covered thereby, provided that such bonds fulfill purposes of the Authority and are in accordance with the requirements of the Act. Nothing in this paragraph shall preclude the Authority from requiring a licensee to purchase Authority bonds or to purchase through the Authority bonds or other obligations of the State, any political subdivision thereof, or any authority created by the State or any political subdivision.

10. That, if a waiver of a licensee's obligation to purchase bonds is granted by the Authority in accordance with the provisions of the Act, the licensee may, in lieu of purchasing bonds as may be required by its contract for any period covered thereby, make an equivalent direct investment in, contribution to or guaranty in connection with an approved project.

11. That any obligation imposed by the contract to purchase bonds as a credit against payment by a licensee of any investment alternative tax owing by such licensee shall be the continuing responsibility of the licensee which is a party to the contract unless such obligation shall have been assumed by a licensee purchaser of the casino hotel or related property or some other provision for fulfillment of such obligation is made which is satisfactory to the Authority.

12. That the Authority may invest and reinvest and otherwise deal with any monies to be derived pursuant to the contract as permitted by N.J.S.A. 5:12-161(m), and that the Authority shall pay the licensee, no less often than annually and as reasonably practicable based upon maturities of investments, the portion of the interest on such monies to which the licensee is entitled.

13. That annual amounts due by licensees under the contract be paid by the licensee to the Authority upon entering the contract or at the times specified therein but not later than April 30 of each year; provided however that a licensee's obligation under N.J.S.A. 5:12-144.1(a)(2) shall not be altered by the provisions of any contract.

#### SUBCHAPTER 4. AFFIRMATIVE ACTION IN AUTHORITY FINANCED CONSTRUCTION PROJECTS AND LICENSEES' DIRECT INVESTMENT CONSTRUCTION PROJECTS

19:65-4.1 Set-aside SBMWE Development Authority (Reserved)

19:65-4.2 Affirmative action

(a) In connection with construction projects:

1. The Authority shall ensure that minority or women's businesses receive at least 20 percent of the total expenditures on the total number of approved projects financed each year by or through the Authority or in the case of direct investment by licensees, 20 percent of the total expenditure on the total amount of such investments by the licensees.

2. The Authority shall enforce the provisions of the Act with respect to the 20 percent set-aside described in (a) above, the primary obligation to carry out the 20 percent minority or women's business set-aside rests with the borrowers of proceeds or bonds or the licensees in the case of direct investments in projects involving construction.

3. Each applicant and its respective contractors shall make every effort to use as many minority or women's businesses from as wide market areas as is economically feasible to satisfy the set-aside requirements. This effort shall include the employment of such minority businesses with less experience than otherwise available nonminority enterprises, and each applicant shall be required to provide reasonable technical assistance to minority businesses as needed.

19:65-4.3 Enforcement and waivers

(a) The Authority shall take such steps as are necessary to ensure compliance with this subchapter.

(b) Under exceptional circumstances, after a public hearing with notice given as provided in N.J.A.C. 19:65-2.3(b) and upon determination by the Authority that there are not sufficient, relevant or qualified minority business enterprises, whose market areas include the project location, the Authority may waive up to 10 percent of the 20 percent set-aside requirement. In order to be entitled to such a waiver, the applicant shall comply with the timing requirements of and demonstrate and detail the matters set forth in N.J.S.A. 5:12-181(b)(2). Nothing herein shall preclude the Authority from hearing any information provided by any other person, or Federal, State or local governmental agency.

#### SUBCHAPTER 5. INVESTMENT BY LICENSEES PURSUANT TO N.J.S.A. 5:12-144

19:65-5.1 New Jersey Casino Control Commission rules

Eligibility of investments or contributions by licensees which were commenced or made prior to the effective date of the Act and the determination of which were pending before the New Jersey Casino Control Commission, shall be determined by the Authority by reference to the rules of the New Jersey Casino Control Commission set forth at N.J.A.C. 19:54-2.1 through and including N.J.A.C. 19:54-2.37, to the extent not inconsistent with the Act. All references in such rules to the "Commission" shall, except where the context clearly indicates otherwise, be deemed to refer to the "Authority". Nothing herein shall be construed to alter or disturb final determinations by the New Jersey Casino Control Commission as to matters within its jurisdiction prior to the effective date of these rules nor to permit licensees to seek determinations from the Authority as to matters which were not brought in a timely fashion before the New Jersey Casino Control Commission.

#### SUBCHAPTER 6. FEES AND CHARGES

19:65-6.1 Application fees

An initial non-refundable payment of \$500.00 shall accompany every application. Upon favorable preliminary review of an application pursuant to N.J.A.C. 19:65-2.4, an additional non-refundable application fee of \$1,000 shall be payable by an applicant before the hearing required by N.J.A.C. 19:65-2.8, which payment shall be credited toward any administrative fee if the project is approved by the Authority.

19:65-6.2 Administrative fees (Reserved)

#### SUBCHAPTER 7. DISQUALIFICATION, DEBARMENT AND SUSPENSION

19:65-7.1 Definitions

As used in this subchapter, the following words and terms shall have the following meanings unless a different meaning clearly appears from the context:

"Debarment" means an exclusion from Authority project contracting on the basis of a lack of responsibility evidenced by an offense, failure or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

"Person" means any natural person, corporation, partnership, company, firm, association or other entity.

"Authority project contracting" means any arrangement giving rise to an obligation to supply anything or to perform any service in connection with the construction, financing or administration of a project.

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Suspension" means an exclusion from Authority project contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

19:65-7.2 Cause for debarment

(a) The Authority may decline to approve a project, give financial assistance to any project or participant therein, debar a person from contracting with the Authority or debar a person from Authority project contracting for the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract thereunder, or in the performance of such contract or subcontract;

2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty;

3. Violation of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c);

4. Violation of any laws governing the conduct of elections of the Federal Government, State of New Jersey or of its political subdivisions;

5. Violation of the "Law Against Discrimination" (P.L.1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L.1975, c.127), or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.);

6. Violation of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;

7. Violation of any laws governing the conduct of occupations or professions or regulated industries;

8. Violation of any laws which may bear upon a lack of responsibility or moral integrity;

9. Willful and unjustified failure to perform in accordance with contract specifications or with contractual time limits;

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred with a reasonable time preceding the determination to debar and was caused by acts with the control of the person debarred;

11. Any other cause of such serious and compelling nature as may be determined by the Authority to warrant disqualification for assistance or debarment from contracting with the Authority or from Authority project contracting, even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

12. Debarment by any department or agency of the Executive Branch of State Government;

13. Debarment by the Department of Housing and Urban Development, Federal Housing Administration or any other instrumentality, agency or department of the United States Government.

#### 19:65-7.3 Conditions affecting debarment

(a) The following conditions shall apply concerning debarment:

1. Debarment shall be made only upon approval of the Authority, upon its own action or upon recommendation by the Executive Director of the Authority, except as otherwise provided by law.

2. The existence of any of the causes set forth in N.J.A.C. 19:65-7.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Authority, upon its own action or upon recommendation of the Executive Director of the Authority, unless otherwise required by law, and shall be based upon the best interests of the State.

3. All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequate of performance and in deciding whether debarment is warranted.

4. The existence of a cause set forth in N.J.A.C. 19:65-7.2(a)1 through 7.2(a)8 shall be established upon the rendering of a final judgment or conviction including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

5. The existence of a cause set forth in N.J.A.C. 19:65-7.2(a)11 shall be established by evidence which the Authority determines to be clear and convincing in nature.

6. Debarment for the causes set forth in N.J.A.C. 19:65-7.2(a)11 shall be proper, provided that one of the causes set forth in N.J.A.C. 19:65-7.2(a)1 through 7.2(a)10 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such factors and additional facts.

#### 19:65-7.4 Procedures: Period of debarment

(a) When the Authority seeks to debar a person or its or his or her affiliates, such person or persons shall be furnished with a written notice stating that:

1. Debarment is being considered;
2. The reasons for the proposed debarment; and

3. An opportunity will be afforded to such person or persons for a hearing if the hearing is requested within seven days from the date of personal delivery or the date of mailing of such notice.

(b) All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 54:144B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Where any State department or agency has already imposed debarment upon a party, the Authority may also impose a similar debarment without affording an opportunity for a hearing, provided the Authority furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in its or his or her behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(c) Debarment shall be a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information

in its or his or her behalf to explain why the additional period of debarment should not be imposed.

(d) Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced in the discretion of the Authority, upon its own action or upon recommendation of the Executive Director, upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the cause for which the debarment was imposed.

(e) A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of a person may be imputed to an affiliate of such person, where such conduct was accomplished within the course of its or his or her official duty or was effected by it or him or her with the knowledge or approval of such person.

#### 19:65-7.5 Causes for suspension of a person

In the public interest, the Authority may, upon approval of the Attorney General, suspend a person for any cause specified in N.J.A.C. 19:65-7.2 or upon a reasonable suspicion that such cause exists.

#### 19:65-7.6 Conditions for suspension of a person

(a) The following conditions concerning suspension shall be adhered to:

1. Suspension shall be imposed only upon approval of the Authority, upon its own action or upon recommendation by the Executive Director of the Authority, and upon approval of Attorney General, except as otherwise provided by law.

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Authority, upon its own action or upon recommendation by the Executive Director of the Authority, and at the discretion of the Attorney General, and shall be rendered in the best interests of the State.

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists.

4. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts.

5. Reasonable suspicion of the existence of a cause described in N.J.A.C. 19:65-7.2(a)1 through 7.2(a)8 may be established by the rendering of a final judgment or conviction by a court or administrative agency or competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur.

6. A suspension invoked by another agency for any of the causes described in N.J.A.C. 19:65-7.2 may be the basis for the imposition of a concurrent suspension by the Authority, which suspension may be imposed when found to be in the best interest of the State.

#### 19:65-7.7 Procedures: Period of suspension; Scope of suspension affecting the suspension of a person

(a) The following provisions regarding procedures, period of suspension and scope of suspension shall be adhered to by the Authority:

1. Upon approval of the Attorney General, the Authority may suspend a person or its or his or her affiliates, provided that within 10 days after the effective date of the suspension, the Authority provides such party with a written notice:

- i. Stating that a suspension has been imposed and its effective date;
- ii. Setting forth the reasons for the suspension to the extent that the Attorney General determined that such reasons may be properly disclosed;

iii. Stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and

iv. Indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if it, he or she so requests, or a statement declining to give such reasons and setting forth the Authority's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by the Authority, the Authority shall note that fact as a reason for its suspension.

2. A suspension shall not continue beyond 18 months from its effective

date unless civil or criminal in regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution, civil action or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

3. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom it, he or she is affiliated, where such conduct was accomplished within the course of its, his or her official duty or was effectuated by it, him or her with the knowledge or approval of such person.

19:65-7.8 Extent of debarment and suspension

The exclusion from Authority project contracting by virtue of debarment or suspension shall extend to all contracting and subcontracting within the control or jurisdiction of the Authority including any contracts which utilize Authority funds. When it is determined by the Authority, upon its own action or upon recommendation by the Executive Director of the Authority, to be essential to the public interest, and upon filing of a finding thereof by the Attorney General, and in the case of suspension, upon approval of the Attorney General, an exemption from total exclusion may be made by respect to a particular Authority contract.

19:65-7.9 Notice to Attorney General and Treasurer

Insofar as practicable, prior notice of any proposed debarment or suspension shall be given by the Authority to the Attorney General and the State Treasurer. The Authority shall supply to the State Treasurer a list of all persons having been debarred or suspended in accordance with the procedures prescribed in these rules, including the effective date and term, if any, of such debarment or suspension. Such list shall at all times be available for public inspection.

19:65-7.10 Lists of other agencies

Notwithstanding the failure of the Authority to debar or suspend any person pursuant to these rules, whenever the Authority participates in any program financed, issued or guaranteed by and department, agency or instrumentality of the State or the United States Government, it may rely on any list of persons suspended or debarred by such agency, department or instrumentality and prevent the listed person from participating in that program.

19:65-7.11 Authority discretion

Nothing contained in this subchapter is intended to limit the discretion of the Authority in determining eligibility for financial or other assistance or to contract or refrain from contracting with any person. The purpose of this subchapter is to provide notice of certain offenses or failures which may result in disqualification for assistance or debarment. Project applicants and participants must meet any other applicable standards and policies.

19:65-7.12 Executive Director to implement subchapter

The Executive Director is authorized to take all necessary action to implement and administer the provisions of this subchapter.

SUBCHAPTER 8. WAIVERS

19:65-8.1 Waivers generally

Nothing in these rules shall be construed to prohibit the Authority from granting waivers from the provisions hereof or the provisions of the Act as expressly provided for in the Act.

19:65-8.2 Procedure

Any party desiring a waiver or release from the express provisions of any of these rules may submit a written request to the Authority to the attention of the Executive Director. Waivers may be granted by the Authority only when such waiver would not contravene the provisions of the Act and upon a finding that in granting the waiver the Authority will be consistent with the statutory purposes of the Authority.

(a)

**DELAWARE RIVER BASIN COMMISSION**  
**Water Code and Administrative Manual—Part III**  
**Water Quality Regulations**

Adopted: May 28, 1986 by Delaware River Basin Commission,

Susan M. Weisman, Secretary.

Filed: June 5, 1986 as R.1986 d.244.

Effective Date: May 28, 1986.

Full text of the adoption follows:

No. 86-8

A RESOLUTION amending the Comprehensive Plan, **Water Code and Administrative Manual—Part III Water Quality Regulations** in relation to intrastate disinfection requirements.

WHEREAS, the Commission's **Water Code and Administrative Manual—Part III Water Quality Regulations** currently require year-round disinfection of waste discharges containing human excreta or disease-producing organisms (except for stormwater bypass); and

WHEREAS, the Commission held a public hearing on September 12, 1983 on a proposal to allow disinfection to be practiced on a seasonal basis by dischargers to all streams in the Basin except those in Zones 5 and 6 of the Delaware River; and

WHEREAS, the Commission then decided that additional data were needed to determine if shellfishing water quality could be protected under the proposed amendments and authorized a two-year study to begin July 1, 1986 to provide this data; and

WHEREAS, there is no need to wait until 1988 to consider amending disinfection requirements for dischargers to intrastate streams as disinfection practices by dischargers to most Basin streams will not impact shellfishing water quality or bacterial quality of streams forming or crossing state boundaries; and

WHEREAS, dischargers to interstate waters of the Basin will continue to be subject to the Commission's year-round disinfection requirements; and

WHEREAS, the Commission held a public hearing on February 26, 1986 on proposed amendments calling for disinfection by dischargers to intrastate waters only as needed to meet applicable Commission or State water quality standards and testimony has been received and considered by the Commission; now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Comprehensive Plan and subsection 3.10.4B of the **Water Code and Administrative Manual—Part III Water Quality Regulations** are hereby amended to read as follows:

B. **Disinfection.** Wastes (exclusive of stormwater bypass) containing human excreta or disease-producing organisms shall be effectively disinfected before being discharged into surface bodies of water as needed to meet applicable Commission or State water quality standards.

2. Subsection 4.30.9B.1 of **Administrative Manual—Part III Water Quality Regulations** is amended to read as follows:

1.a. Waste treatment operations, except disinfection, shall not be curtailed at any time of the year.

b. The capability to resume disinfection, upon reasonable notice not to exceed 15 days, shall be maintained.

3. This resolution shall take effect immediately.

OFFICE OF ADMINISTRATIVE LAW NOTE: These rules are not subject to codification and will not appear in the New Jersey Administrative Code.

# MISCELLANEOUS NOTICES

## COMMUNITY AFFAIRS

(a)

### DIVISION OF HOUSING AND DEVELOPMENT

#### Notice of Agency Response to Petition for a Rule Uniform Construction Code

##### One and Two-Family Dwelling Construction Subcode

A Notice of Petition for a Rule to amend Section R-214.2 of the One and Two-Family Dwelling Construction Subcode with regard to winders and spiral stairs was published December 16, 1985 at 17 N.J.R. 3015(a).

The petitioner sought to amend the aforementioned provisions of the One and Two-Family Dwelling Construction Subcode (CABO One and Two-Family Dwelling Code) to read as follows:

**Section R. 214.2(a) Winders.** Winders are permitted provided the width of the tread at a point not more than twelve (12) inches from the side where the treads are narrower is not less than nine (9) inches and the minimum width is not less than six (6) inches.

Winders are permitted provided the minimum width of any tread is no less than six (6) inches and the average width of any tread is not less than nine (9) inches.

**Section R. 214.2(b) Spiral Stairs.** Spiral stairways are permitted provided the width of the tread at a point not more than twelve (12) inches from the side where the treads are narrower is not less than nine (9) inches.

The petitioner stated that the present language of Section R-214.2 is in conflict with the BOCA/National Building Code.

The public was invited to comment on the petition; however, no comments were received.

After careful consideration by both the Department staff and the Code Advisory Board, it has been determined that the petition be denied for the following reasons:

1. The One and Two-Family Dwelling Construction Subcode (CABO One and Two-Family Dwelling Code) is designed for simplicity, both from the user's standpoint and from an enforcement perspective. In order to justify compromising this advantage, changes made by the Department should be limited to those deemed most critical (that is, those involving fire safety, structural stability or similar life safety concerns).

2. The Department of Community Affairs has adopted the CABO Code for one and two-family dwellings only as an *option* for homeowners. The applicant may choose to adhere to either the CABO or the BOCA standards in the construction of a one or two-family dwelling. All other types of construction must comply with BOCA Code.

3. The proposed code change would not, in any event, bring the CABO document into conformity with the BOCA Basic/National Building Code.

4. The State adopts national codes. To make technical changes to one of these codes, the proper procedure is to make application to the national board or organization which promulgates that code. This is the procedure followed by the State of New Jersey to effect technical code changes. The Department would encourage the petitioner to present this suggested change to CABO in the prescribed manner.

Information as to CABO code change procedures and code change submittal can be obtained from:

CABO  
5203 Leesburg Pike  
Suite 708  
Falls Church, Virginia 22041

## ENVIRONMENTAL PROTECTION

(b)

### DIVISION OF FISH, GAME AND WILDLIFE

#### Marine Fisheries Administration

##### Notice of Closure of Certain Natural Oyster Seed Beds in Delaware Bay

Authority: N.J.S.A. 50:1-5.

**Take notice** that based upon physical tests of natural oyster seed beds and the recommendation of the Bay Season Advisory Committee, the Delaware Bay Section of the Shellfisheries Council has voted to close the natural seed beds below a line from Bennies Point to Buoy No. 35, effective 3:30 P.M., Friday, May 30, 1986, and to close all remaining natural seed beds, effective 3:30 P.M., Friday, June 6, 1986. Pursuant to N.J.A.C. 7:25A-1.9(f), Richard T. Dewling, Commissioner of Environmental Protection, granted the necessary approvals to effect these closures.

(c)

### DIVISION OF WATER RESOURCES

#### Amendment to the Cape May County Water Quality Management Plan

##### Public Notice

Cape May County has submitted for approval an amendment to the Cape May County Water Quality Management (WQM) Plan to expand the Township of Lower Municipal Utilities Authority's sewer service to include Lots 14 and 11S of Block 496 located within Lower Township. The purpose of this expansion is to provide sewer service to a proposed residential development known as Holly Estates.

**This notice** is being given to inform the public that a plan amendment has been proposed for the Cape May County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the Cape May County Planning Board, Cape May Court House, New Jersey 08210, and the NJDEP, Division of Water Resources, Bureau of Planning and Standards, 25 Arctic Parkway, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

**Interested persons** may submit written comments on the amendment to George Horzempa, Bureau of Planning and Standards, at the NJDEP address cited above. All comments must be submitted within thirty days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the NJDEP with respect to the amendment request.

Any **interested person** may request in writing that the NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this notice to George Horzempa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(a)

**Amendment to Tri-County Water Quality Management Plan**

**Public Notice**

**Take notice** that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. The amendment provides for the extension of the Cooper River Interceptor into Berlin Township and Berlin Borough. Waste water from these two communities will be treated at Camden County Municipal Utilities Authority's Delaware #1 Plant. The existing Berlin Borough plant would be eliminated. The amendment has been recommended for approval by the Delaware Valley Regional Planning Commission, the designated areawide WQM planning agency.

**This notice** is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Planning and Standards, 25 Arctic Parkway, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

**Interested persons** may submit written comments on the amendment to George Horzepa, Bureau of Planning and Standards, at the NJDEP address cited above. All comments must be submitted within thirty days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any **interested person** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(b)

**NJPDES 1986-87 Annual Fee Report and Proposed Fee Schedule**

**Public Hearing**

**Take notice** that the Department of Environmental Protection will hold a public hearing to present the New Jersey Pollutant Discharge Elimination System (NJPDES) 1986-87 Annual Fee Report and the proposed Fee Schedule for fiscal year 1987. The hearing will be held on Monday, August 4, 1986 at 10:00 A.M. at the Labor Education Center, Ryders Lane and Clifton Avenue, on the Cook College, Rutgers University Campus, New Brunswick, New Jersey.

The Annual Fee Report and Assessment of Fees will be mailed July 1, 1986 to all NJPDES permittees and will be available for inspection at the Division of Water Resources, 1474 Prospect Street, Trenton, New Jersey during normal working hours and at all State Depository Libraries beginning July 1, 1986. Contact Debra Hammond, Bureau of Permits Administration at (609) 984-4428 for further information.

(c)

**DIVISION OF COASTAL RESOURCES**

**Notice of Relaxation of Application of N.J.A.C. 7:6-1.37(d)**

Authority: N.J.S.A. 12:6-1e and 12:7-34.49.

**Take Notice** that the Commissioner, Department of Environmental Protection, upon recommendation of the Boat Regulation Commission and finding it to be in the public interest and as provided at N.J.A.C. 7:6-1.2(b), relaxes the application of N.J.A.C. 7:6-1.37(d) in the manner specified below.

For the purpose of operating a parasailing business in the areas of Little Egg Harbor (Ham Island) and Barnegat Bay, Richard C. Gardner was, on August 20, 1984, granted a waiver of the maximum tow line length (75 feet) requirement contained in N.J.A.C. 7:6-1.37(d), thereby permitting his use of 300-foot tow lines. This waiver was granted for a two year period concluding at the termination of the 1985 boating season.

Upon the reapplication of Mr. Gardner and upon the recommendation of the New Jersey Boat Regulation Commission, this waiver is hereby extended for an additional two year period which shall conclude at the termination of the 1987 boating season.

This waiver can be withdrawn upon the Commissioner's making the finding that the parasailing operation is not being conducted with the utmost attention to the safety of the participants and observers alike or that said operation is not being conducted without endangerment to the general boating public.

(d)

**Amendment to Northeast Water Quality Management Plan**

**Public Notice**

The West Essex Developers, Inc. has requested an amendment to the Northeast Water Quality Management (WQM) Plan. The amendment is to expand the Verona Township's sewer service area to include the West Essex Highland Development in West Orange. The sewer extension permit for the West Essex Highlands Development is subject to adequate treatment plant capacity.

**This notice** is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Planning and Standards, 25 Arctic Parkway, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

**Interested persons** may submit written comments on the amendment to George Horzepa, Bureau of Planning and Standards, at the NJDEP address cited above. All comments must be submitted within thirty days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any **interested person** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

**HEALTH**

(e)

**Notice of Action on Petition for Rulemaking Minimum Flow Rate Provided By Portable Suction Devices Carried On Invalid Coaches and Ambulances**

N.J.A.C. 8:40-6.15(c)1

N.J.A.C. 8:40-6.5(c)12

Petitioners: The BOC Group, Inc.

Authority: N.J.S.A. 26:2H-1 et seq. and N.J.S.A. 52:14B-4(f).

**Take notice** that on April 14, 1986, petitioners, through their attorneys, Pitney, Hardin, Kipp and Szuch, filed a petition with the New Jersey State Department of Health, requesting amendments to N.J.A.C. 8:40-6.15(c)1 and N.J.A.C. 8:40-6.5(c)12, concerning the minimum flow rate provided by a portable suction device carried upon an Invalid Coach or Ambulance (see 18 N.J.R. 1204(d)). (Note: Invalid Coaches are not required to be equipped with aspirators.) The flow rate is currently set at 30 liters per minute (lpm); petitioners request that standard be lowered to 20 lpm. Pursuant to N.J.A.C. 1:30-3.6(c)3. This matter was referred to the Office of Emergency Health Services, within the Department of Health, for a technical review of the petition's merits.

The petition submitted on behalf of the BOC Group, Inc., is separated into five separate arguments. Each argument was reviewed, and responses thereto are as follows:

1. Petitioner points out that a federal standard for ambulance certification, establishing a flow rate of 20 lpm for portable suction devices, appears in "KKK-A-1822, Federal Specification, Ambulance, Emergency

Medical Care Vehicle ("KKK Spec"), which was developed by the Federal Department of Transportation (DOT). In fact, the above document was prepared and published by the Federal Supply Service, General Services Administration; DOT merely assisted in the development of the specification, and is not responsible for them. The document contains federal procurement specifications for ambulance vehicles, and are not federal regulations. Several states have chosen to use the "KKK Specs" as a basis for preparation of regulations, which are then modified as appropriate for local conditions. However, the State of New Jersey has no obligation to accept a federal vehicle procurement specification in lieu of its own medical standards.

Further, the 20 lpm standard noted in the "KKK Specs" was approved by the automobile section of the Federal Supply Service; no formal medical review of the standard was conducted. A physician, Peter Safar, M.D., former Chairman of the Task Force of the National Research Council on Ambulance Design and Equipment, criticized the decision to proceed with the lower flow rate.

Also, the 20 lpm flow rate is not uniformly accepted within the federal government itself, as the Defense Personnel Support Center (procurement agency for the Armed Forces) requires a 30 lpm flow rate for portable aspirators. (Suction Apparatus, Oropharyngeal, Portable, Battery Operated, 23 March 1984).

Petitioner also states that "... all major commercially available units, except one device, do not meet the more stringent New Jersey standard ... All other major manufacturers of commercially available portable suction units do not comply with the 30 lpm standard and are not domiciled in New Jersey."

In fact, there are at least two vendors (of which the Department is aware), Laerdal and Impact, which produce portable suction devices meeting New Jersey's standard (department staff spoke with both firms). Impact has two battery-powered aspirators with 30 lpm flow rate (there is no such product as Impact Model 3050GR, referenced in BOC's petition); Laerdal also produces two battery powered units meeting the state standard. There appear to be other manufacturers who produce aspirators meeting the 30 lpm standard (that is, SSCORT).

2. Office of Emergency Health Services staff reviewed a substantial amount of scientific literature, all indicating that 30 lpm is the standard for fixed (inboard) suction units. No literature was uncovered setting a standard (of any kind) for portable units. Moreover, no medical evidence was discovered suggesting that the standard should be different for portable, rather than fixed, suction devices.

The article submitted by petitioner, "Suction Devices: A Guide To Emergency Field Aspirators", Thom Dick, *jems*, March, 1985 (Journal of Emergency Medical Services), as authority for its requested change, was not complete.

Omitted was performance data on individual medical devices (the aspirators) described in the article. This data indicated that at least one other portable aspirator is manufactured which would apparently meet Department specifications (that is, SSCORT manufactures an aspirator producing an air flow of 33 lpm). Thus, petitioner could have realized that its statement that only one device met New Jersey standards was not true, simply by reading the entire article. However, the copy of the article attached to the petition did contain a sidebar (box) titled, "The JEMS Suction Model." When describing the ideal suction unit, it was stated that such a unit, "can provide a free airflow in excess of 30 lpm". Further, the July, 1985 issue of *jems* contained a letter from Ron Stewart, M.D., Director and President of Emergency Medicine of Western Pennsylvania, in which he said, "... Patients deserve more than subjective opinion. This is medicine we're practicing, not trying recipes in a cooking school." The editor's reply to the latter statement was that, "the testing criteria [used in the March 1985 evaluation of suction units] would not meet every measure of scientific research."

Finally, the author of the article in question, a *jems* associate editor and full-time paramedic, was described in the petition as "a knowledgeable authority in the emergency medical field." In fact, Mr. Dick is not a physician, nor is he associated with a recognized testing program for medical devices.

Petitioner also points out that volunteer first aid, rescue and ambulance squads are not required to adhere to the 30 lpm standard. Thus, petitioner states, "If a minimum 30 lpm standard was truly enacted as a health regulation, it seems evident that the standard for commercially owned and volunteer ambulances should be the same."

Petitioner's point is well taken. However, the Department of Health has no jurisdiction over volunteer agencies, pursuant to N.J.S.A. 26:2H-2(b), which specifically excludes from the definition of "health care service," "services provided first aid, rescue, and ambulance squads as

defined in the New Jersey Highway Safety Act of 1971, P.L. 1971, c. 351."

Despite this statutory exclusion, many volunteer services have in fact chosen to meet the same standards as commercial services, via the Department's voluntary certification program (operating since 1972), and through the voluntary certification provisions of N.J.A.C. 8:40-2.5(d).

3. Petitioners state that, "Those given the opportunity to comment ... prior to enactment, all agreed that these provisions create problems where none theretofore existed." In fact, as the adoption notice for the rules in question indicate (see, 17 N.J.R. 919) a number of comments were received; only three related to the issue of the flow rate of portable suction devices. Thus, the majority of those given an opportunity to comment on the rule did not choose to question our use of the 30 lpm standard.

Further, as indicated in the response to the three commentors on the minimum flow rate, a 30 lpm flow rate is a long-standing requirement contained in several documents dealing with ambulance design. No new medical evidence was supplied by petitioners to suggest that we should now change our position.

4. Petitioner argues that those parties most affected by promulgation of the regulation in question were not notified that the rule was being proposed, as required by N.J.S.A. 52:14B-1 et seq and rules promulgated thereunder. Petitioner states that the Department should have notified the manufacturers of ambulance components (such as aspirator manufacturers) of the proposed rule, and that failure to do so violates the spirit and intent of the Administrative Procedure Act.

The Department believes that it more than met the "spirit and intent of the APA." During the three and one half years in which N.J.A.C. 8:40-1 et seq was developed, drafts of the rule were shared with numerous affected parties, including the provider agencies most directly affected. The proposed rule was also published in trade association mailings, was the major topic of a statewide meeting sponsored by a trade association (N.J. Invalid Coaches Association, now known as the Medical Transport Association of New Jersey), and was the subject of numerous articles in newspapers throughout the State. Copies of the proposal were provided, at no cost, to any person or organization requesting them.

The Department did not notify component manufacturers directly of the proposal, since the rule dealt with licensure requirements for invalid coaches and ambulance services (not with requirements for component manufacturers). To extend petitioner's argument to its logical conclusion would require notification to the manufacturers of components of the components (for example, the manufacturer of the screws in the aspirator).

Further, even had the Department deemed it appropriate to notify component manufacturers directly, it would not have known that BOC (or its Ohmeda division) manufactured portable aspirators. The *Health Devices Sourcebook*, (1985-6 edition) published by ECRI (a non-profit agency, nationally recognized as a testing group for medical devices), lists and evaluates medical devices, and would be the optimum source to determine component manufacturers. However, the *Health Devices Sourcebook* did not indicate that BOC (or its Ohmeda division) produced emergency aspirators in November, 1984, when the rule was proposed. Thus, it would have been impossible to notify BOC/Ohmeda (as a component manufacturer), since it was not even producing the device when the rule was proposed (as indicated by ECRI's *Sourcebook*). Further, as far as Department staff could determine while reviewing this petition, BOC/Ohmeda had not applied for FDA approval to market this medical device, when the rule was proposed.

Finally, petitioner infers that, had it been notified of the proposal, it would have submitted comments which would have caused the Department to alter the 30 lpm standard. However, as indicated above, other commentors did question the standard; those comments were adequately addressed in the adoption notice. This petition did lead department staff to re-review its conclusions regarding the 30 lpm; that review uncovered no new medical evidence to suggest that, at this time, the standard of 30 lpm should be lowered to 20 lpm.

In conclusion, petitioners made several arguments which they felt should result in either amendment or suspension of N.J.A.C. 8:40-1 et seq. Department staff carefully reviewed those arguments, as well as all medical information available to it, in an effort to determine the scientific validity of the argument presented by petitioner. The literature reviewed does not justify an amendment to the 30 lpm standard at this time.

Petitioners legal arguments, concerning adequate notice to all interested parties, have been responded to above. The Department believes that it did meet the requirements of the law, and will not suspend the rule as requested by petitioner.

Therefore, the Department of Health denies the petitioner's request for amendments to N.J.A.C. 8:40-6.15(c)1, and N.J.A.C. 8:40-6.5(c)12, and

will maintain a requirement that all portable aspirators carried on Ambulance services provide a flow rate of at least 30 lpm.

(a)

**DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT**

**Home Health Care Services  
Certificate of Need Batching Cycle  
Public Notice**

Take notice that the Commissioner of Health in cooperation with the Health Care Administration Board, has deleted for one time only the batching cycle found at N.J.A.C. 8:33-1.5(d) scheduled to begin September 15, 1986 for certificate of need applications for home health services.

The next deadline for the submission of new or revised certificate of need applications for home health services will be on December 1, 1986 for a January 15, 1987 cycle. The change shall have no effect on subsequent batching cycles for certificate of need applications for home health services.

This deletion of the batching cycle is being implemented in order to provide sufficient time for the Statewide Health Coordinating Council to act on policy recommendations of the Department of Health's Home Health Advisory Group. Issues to be addressed in this planning process include the methodology for computing home health resource need, the further definition of the policy of "limited competition," and the C/N requirements for provision of indigent care.

This deletion of the batching cycle should not have an adverse impact on access to home health care services in the State. There are currently 69 agencies approved in New Jersey, of which 21 have been approved since 1982.

Any inquiries should be addressed to:

John A. Calabria  
Chief  
Health Systems Review  
CN 360, Room 604  
Trenton, New Jersey 08625-0360

**HUMAN SERVICES**

(b)

**DIVISION OF PUBLIC WELFARE**

**General Assistance Manual  
Reevaluation of LRRs, N.J.A.C. 10:85-9.6  
Food Stamp Manual  
Earned Income, N.J.A.C. 10:87-5.4  
Notice of Correction**

Take notice that errors appear in the New Jersey Administrative Code at N.J.A.C. 10:85-9.6(d) concerning Reevaluation of LRRs and at N.J.A.C. 10:87-5.4(a) concerning Earned income. The current text of N.J.A.C. 10:85-9.6 was published in the New Jersey Register at 8 N.J.R. 284(a), 8 N.J.R. 557(b). The current text of N.J.A.C. 10:87-5.4 was published in the Register at 15 N.J.R. 1823, 16 N.J.R. 246(a). The correct text of N.J.A.C. 10:85-9.6(d) and 10:87-5.4(a) as it should appear in the New Jersey Administrative Code is as follows:

10:85-9.6 Reevaluation of LRRS

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

(d) The MWD shall avoid making routine requests of other agencies to contact relatives for reevaluation of capacity to support. When, after careful evaluation of the need for such service, it is considered essential to request an interview, the letter of request shall clearly identify both the nature and the purpose of the desired service.

10:87-5.4 Earned income

(a) For the purposes of determining Net Food Stamp Income, earned income shall include:

1.-4. (No change in text.)

5. Payments to volunteers: Payments to volunteers under Title I (VISTA, University Year for Action, and so forth) of the Domestic Volunteer Service Act of 1973 (P.L. 93-113) shall be considered earned income and subject

to the earned income deduction specified in N.J.A.C. 10:87-5.10(a)2, excluding payments to households as set forth in N.J.A.C. 10:87-5.9(a)12iii.

**TREASURY-GENERAL**

(c)

**DIVISION OF BUILDING AND CONSTRUCTION**

**Architect-Engineer Selection  
Notice of Assignments—Month of May**

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, pre-qualified New Jersey consulting firms. For information on DBC's pre-qualification and assignment procedures, call (609) 984-6979.

Last list dated May 12, 1986.

The following assignments have been made:

DBC No.	PROJECT	A/E	CCF
A512	Renovations to Renaud Residence Monmouth Battlefield State Park	Joseph N. Wirth & Associates	\$ 100,000.00
H774	New Fume Hood Print Lab-Holman Hall Trenton State College	Edward A. Sears Assoc.	\$ 125,000.00
P476	Wading Pool Replacement Round Valley Recreation Area Clinton, NJ	Kruger, Kruger, Albenberg	\$ 88,000.00
E157	Interior Repairs, Plastering, Painting Various Campus Buildings Marie H. Katzenbach School for the Deaf West Trenton, NJ	Richard M. Horowitz, AIA	\$ 67,505.00
M676	Sewer Line Improvements Mercer County Day Training Center Trenton, NJ	Trenton Engineering Company, Inc.	\$ 24,500.00
H829	New Elevator & Handicapped Renovations Panzer & College Hall Montclair State College Upper Montclair, NJ	L. J. Mineo, Jr., AIA	\$ 160,000.00
M625	Miscellaneous Repairs Plainfield & Freehold Division of Youth & Family Services	Dalim Sibdial Sau, AIA	\$ 70,000.00
C312	Feasibility Study Adult Diagnostic Training Center Avenel, NJ	BBM Architects Services	\$ 5,000.00
H861	Site Improvements Parking Lot Stairs (-01) Athletic Field Improvements (-02) William Paterson College Wayne, NJ	Sidney M. Johnson & Associates	\$ 94,000.00

COMPETITIVE PROPOSALS

M674	Air Conditioning of Dining Room Areas Marlboro Psychiatric Hospital Marlboro, NJ	Maitra Associates	\$ 28,910.00
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COMPETITIVE PROPOSALS

Maitra Associates, Inc.	5.90%
M. Benton & Associates	9.395%
O'Connor, Jeffrey & Kallaur	11.33%
John C. Morris Associates, Inc.	11.90%

C280	Life Safety Survey Yepsen Unit Bordentown, NJ	John C. Morris Assoc., Inc.	\$ 23,400.00 Services
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COMPETITIVE PROPOSALS

John C. Morris Associates, Inc.	\$23,400 Lump Sum
Edward A. Sears Associates	\$24,900 Lump Sum
Tectonic, PA	\$48,915 Lump Sum
Borda Engineers & Energy Consultants	No Proposal Received

A434-01	Phase I N.J. Horse Park at Stone Tavern Freehold, NJ	Eugene F. O'Connor, AIA	\$1,000,000.00
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COMPETITIVE PROPOSALS

Eugene F. O'Connor, AIA	5.68%
Vaughn Organization	8.25%
Zwotow & Eckert, AIA	14.90%

A902 Replacement of MLS400 Syska & Hennessy, Inc. \$2,000,000.00  
Trenton Capitol Complex  
Trenton, NJ

COMPETITIVE PROPOSALS

Syska & Hennessy, Inc. 7.25%  
Gibbs & Hill, Inc. 7.40%  
Cosentini Associates 8.90%  
Joseph R. Loring Assoc./  
Stanley Seroka, J.V. 15.00%

P484 Reassigned Project

Bathroom Complex Renovations Kolbe & Poponi, PA \$ 250,000.00  
Parvin State Park  
Pittsgrove Township  
Salem County, NJ

COMPETITIVE PROPOSALS

\*Manders-Merighi Associates 11.45%  
Kolbe & Poponi, PA 13.42%  
Lammy & Giorgio, PA 17.80%

\*Declined Project

E146 Alterations to Five Regional Day Schools Oliver & Becica, AIA, PA \$ 300,000.00  
Ocean, Mercer, Camden, Atlantic &  
Salem Counties

COMPETITIVE PROPOSALS

Oliver & Becica, AIA, PA 9.25%  
Lammy & Giorgio, PA 12.20%  
Kolbe & Poponi, PA 12.79%  
The Lisiewski Group, PA 13.50%

M655 Study of Existing Conditions/  
Asbestos Remediation and Utility Repair BCM Eastern, Inc. \$ 13,400.00  
Woodbine & Vineland Developmental Center  
& Marlboro Psychiatric Hospital Services

COMPETITIVE PROPOSALS

BCM Eastern, Inc. \$ 13,400 Lump Sum  
O'Brien & Gere Engineers, Inc. \$ 18,000 Lump Sum  
Joseph R. Loring & Associates \$ 93,000 Lump Sum  
STV/Seelye, Stevenson, Value & Knecht \$128,000 Lump Sum

H828 Fire Safety Improvements Technical Associates, \$ 200,000.00  
Fine Arts Building Inc.  
Montclair State College  
Upper Montclair, NJ

COMPETITIVE PROPOSALS

Technical Associates, Inc. 7.00%  
A. D. Jilajian & Assoc. 9.30%  
K. Feinberg Associates 12.50%

### EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by Title and Chapter. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the Title Table of Contents for each executive department or agency and on the Subtitle page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1		N.J.A.C.	Expiration Date
N.J.A.C.	Expiration Date	3:17	6/18/86
1:1	5/15/90	3:19	3/17/91
1:2	5/15/90	3:21	11/2/86
1:6A	1/1/88	(Except for 3:21-1 which expired 2/2/84)	
1:7	8/9/90	3:22	5/21/89
1:10	3/4/90	3:23	5/3/87
1:10A	9/16/90	3:24	8/20/89
1:11	3/4/90	3:26	12/31/90
1:20	8/1/88	3:27	9/16/90
1:21	7/15/90	3:28	12/17/89
1:30	2/14/91	3:30	10/17/88
1:31	8/12/87	3:38	9/7/87
		3:41	10/16/90

AGRICULTURE—TITLE 2	
N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	10/3/88
(Except for 2:2-9 which expired 6/11/84)	
2:3	6/18/89
(Except for 2:3-4 which expired 1/8/86)	
2:5	6/18/89
2:6	9/3/90
2:7	9/29/88
2:9	7/7/91
2:16	5/7/90
2:22	1/18/87
2:23	6/6/88
2:24	2/11/90
2:32	2/3/91
2:48	11/27/90
2:50	7/15/87
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	8/1/88
2:69	10/3/88
2:70	5/7/90
2:71	9/1/88
2:72	9/1/88
2:73	7/18/88
2:74	9/1/88
2:76	8/29/89
2:90	6/24/90

BANKING—TITLE 3	
N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
(Except for 3:6-8 which expired 4/9/85)	
3:7	9/16/90
3:11	3/19/89
(Except for 3:11-2 which expired 6/3/85)	

CIVIL SERVICE—TITLE 4	
N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/7/86
4:5	12/7/86
4:6	5/5/91

COMMUNITY AFFAIRS—TITLE 5	
N.J.A.C.	Expiration Date
5:3	9/1/88
5:10	12/1/88
5:11	3/1/89
5:12	1/1/90
5:13	1/1/88
5:14	12/1/90
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:22	12/1/90
5:23	4/1/88
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	7/1/86
5:30	6/1/88
5:31	12/1/89
5:37	11/18/90
5:38	11/7/88
5:51	9/1/88
5:70	8/16/87
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91
5:100	5/7/89

DEPARTMENT OF DEFENSE—TITLE 5A	
N.J.A.C.	Expiration Date
5A:2	5/20/90

**EDUCATION—TITLE 6**

N.J.A.C.	Expiration Date
6:2	3/1/89
6:3	8/18/88
6:8	1/1/87
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	6/1/89
6:29	3/25/90
6:30	1/1/87
6:31	1/24/90
6:39	10/18/89
6:43	4/7/91
6:46	12/1/86
6:53	9/1/87
6:64	5/1/88
6:68	4/12/90
6:70	1/25/90
6:79	2/1/88

**ENVIRONMENTAL PROTECTION—TITLE 7**

N.J.A.C.	Expiration Date
7:1	9/16/90
(Except for 7:1-3 which expired 3/5/87)	
7:1A	6/7/87
7:1C	6/17/90
7:1D	12/1/88
7:1E	7/15/90
7:1F	3/27/87 (Governor's Waiver)
7:1G	10/1/89
7:1H	7/24/90
7:1I	11/18/88
7:2	7/19/88
7:4	Expired 8/16/84
7:6	12/19/88
7:7	5/7/89
7:7E	7/24/90
7:7F	12/6/87
7:8	2/7/88
7:9	1/21/91
(Except for 7:9-1 which expired 4/25/85)	
7:10	9/4/89
7:11	6/6/88
(Except for 7:11-5 which expired 12/31/83)	
7:12	6/6/88
7:13	5/4/89
7:14	4/27/89
(Except for 7:14-5 which expired 6/23/85)	
7:14A	6/4/89
7:15	4/2/89
7:17	4/7/91
7:18	8/6/86
7:19	4/15/90
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/19/88
7:21-4	Expired 4/10/84
7:22	12/7/86
7:23	6/18/89
7:24	5/19/91
7:25	2/18/91
(Except for 7:25-1 which expired 9/17/85)	

N.J.A.C.	Expiration Date
7:25A	5/6/90
7:26	11/4/90
(Except for 7:26-5 which expired 10/7/85)	
7:27	Exempt
7:27A	Expired 10/7/85
7:28	10/7/90
7:29	3/18/90
7:29B	4/5/87
7:30	12/6/87
7:36-1	8/5/90
7:36-2	Expired 1/9/86
7:36-3	Expired 1/9/86
7:36-4	8/5/90
7:36-5	Expired 1/9/86
7:36-6	Expired 1/9/86
7:36-7	8/5/90
7:37	Expired 3/30/84
7:38	9/18/90
7:45	Expired 1/11/85

**HEALTH—TITLE 8**

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	5/21/89
8:9	2/18/91
8:13	8/2/87
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
(Except for 8:21-1 which expired 5/15/85;	
8:21-4 which expired 7/21/83;	
8:21-6 which expired 9/18/85)	
8:21A	4/1/90
8:22	5/4/86
8:23	12/17/89
8:24	4/4/88
8:25	5/20/88
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
(Except for 8:31B-1 which expired 7/19/84)	
8:32	Expired 3/12/85
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	8/20/89
8:33D	2/1/87
8:33E	2/4/90
8:33F	1/14/90
8:33G	7/20/89
8:33H	7/19/90
8:33I	11/2/86
8:33J	5/17/89
8:33K	4/16/89
8:34	11/18/88
8:39	6/20/88
8:40	4/15/90
8:42	3/18/90
8:42A	6/12/91
8:42B	8/1/88
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	1/17/88
8:43F	3/18/90
8:44	11/7/88
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:53	Expired 7/19/84
8:57	6/18/90

N.J.A.C.	Expiration Date
8:58	Expired 5/1/84
8:59	10/1/89
8:60	5/3/90
8:65	12/2/90
(Except for 8:65-11 which expired 7/17/85)	
8:70	9/17/88
8:71	4/2/89

N.J.A.C.	Expiration Date
10:90	11/15/87
10:94	1/6/91
10:95	8/23/89
10:97	4/16/89
10:98	7/12/87
10:99	2/19/90
10:100	2/6/89
10:109	3/17/91
10:112	2/17/89
10:120	9/26/88
10:121	3/13/89
10:121A	8/6/86
10:122	8/6/89
10:122A	Exempt
10:122B	9/10/89
10:123	7/20/90
10:124	7/19/87
10:125	7/16/89
10:127	9/19/88
10:129	10/11/89
10:130	9/19/88
10:131	9/20/87
10:132	11/16/86
10:140	12/31/86
10:141	2/21/89

**HIGHER EDUCATION—TITLE 9**

N.J.A.C.	Expiration Date
9:1	1/17/89
9:2	6/17/90
9:3	10/17/88
9:4	11/2/86
9:5	1/21/91
9:6	5/20/90
9:7	4/13/88
9:8	11/4/90
9:9	10/3/88
9:11	1/17/89
9:12	1/17/89
9:14	5/20/90
9:15	10/25/88
9:16	Expired 7/9/85

**CORRECTIONS—TITLE 10A**

N.J.A.C.	Expiration Date
10A:31	2/4/90
10A:32	3/4/90
10A:33	7/16/89
10A:70	Exempt
10A:71	4/15/90

**HUMAN SERVICES—TITLE 10**

N.J.A.C.	Expiration Date
10:1	5/6/88
10:3	9/19/88
10:4	1/3/88
10:5	12/19/88
10:6	2/21/89
10:37	11/4/90
10:38	5/28/91
10:40	3/15/89
10:43	9/1/88
10:44	10/3/88
10:44A	2/7/88
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	9/10/86
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/88
10:67	3/3/91
10:68	7/9/86
10:69A	4/26/88
10:69B	11/21/88
10:70	6/16/91
10:80	8/23/89
10:81	10/15/89
10:82	10/29/89
10:85	1/3/90
10:87	3/1/89
10:89	9/11/90

**INSURANCE—TITLE 11**

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	7/7/88
11:1-22	7/7/88
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	11/7/88
11:10	7/15/90
11:12	11/2/86
11:13	12/6/87
11:14	7/2/89
11:15	12/3/89
11:16	2/3/91

**LABOR—TITLE 12**

N.J.A.C.	Expiration Date
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:20	11/5/89
12:35	8/5/90
12:45	5/2/88
12:46	5/2/88
12:47	5/2/88
12:48	5/2/88
12:49	5/2/88
12:51	8/1/86
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:120	5/3/90

N.J.A.C.	Expiration Date
12:175	12/9/88
12:190	9/5/87
12:195	9/6/88
12:200	8/5/90
12:235	5/5/91

**LAW AND PUBLIC SAFETY—TITLE 13**

N.J.A.C.	Expiration Date
13:1	7/19/88
13:1C	Expired 12/1/83
13:2	8/5/90
13:3	8/1/88
13:4	1/21/91
13:10	5/27/89
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	6/4/89
13:24	11/5/89
13:25	3/18/90
13:26	10/17/88
13:27	4/1/90
13:27A	11/1/87
13:28	9/3/90
13:29	6/3/90
13:30	4/15/90
13:31	12/21/86
13:32	11/1/87
13:33	3/18/90
13:34	11/21/88
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	1/6/91
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	11/3/88
13:43	9/8/88
13:44	8/20/89
13:44A	Expired 5/17/84
13:44B	5/3/87
13:44C	6/2/91
13:45A	12/16/90
13:46	6/3/90
13:47A	8/16/87
(Except for 13:47A-25 which expired 8/14/83)	
13:47B	1/4/89
13:47C	8/20/89
13:48	1/21/91
13:49	12/19/88
13:51	6/21/87
13:58	9/7/89
13:59	9/16/90
13:70	2/25/90
13:71	2/25/90
13:75	8/20/89
13:76	9/6/88

**PUBLIC UTILITIES—TITLE 14**

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:11	2/1/87
14:17	5/7/89
14:18	7/29/90

**ENERGY—TITLE 14A**

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
(Except for 14A:3-10 which expired 9/1/85)	
14A:4	10/19/88
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:9	Expired 4/27/84
14A:11	9/20/89
14A:12	2/7/88
14A:13	11/2/86
14A:14	2/6/89
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

**STATE—TITLE 15**

N.J.A.C.	Expiration Date
15:2	3/7/88
15:3	7/7/91
15:10	2/18/91

**TRANSPORTATION—TITLE 16**

N.J.A.C.	Expiration Date
16:1	8/5/90
16:2	10/3/88
16:6	9/3/90
16:13	5/7/89
16:16	11/7/88
16:17	11/7/88
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25-12	Expired 2/5/84
16:25-13	Expired 2/5/84
16:26	8/6/89
16:27	6/4/86
16:28	11/7/88
16:28A	11/7/88
16:29	11/7/88
16:30	11/7/88
16:31	11/7/88
16:31A	10/20/88
16:32	4/15/90
16:33	9/3/90
16:41	11/15/87
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	10/3/88
16:49	3/18/90
16:53	3/19/89
16:53A	4/15/90
16:53B	Expired 8/21/84
16:53C	9/19/88
16:53D	5/7/89
16:54	4/7/91
16:55	11/7/88
16:56	6/4/89
16:60	11/7/88
16:61	11/7/88
16:62	4/15/90
16:72	3/31/91
16:73	2/16/87
16:75	6/6/88
16:76	12/19/88
16:77	1/21/90
16:78	10/7/90

**TREASURY-GENERAL—TITLE 17**

N.J.A.C.	Expiration Date
17:1	6/6/88
17:2	12/17/89
17:3	6/6/88
17:4	7/1/90
17:5	12/2/90
17:6	2/19/89
17:7	6/6/88
17:8	6/27/90
17:9	6/6/88
17:10	6/6/88
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
17:19A	Expired 2/1/84
17:20	11/7/88
17:25	6/18/89
17:27	11/7/88
17:28	9/13/90
17:29	10/18/90

**TREASURY-TAXATION—TITLE 18**

N.J.A.C.	Expiration Date
18:3	4/23/89
18:5	4/16/89
18:6	4/2/89
18:7	4/2/89
18:8	4/2/89
18:9	8/12/88
18:12	8/12/88
18:12A	8/12/88
18:14	8/12/88
18:15	8/12/88
18:16	8/12/88
18:17	8/12/88
18:18	4/2/89
18:19	4/6/89
18:22	4/2/89
18:23	4/2/89
18:23A	8/5/90

**N.J.A.C.**

18:24	8/12/88
18:25	1/6/91
18:26	8/12/88
18:30	4/2/89
18:35	8/12/88
18:36	2/4/90
18:37	8/5/90

**Expiration Date**

**OTHER AGENCIES—TITLE 19**

**N.J.A.C.**

N.J.A.C.	Expiration Date
19:3	6/19/88
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	11/7/88
19:4A	5/2/88
19:8	6/1/88
19:9	7/13/88
19:12	8/21/86
19:16	8/21/86
19:17	7/15/88
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/17/88
19:42	5/17/88
19:43	4/27/89
19:44	10/13/88
19:45	4/7/88
19:46	5/4/88
19:47	5/4/88
19:48	10/13/88
19:49	3/29/88
19:50	5/23/88
19:51	11/2/86
19:52	10/8/86
19:53	5/4/88
19:54	4/15/88
19:61	7/7/91
19:65	7/7/91
19:75	1/17/89

**Expiration Date**

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

**The research supplement to the New Jersey Administrative Code**

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the May 5, 1986 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

#### **Terms and abbreviations used in this Index:**

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1986 d.100 means the one hundredth rule adopted in 1986.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A number and date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: APRIL 21, 1986.**

**NEXT UPDATE WILL BE DATED MAY 19, 1986.**

**Note:** If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

# N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
17 N.J.R. 1461 and 1608	June 17, 1985	18 N.J.R. 1 and 128	January 6, 1986
17 N.J.R. 1609 and 1700	July 1, 1985	18 N.J.R. 129 and 234	January 21, 1986
17 N.J.R. 1701 and 1818	July 15, 1985	18 N.J.R. 235 and 376	February 3, 1986
17 N.J.R. 1819 and 1954	August 5, 1985	18 N.J.R. 377 and 446	February 18, 1986
17 N.J.R. 1955 and 2070	August 19, 1985	18 N.J.R. 447 and 506	March 3, 1986
17 N.J.R. 2071 and 2170	September 3, 1985	18 N.J.R. 507 and 582	March 17, 1986
17 N.J.R. 2171 and 2318	September 16, 1985	18 N.J.R. 583 and 726	April 7, 1986
17 N.J.R. 2319 and 2484	October 7, 1985	18 N.J.R. 727 and 868	April 21, 1986
17 N.J.R. 2485 and 2584	October 21, 1985	18 N.J.R. 869 and 1018	May 5, 1986
17 N.J.R. 2585 and 2710	November 4, 1985	18 N.J.R. 1019 and 1122	May 19, 1986
17 N.J.R. 2711 and 2814	November 18, 1985	18 N.J.R. 1123 and 1222	June 2, 1986
17 N.J.R. 2815 and 2934	December 2, 1985	18 N.J.R. 1223 and 1326	June 16, 1986
17 N.J.R. 2935 and 3032	December 16, 1985	18 N.J.R. 1327 and 1432	July 7, 1986

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ADMINISTRATIVE LAW—TITLE 1</b>				
1:1, 1:2-1:21	Pre-proposal: Administrative hearings	18 N.J.R. 728(a)		
1:1-3.8	Attorney disqualification from a case	18 N.J.R. 2(a)		
1:1-15.10	Prior transcribed testimony	18 N.J.R. 1020(a)		
1:6	Education budget hearings	18 N.J.R. 1020(b)		
1:6A-5.4	Special education hearings: stay of decision implementation	18 N.J.R. 584(a)	R.1986 d.195	18 N.J.R. 1192(a)
1:30	Agency rulemaking: correction	18 N.J.R. 3(a)	R.1986 d.60	18 N.J.R. 938(a)
(TRANSMITTAL 20, dated April 21, 1986)				
<b>AGRICULTURE—TITLE 2</b>				
2:5-3	Avian influenza	18 N.J.R. 488(a)	R.1986 d.148	18 N.J.R. 938(b)
2:9-1.1, 1.2	Avian influenza and infected poultry flocks	18 N.J.R. 870(a)	R.1986 d.250	18 N.J.R. 1370(a)
2:22-3.1	Africanized honeybee control	18 N.J.R. 585(a)	R.1986 d.200	18 N.J.R. 1192(b)
2:24-1	Shipment of bees into State	18 N.J.R. 586(a)	R.1986 d.199	18 N.J.R. 1192(c)
2:69-1.11	Commercial values of fertilizers	18 N.J.R. 588(a)	R.1986 d.198	18 N.J.R. 1193(a)
2:71-2.2-2.7	"Jersey Fresh" Quality Grading Program	18 N.J.R. 588(b)	R.1986 d.201	18 N.J.R. 1196(a)
2:71-2.28, 2.29, 2.31	Fees for inspection and grading of fruit and vegetables	18 N.J.R. 448(a)	R.1986 d.147	18 N.J.R. 938(c)
2:76-3.12	Faerland preservation programs: deed restrictions	18 N.J.R. 508(a)	R.1986 d.196	18 N.J.R. 1192(b)
2:76-4.11	Municipally-approved preservation programs: deed restrictions	18 N.J.R. 511(a)	R.1986 d.197	18 N.J.R. 1195(a)
2:76-6.15	Acquisition of development easements: deed restrictions	18 N.J.R. 513(a)		
2:90-1.5, 1.14	Soil conservation plan certifications; minor subdivisions	17 N.J.R. 2172(a)		
2:90-1.13	Soil conservation: extraction activity	17 N.J.R. 1957(a)		
2:90-3.6, 3.9	Time extensions to complete conservation projects	18 N.J.R. 449(a)	R.1986 d.190	18 N.J.R. 1099(a)
(TRANSMITTAL 39, dated April 21, 1986)				
<b>BANKING—TITLE 3</b>				
3:1-2.24	Modification of Commissioner's Order restricting stock transfers	17 N.J.R. 2487(a)		
3:11-11	Leeway investments	18 N.J.R. 132(a)	R.1986 d.245	18 N.J.R. 1370(b)
3:11-11.13	Leeway investments: confidentiality of approval process	18 N.J.R. 1224(a)		
3:17	Small loan rules	18 N.J.R. 1021(a)		
3:38-5.2	Return of borrower's commitment fee	17 N.J.R. 2488(b)		
(TRANSMITTAL 33, dated April 21, 1986)				
<b>CIVIL SERVICE—TITLE 4</b>				
4:1-2.1, 5.2, 11.2, 16, 24	Separations, demotions, layoffs; review and appeals	18 N.J.R. 450(a)		
4:1-16, 24	Separations, layoffs, demotions	18 N.J.R. 450(a)	R.1986 d.206	18 N.J.R. 1260(a)
4:1-8.4	Promotional examinations	18 N.J.R. 591(a)		
4:1-15	Assignments and transfers	18 N.J.R. 592(a)		
4:2-15.1	Assignments and transfers	18 N.J.R. 592(a)		
4:2-16	Separations and demotions	18 N.J.R. 450(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
4:2-16	Separations, layoffs, demotions	18 N.J.R. 450(a)	R.1986 d.206	18 N.J.R. 1260(a)
4:3-16	Separations and demotions	18 N.J.R. 450(a)		
4:3-16	Separations, layoffs, demotions	18 N.J.R. 450(a)	R.1986 d.206	18 N.J.R. 1260(a)
4:6	Overtime compensation	18 N.J.R. 515(a)	R.1986 d.170	18 N.J.R. 939(a)

(TRANSMITTAL 29, dated April 21, 1986)

**COMMUNITY AFFAIRS—TITLE 5**

5:11-2.1	Uniform Fire Code enforcement and relocation assistance	17 N.J.R. 2938(a)		
5:12-2.4, 2.5	Homelessness Prevention Program: eligibility and priorities	17 N.J.R. 2939(a)		
5:18-1.1, 1.4, 1.5, 1.6, 2.3, 4	Uniform Fire Code, Fire Safety Code	17 N.J.R. 1161(a)	R.1986 d.214	18 N.J.R. 1260(b)
5:18-2.5, 2.7, 2.11, 2.14, 3.2, 4.1, 4.7, 4.9-4.13, 4.17, 4.18	Uniform Fire Code: Fire Safety Code	18 N.J.R. 1225(a)		
5:18A-2.3, 4.3, 4.4	Fire Code Enforcement	18 N.J.R. 1225(a)		
5:23-2.14, 4.18, 4.20	UCC: annual construction permits	17 N.J.R. 2490(a)	R.1986 d.213	18 N.J.R. 1266(a)
5:23-3.2	Subcode exceptions	18 N.J.R. 757(a)		
5:23-3.4, 3.14, 3.17, 3.20	Building, Fire Protection, and Mechanical Subcodes	18 N.J.R. 1235(a)		
5:23-3.11, 4.22, 4.24, 4.25	Uniform Construction Code: premanufactured construction	17 N.J.R. 1169(a)	R.1986 d.142	18 N.J.R. 945(a)
5:23-5.5, 5.7	Construction subcode licensure: transferability of experience	18 N.J.R. 594(a)	R.1986 d.255	18 N.J.R. 1373(a)
5:23-5.26	Uniform Construction Code: revocation of licenses	18 N.J.R. 16(b)	R.1986 d.173	18 N.J.R. 1099(b)
5:23-7	Barrier Free Subcode: access for physically handicapped and aged	18 N.J.R. 757(a)		
5:23-8	Asbestos hazard abatement subcode	18 N.J.R. 378(a)	R.1986 d.143	18 N.J.R. 949(a)
5:25	New Home Warranties and Builders' Registration	17 N.J.R. 2816(a)	R.1986 d.141	18 N.J.R. 959(a)
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 218(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 490(a)		
5:29	Housing and Development: petitions for rules	18 N.J.R. 871(a)		
5:30-17	Local public contracts: cooperative pricing and joint purchasing systems	18 N.J.R. 1022(a)		
5:80-8	Housing and Mortgage Finance Agency: housing project occupancy requirements	17 N.J.R. 1620(a)	R.1986 d.258	18 N.J.R. 1373(b)
5:80-20	HMFA housing projects: applicant and tenant income certification	17 N.J.R. 2321(b)		
5:80-20	HMFA housing projects: applicant and tenant income certification	18 N.J.R. 523(a)		
5:91	Council on Affordable Housing: procedural rules	18 N.J.R. 821(a)	R.1986 d.221	18 N.J.R. 1267(a)
5:92	Council on Affordable Housing: substantive rules	18 N.J.R. 1124(b)		

(TRANSMITTAL 40, dated April 21, 1986)

**DEFENSE—TITLE 5A**

(TRANSMITTAL 1, dated May 20, 1985)

**EDUCATION—TITLE 6**

6:11-2.1	Duties of State Board of Examiners	18 N.J.R. 595(a)		
6:12	Governor's Teaching Scholars Program	18 N.J.R. 135(a)	R.1986 d.158	18 N.J.R. 973(a)
6:20-4.4	Tuition for private schools for handicapped	18 N.J.R. 1237(a)		
6:20-5.5	State aid for asbestos removal and encapsulation	18 N.J.R. 392(b)	R.1986 d.204	18 N.J.R. 1198(a)
6:20-5.6	Minimum salaries and State aid	18 N.J.R. 393(a)	R.1986 d.205	18 N.J.R. 1199(a)
6:21-16.1	Pupil transportation contracts	18 N.J.R. 138(a)	R.1986 d.156	18 N.J.R. 975(a)
6:22-1.6, 1.7, 2.4, 3.1	School facility planning; substandard facilities	18 N.J.R. 526(a)		
6:24	Controversies and disputes under school law	18 N.J.R. 404(b)	R.1986 d.157	18 N.J.R. 976(a)
6:29-9	Policies and procedures concerning pupil use of drugs and alcohol	18 N.J.R. 1237(b)		
6:30	Adult and community education	18 N.J.R. 871(b)		
6:68-5	Audio-visual public library services	18 N.J.R. 595(b)		
6:68-6	Institutional library services	18 N.J.R. 597(a)		
6:69-2	Library services to the disadvantaged	18 N.J.R. 599(a)		

(TRANSMITTAL 39, dated April 21, 1986)

**ENVIRONMENTAL PROTECTION—TITLE 7**

7:1-3.20	ECRA review process: exempt industrial categories	18 N.J.R. 529(a)	R.1986 d.188	18 N.J.R. 1099(c)
7:1-6	Disposal of solid waste	18 N.J.R. 883(a)		
7:1-7	Hazardous substance discharges: reports and notices	17 N.J.R. 1826(a)	R.1986 d.229	18 N.J.R. 1272(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:1E-2.3	Discharge of hazardous substances: department response	18 N.J.R. 456(a)	R.1986 d.161	18 N.J.R. 980(a)
7:2-11.22	Bear Swamp East natural area	18 N.J.R. 139(a)	R.1986 d.202	18 N.J.R. 1200(a)
7:2-11.22	Bear Swamp East natural area: public hearing	18 N.J.R. 532(a)		
7:6-1.4, 1.12, 1.14, 1.15, 1.42	Boating rules	18 N.J.R. 876(a)		
7:7-2.2	Wetlands maps in Ocean County	17 N.J.R. 1710(a)	R.1986 d.262	18 N.J.R. 1374(a)
7:7-2.2	Wetlands management in Atlantic County	18 N.J.R. 1026(a)		
7:7E	Coastal Resource and Development revisions: extension of comment period	17 N.J.R. 1797(b)		
7:7E	Coastal Resource and Development Policies: correction to Code and proposed revisions	17 N.J.R. 1797(c)		
7:11-2.2, 2.3, 2.9	Sale of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs	18 N.J.R. 17(a)	R.1986 d.187	18 N.J.R. 1100(a)
7:12-1.2-1.6, 1.8, 2.1, 2.15	Shellfish-growing water classification	18 N.J.R. 784(a)	R.1986 d.234	18 N.J.R. 1275(a)
7:13-7.1	Floodway delineations along East Branch of Stony Brook, South Branch of Rockaway Creek, and Whale Pond Brook	18 N.J.R. 1239(a)		
7:13-7.1(c)29	Floodway delineations within Maurice River Basin	17 N.J.R. 2186(a)		
7:13-7.1(d)	Flood hazard delineations for Raritan River and Peters Brook	18 N.J.R. 600(a)		
7:14A-4.4, 4.7	Dioxin-containing waste	18 N.J.R. 879(a)		
7:14A-6.16	Disposal of solid waste	18 N.J.R. 883(a)		
7:18	Laboratory certification and standards of performance	18 N.J.R. 1239(b)		
7:19-3	Water allocation permit fees	18 N.J.R. 789(a)	R.1986 d.263	18 N.J.R. 1376(a)
7:22	Wastewater treatment facilities: construction grants and loans	18 N.J.R. 243(a)		
7:24	Dam restoration grants	18 N.J.R. 395(a)	R.1986 d.186	18 N.J.R. 1101(a)
7:25-4.17	Status of indigenous nongame wildlife	18 N.J.R. 601(a)	R.1986 d.230	18 N.J.R. 1279(a)
7:25-5	1986-1987 Game Code	18 N.J.R. 1026(b)		
7:25-8.1	Repeal clam dredging rule	18 N.J.R. 396(a)	R.1986 d.232	18 N.J.R. 1279(b)
7:25-9	Minimum legal size for hard clams	18 N.J.R. 146(a)	R.1986 d.231	18 N.J.R. 1280(a)
7:25-10	Possession of captive game animals and birds	18 N.J.R. 533(a)	R.1986 d.233	18 N.J.R. 1280(b)
7:25-19	Atlantic Coast harvest season	17 N.J.R. 2494(a)	R.1986 d.273	18 N.J.R. 1378(a)
7:26-1.4, 1.6, 9.1, 12.1	Tolling agreements and reclamation of hazardous waste	17 N.J.R. 1968(a)	R.1986 d.160	18 N.J.R. 981(a)
7:26-1.4, 2, 2A, 2B, 5, 12.11, 12.12	Disposal of solid waste	18 N.J.R. 883(a)		
7:26-1.4, 7.4, 9.1, 12.1, 12.8	Reuse of hazardous waste	17 N.J.R. 2716(a)		
7:26-1.4, 7.5, 7.7, 8.13	Waste oil	18 N.J.R. 878(a)		
7:26-1.7	Solid waste disposal: exemption from registration	17 N.J.R. 1368(a)	Expired	
7:26-1.8	Solid waste disposal: land application operations	17 N.J.R. 2945(a)	R.1986 d.162	18 N.J.R. 982(a)
7:26-2.6, 2.7	Disposal of asbestos waste	17 N.J.R. 2719(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 252(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 924(a)		
7:26-2.9	Closure and post-closure care of sanitary landfills: escrow agreements	18 N.J.R. 1036(a)		
7:26-2.13	Resource recovery facilities and transfer stations: recordkeeping	_____	_____	18 N.J.R. 983(a)
7:26-6.5	Solid waste flow: Ocean County	17 N.J.R. 2590(a)	R.1986 d.159	18 N.J.R. 983(b)
7:26-6.5	Solid waste flow: Camden County	17 N.J.R. 2591(a)	R.1986 d.164	18 N.J.R. 983(c)
7:26-7.4, 8.3, 8.15, 9.2, 10.6, 10.8	Land disposal of hazardous waste: correction	_____	_____	18 N.J.R. 1379(a)
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management	17 N.J.R. 2941(a)		
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management: extension of comment period	18 N.J.R. 254(a)		
7:26-8.3, 8.4, 8.13, 8.15, 10.5-10.8, 11.1, 11.5, 11.6, 12.2	Dioxin-containing waste	18 N.J.R. 879(a)		
7:26-8.14, 8.15, 8.16	Hazardous waste criteria, identification and listing	18 N.J.R. 1037(a)		
7:26-8.16	Waste code numbers for hazardous constituents	18 N.J.R. 792(a)		
7:26-17	Scales at solid waste facilities	18 N.J.R. 1154(a)		
7:27-16	Air pollution by volatile organic substances	17 N.J.R. 1969(a)		
7:27B-3	Determination of volatile organic substances from source operations	17 N.J.R. 2194(a)		
7:28-14	Therapeutic radiation installations	18 N.J.R. 1157(a)		
7:28-42.1	Workplace exposure to radio frequency radiation	18 N.J.R. 1166(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:45	Delaware and Raritan Canal State Park: Review Zone rules	17 N.J.R. 1711(a)		
7:45-1, 2, 3	Delineation of Review Zone within Delaware and Raritan Canal State Park: reopening of comment period	18 N.J.R. 457(a)		

(TRANSMITTAL 41, dated April 21, 1986)

**HEALTH—TITLE 8**

8:9-1.11	Disposal of cremains: public hearing	17 N.J.R. 2835(a)		
8:22-1	Campgrounds sanitation	18 N.J.R. 1038(a)		
8:26	Recreational bathing	18 N.J.R. 1040(a)		
8:31-25.1	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:31-30.1	Health facilities construction: plan review fees	18 N.J.R. 795(a)		
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	17 N.J.R. 2464(a)		
8:31B-3.31	Hospital reimbursement: transfer of residency positions	18 N.J.R. 795(b)	R.1986 d.260	18 N.J.R. 1379(c)
8:31B-3.76-3.82	Hospital reimbursement: URO performance evaluation; post-billing denial of payments	18 N.J.R. 150(b)		
8:33B-1.3, 1.12	Extracorporeal shock wave lithotripsy services	18 N.J.R. 798(a)	R.1986 d.259	18 N.J.R. 1379(b)
8:33F-1.2	Continuous ambulatory peritoneal dialysis	18 N.J.R. 1241(a)		
8:34-1.31	Licensing of nursing home administrators	17 N.J.R. 2212(a)		
8:39-3.11	Availability of information at long-term care facilities	18 N.J.R. 1241(b)		
8:41-8	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:42A	Alcoholism treatment facilities	18 N.J.R. 796(a)	R.1986 d.257	18 N.J.R. 1380(a)
8:43B-8.16	Obstetric and newborn services: use of oxytocic agents	17 N.J.R. 2213(a)	R.1986 d.167	18 N.J.R. 984(a)
8:43E-1	Hospital Policy Manual	18 N.J.R. 825(a)		
8:43G	Hospital capital policy	18 N.J.R. 1242(a)		
8:44-2.10	Reportable occupational and environmental diseases and poisons	17 N.J.R. 1831(a)		
8:53	Implementation of Local Health Services Act	17 N.J.R. 2836(a)		
8:57-1.14	Reporting of AIDS and AID Related Complex	18 N.J.R. 1245(a)		
8:57-1.19, 1.20, -6	Cancer registry	17 N.J.R. 2836(b)	R.1986 d.227	18 N.J.R. 1283(a)
8:60-1.1, 4.2-4.8, 5.2, 5.4-5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)		
8:65-10.1	Controlled dangerous substances: analogs of fentanyl	18 N.J.R. 254(b)	R.1986 d.184	18 N.J.R. 1102(a)
8:65-10.1	Controlled dangerous substances: Parafluorofentanyl	18 N.J.R. 603(a)		
8:65-10.2	Removal of Nalmefene from Schedule II of controlled substances	18 N.J.R. 536(a)		
8:65-10.4	Controlled substances: Quazepam and Midazolam	18 N.J.R. 1166(b)		
8:65-11	Narcotic treatment programs	18 N.J.R. 924(b)		
8:71	Generic drug list additions (see 17 N.J.R. 2042(b), 2556(b), 2769(a), 18 N.J.R. 182(a), 845(a))	17 N.J.R. 1043(a)	Expired	
8:71	Generic drug list additions (see 17 N.J.R. 2557(a), 2769(b), 18 N.J.R. 183(a), 418(a), 985(a))	17 N.J.R. 1733(a)	R.1986 d.251	18 N.J.R. 1380(b)
8:71	Generic drug list additions (see 18 N.J.R. 417(a), 984(b), 1102(b))	17 N.J.R. 2842(a)	R.1986 d.253	18 N.J.R. 1382(a)
8:71	Generic drug list additions: public hearing	18 N.J.R. 537(a)	R.1986 d.252	18 N.J.R. 1381(a)
8:71	Generic drug list additions	18 N.J.R. 1167(a)		

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**HIGHER EDUCATION—TITLE 9**

9:2-5	Management of computerized information	18 N.J.R. 799(a)		
9:7-2.2	Residency and student assistance	18 N.J.R. 801(a)		
9:7-2.3	Status of foreign nationals	18 N.J.R. 19(a)	R.1986 d.254	18 N.J.R. 1382(b)
9:7-2.9	Student assistance programs: award combinations	17 N.J.R. 2725(a)		
9:11-1.2	Educational Opportunity Fund: student residency	18 N.J.R. 925(a)		
9:11-1.5	EOF: undergraduate grants	18 N.J.R. 926(a)		
9:11-1.7	EOF: grant amounts	18 N.J.R. 926(b)		
9:12-1.5, 2.3	Educational Opportunity Fund Program	17 N.J.R. 2214(b)		
9:12-1.5, 2.3	Educational Opportunity Fund Program	18 N.J.R. 801(b)		

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**HUMAN SERVICES—TITLE 10**

10:36-1	Patient supervision at State psychiatric hospitals	17 N.J.R. 2593(a)		
10:36-1	Patient supervision at State psychiatric hospitals: public hearing	18 N.J.R. 20(a)		
10:36-2	Clinical review procedures for special status psychiatric patients	17 N.J.R. 2951(a)		
10:38	Interim assistance procedures for discharged clients of State hospitals	18 N.J.R. 802(a)	R.1986 d.239	18 N.J.R. 1383(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
10:42	Developmental Disabilities: Emergency Mechanical Restraint	17 N.J.R. 1832(a)		
10:49-1.1, 1.2, 1.4	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:49-1.27	Correction to Administrative Code			18 N.J.R. 1205(c)
10:50-1.5, 2.3	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:51-1.2, 1.14, 3.1	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:51-1.14, 5.16	Pharmaceutical services: ineligible prescription drugs	17 N.J.R. 2730(a)		
10:52-1.2, 1.3, 1.6, 1.8, 1.19	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:52-1.5, 1.17	Out-of-state inpatient hospital services	18 N.J.R. 538(a)		
10:52-1.16	Termination of pregnancy in licensed health care facilities	17 N.J.R. 1375(a)	Expired	
10:53-1.2, 1.3, 1.5, 1.7, 1.15	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:53-1.14	Termination of pregnancy	17 N.J.R. 1375(a)	Expired	
10:54-1.2, 1.4, 1.7, 1.9, 1.10	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:54-1.23	Termination of pregnancy	17 N.J.R. 1375(a)	Expired	
10:54-4	Physician's Services: common procedure coding (HCPCS)	18 N.J.R. 927(a)		
10:55-2.2	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:56-1.12, 2.1	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:57-1.3, 1.7, 1.13, 2.3	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:59-2.3	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:61-1, 2	Independent laboratory services	18 N.J.R. 540(a)		
10:61-2.1, 2.5	Independent laboratory services	18 N.J.R. 540(a)	R.1986 d.219	18 N.J.R. 1293(a)
10:61-2.2	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:62-1, 2, 3	Vision Care Manual	18 N.J.R. 1246(a)		
10:62-1.4, 3.3	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:63-1.16, 2.1	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:63-1.22	Correction to Administrative Code			18 N.J.R. 1205(c)
10:63-3.2, 3.4, 3.5, 3.6, 3.8, 3.10-3.15, 3.18, 3.19	Long-term care facilities: CARE Guidelines	18 N.J.R. 257(a)		
10:65-1.2, 2.5	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:66-1.6	Termination of pregnancy	17 N.J.R. 1375(a)	Expired	
10:66-1.6	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:66-2, 3	Independent clinic services	18 N.J.R. 541(a)		
10:66-2.2, 2.3	Independent clinic services	18 N.J.R. 541(a)	R.1986 d.220	18 N.J.R. 1294(a)
10:66-3	Independent Clinic Services: common procedure coding (HCPCS)	18 N.J.R. 927(a)		
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1053(a)		
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1252(a)		
10:67-2.3	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:68	Chiropractic services and billing procedures	18 N.J.R. 1053(b)		
10:68-1.2	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:68-2	Chiropractor billing procedures	18 N.J.R. 810(a)		
10:69A-5.3	Renewal applications for PAAD beneficiaries	18 N.J.R. 1054(a)		
10:70	Medically Needy supplement	18 N.J.R. 831(a)	R.1986 d.237	18 N.J.R. 1294(b)
10:81-3.38	PAM: transfer of resources	18 N.J.R. 1168(a)		
10:81-3.40, 3.41	PAM: repayment agreements and child injury awards	18 N.J.R. 1055(a)		
10:81-6.3	PAM: transportation of client to fair hearing	18 N.J.R. 927(b)		
10:81-7.21—7.29	PAM: funeral and burial payments	18 N.J.R. 1168(b)		
10:81-10.7	PAM: eligibility for refugee and entrant programs	17 N.J.R. 2227(a)		
10:81-11.3, 11.9	PAM: Social Security numbers; restriction of information	17 N.J.R. 2516(b)	R.1986 d.243	18 N.J.R. 1383(b)
10:82-1.8, 1.9, 2.14, 2.20, 3.1, 3.2, 4.4, 4.6, 4.15, 4.17, 5.3, 5.10	ASH: conformity with Federal regulations	18 N.J.R. 260(a)		
10:82-2.3, 2.4, 4.3	ASH: AFDC eligibility requirements	18 N.J.R. 928(a)		
10:82-4.2	ASH: income from tips	18 N.J.R. 1056(a)		
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2336(a)	R.1986 d.203	18 N.J.R. 1200(b)
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2337(a)		
10:85-3.3	GAM: assistance allowance standards	18 N.J.R. 928(b)		
10:85-3.3	GAM: income from tips	18 N.J.R. 1056(b)		
10:85-4.8	GAM: funeral and burial payments	18 N.J.R. 1170(a)		
10:85-6.4	GAM: fiscal and statistical reporting	18 N.J.R. 1056(c)		
10:86	Repeal obsolete AFDC Work Incentive Program rules	17 N.J.R. 1838(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
10:87-4.13, 5.10, 12.1	Food Stamp Program: income deductions and resource limits	Emergency	R.1986 d.191	18 N.J.R. 1108(a)
10:90-2.2, 2.3, 2.4, 2.6, 3.3, 4.1—4.10, 5.1, 5.2, 5.6, 6.1, 6.2, 6.3	Monthly Reporting Policy Handbook	17 N.J.R. 1839(a)		
10:94-4.1	Medicaid Only: resource eligibility	17 N.J.R. 2524(a)	R.1986 d.165	18 N.J.R. 985(b)
10:94-4.2, 4.3	Medicaid eligibility and nonliquid resources	18 N.J.R. 542(a)		
10:100-3.6, 3.7	Special Payments Handbook: funeral and burial payments	18 N.J.R. 1171(a)		
10:121-2	Adoption subsidy	18 N.J.R. 24(a)		
10:121A	Adoption agency standards	18 N.J.R. 1057(a)		

(TRANSMITTAL 39, dated April 21, 1986)

**CORRECTIONS—TITLE 10A**

10A:3	Security and control	18 N.J.R. 1057(b)		
10A:4	Inmate discipline	18 N.J.R. 27(a)		
10A:4	Inmate discipline: public hearing	18 N.J.R. 544(a)		
10A:5	Close custody units	18 N.J.R. 1067(a)		
10A:31-3.12, 3.15	Adult county facilities: medical screening of new inmates	17 N.J.R. 2343(a)	R.1986 d.241	18 N.J.R. 1384(a)
10A:31-3.12, 3.15	Medical screening of new inmates in county facilities: public hearing	17 N.J.R. 2955(b)		
10A:31-6	Work Release Program	18 N.J.R. 604(a)	R.1986 d.261	18 N.J.R. 1386(a)
10A:34	County correctional facilities	17 N.J.R. 2525(a)	R.1986 d.182	18 N.J.R. 1103(a)
10A:71-2.2, 3.3, 3.4, 3.22, 3.27, 3.28, 3.31, 4.2, 4.3	Parole Board process and procedure	18 N.J.R. 929(a)		

(TRANSMITTAL 12, dated December 16, 1985)

**INSURANCE—TITLE 11**

11:1-20, 22	Cancellation and nonrenewal of property and casualty/liability policies	17 N.J.R. 2956(a)		
11:1-20, 22	Commercial policies: cancellation and nonrenewal	18 N.J.R. 457(b)	R.1986 d.272	18 N.J.R. 1388(a)
11:2-19.2	Continuing education	18 N.J.R. 44(a)		
11:2-20	License renewal: continuing education requirement	17 N.J.R. 2962(a)		
11:3-8	Nonrenewal of automobile policies	18 N.J.R. 1079(a)		
11:3-16	Pre-proposal: Private passenger automobile rate filings	18 N.J.R. 1083(a)		
11:3-17	Rating organizations: private passenger automobile filings	18 N.J.R. 1171(b)		
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 2344(a)		
11:4-15	Health insurance: benefits concerning treatment of alcoholism	18 N.J.R. 607(a)	R.1986 d.228	18 N.J.R. 1302(a)
11:4-16.6	Daily hospital room and board coverage	18 N.J.R. 608(a)		
11:4-20	Coverage of the handicapped	18 N.J.R. 44(b)		
11:4-21	Limited death benefit policies	18 N.J.R. 1085(a)		
11:4-27	Reporting of liquor law liability loss experience	18 N.J.R. 45(a)	R.1986 d.189	18 N.J.R. 1103(b)
11:5-1.3	Licensing of real estate brokers and salespeople	17 N.J.R. 2350(a)		
11:5-1.3	Licensing of real estate broker and broker-salesperson	18 N.J.R. 1088(a)		
11:5-1.15	Real estate advertising	17 N.J.R. 2351(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	18 N.J.R. 1173(a)		

(TRANSMITTAL 37, dated April 21, 1986)

**LABOR—TITLE 12**

12:17-2.1	Reporting requirement for unemployment benefits claimant	18 N.J.R. 811(a)		
12:20-4.8	Temporary appointment to Unemployment Compensation Board of Review	18 N.J.R. 544(b)		
12:51	Vocational rehabilitation services	18 N.J.R. 1088(b)		
12:70	Field sanitation for seasonal farm workers	17 N.J.R. 1860(a)		
12:100-4.2, 12	Public employee exposure to asbestos	18 N.J.R. 811(b)		
12:120-1.1, 4.2-4.8, 5.2, 5.4-5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)	R.1986 d.149	18 N.J.R. 986(a)
12:195-1.3, 1.4, 1.7, 1.9, 1.12, 1.13, 1.14, 2.1, 3.1, 3.3, 3.9, 3.10, 3.14, 4.2, 4.6, 5.11, 6	Carnival-amusement rides	18 N.J.R. 609(a)	R.1986 d.222	18 N.J.R. 1303(a)
12:235	Practice and procedure before Division of Workers' Compensation	17 N.J.R. 2081(a)	R.1986 d.144	18 N.J.R. 987(a)
12:235-7.2	Correction	17 N.J.R. 2081(a)	R.1986 d.144	18 N.J.R. 1201(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A</b>				
12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1985 d.421	17 N.J.R. 2683(a)
12A:100-1	Commission on Science and Technology: Innovation Partnership Grant Program	18 N.J.R. 1175(a)		
<b>LAW AND PUBLIC SAFETY—TITLE 13</b>				
13:1-4.6	Police training: certification of firearms instructors	18 N.J.R. 397(a)	R.1986 d.235	18 N.J.R. 1305(a)
13:2-5.2	Alcoholic beverage control: special concessionaire permit	18 N.J.R. 545(a)	R.1986 d.181	18 N.J.R. 1104(a)
13:3-3.4, 3.8, 3.17, 7.9	Amusement games control	18 N.J.R. 613(a)	R.1986 d.218	18 N.J.R. 1306(a)
13:20-33.6	Glazing inspection standards for motor vehicles	17 N.J.R. 894(a)	R.1986 d.166	18 N.J.R. 995(a)
13:27	Rules of Board of Architects	17 N.J.R. 2851(b)		
13:29-1.14	Board of Accounting licenses: notification requirement concerning convictions	18 N.J.R. 264(a)	R.1986 d.172	18 N.J.R. 1104(b)
13:30-2.2, 2.3, 2.18, 8.1	Board of Dentistry registration fees	18 N.J.R. 398(a)	R.1986 d.168	18 N.J.R. 995(b)
13:30-8.4, 8.8	Announcement of specialty in dentistry; patient records	18 N.J.R. 816(a)	R.1986 d.269	18 N.J.R. 1394(a)
13:31-1.11	Fees for electrical contractor's license	18 N.J.R. 462(a)	R.1986 d.193	18 N.J.R. 1201(b)
13:35-4.2	Termination of pregnancy	18 N.J.R. 614(a)	R.1986 d.217	18 N.J.R. 1306(b)
13:37-6.2	Delegation of nursing tasks by RPNs	17 N.J.R. 2354(a)		
13:37-6.2	Delegation of selected nursing tasks	18 N.J.R. 1176(a)		
13:37-6.3	Nursing procedures: administration of renal dialysis treatment	18 N.J.R. 398(b)		
13:39A-1	Board of Physical Therapy: organization and administration	17 N.J.R. 2355(a)	R.1986 d.265	18 N.J.R. 1394(b)
13:39A-1.4	Licensure of physical therapists: fees and charges	18 N.J.R. 1177(a)		
13:39A-2	Authorized practice by physical therapists	17 N.J.R. 2356(a)	R.1986 d.266	18 N.J.R. 1395(a)
13:39A-2.2	Authorized practice by physical therapist	18 N.J.R. 1177(b)		
13:39A-3	Unlawful practices by physical therapists	17 N.J.R. 2358(a)	R.1986 d.267	18 N.J.R. 1397(a)
13:39A-3.2	Pre-proposal: fee splitting and kickbacks by physical therapists	17 N.J.R. 2360(a)		
13:39A-3.3	Physical therapy: unlawful practices	18 N.J.R. 1178(a)		
13:39A-4	Unlicensed practice of physical therapy	17 N.J.R. 2361(a)	R.1986 d.268	18 N.J.R. 1399(a)
13:39A-5	Physical therapy applicants: required credentials	17 N.J.R. 2362(a)	R.1986 d.270	18 N.J.R. 1399(b)
13:39A-5.2—5.4, 5.6—5.9	Physical therapy educational credentials and examination standards	18 N.J.R. 1179(a)		
13:39A-6	Temporary licensure of physical therapists	18 N.J.R. 1179(b)		
13:42-6	Reimbursement for psychological services: disclosure of patient information	18 N.J.R. 817(a)		
13:44-2.3, 2.11	Advertising by licensed veterinarians	18 N.J.R. 399(a)	R.1986 d.264	18 N.J.R. 1400(a)
13:44C-1.1	Audiology and Speech Language Pathology Advisory Committee: fees and charges	17 N.J.R. 1062(a)	R.1986 d.192	18 N.J.R. 1201(c)
13:44D	Public moving and warehousing	17 N.J.R. 1382(a)	Expired	
13:45A-2	Motor vehicle advertising practices	17 N.J.R. 2861(a)		
13:45A-24	Sale of grey market merchandise	17 N.J.R. 2866(a)		
13:46-8.25, 11.10	Compensation of boxing officials, and boxing and wrestling timekeepers	18 N.J.R. 930(a)		
13:46-12.1, 12.6	Medical examination of boxers	18 N.J.R. 617(a)		
13:47-6.19	Prohibited prizes in games of chance	18 N.J.R. 1180(a)		
13:47-14.3	Rental of premises for bingo	18 N.J.R. 1180(b)		
13:54	Regulation of firearms businesses	18 N.J.R. 51(a)		
13:70-1.17	Thoroughbred racing: policing requirements	18 N.J.R. 819(a)		
13:70-3.47	Thoroughbred racing: Coggins test	18 N.J.R. 401(a)		
13:70-12.1, 12.2	Thoroughbred racing: claiming privileges	18 N.J.R. 546(a)	R.1986 d.215	18 N.J.R. 1308(a)
13:70-12.16	Thoroughbred racing: filing of claims	18 N.J.R. 402(a)	R.1986 d.171	18 N.J.R. 1104(c)
13:71-5.1	Harness racing: policy requirements	18 N.J.R. 820(a)		
13:71-6.24	Harness racing: Coggins test	18 N.J.R. 402(b)		
<b>(TRANSMITTAL 41, dated April 21, 1986)</b>				
<b>PUBLIC UTILITIES—TITLE 14</b>				
14:3-4.7	Adjustment of utility bills	17 N.J.R. 2236(a)		
14:3-7.15	Discontinuance of residential service: notice to local fire officials	18 N.J.R. 463(a)	R.1986 d.242	18 N.J.R. 1401(a)
14:10-5	Inter LATA telecommunications carriers	17 N.J.R. 2012(a)		
14:18-1.2, 3.9	Cable TV: service outages	18 N.J.R. 619(a)		
14:18-1.2, 11.21, 3	CATV: franchise renewals	18 N.J.R. 1181(a)		
14:18-7.11	Cable TV: senior citizens' rates	18 N.J.R. 931(a)		
<b>(TRANSMITTAL 27, dated March 17, 1986)</b>				
<b>ENERGY—TITLE 14A</b>				
14A:3-4.4, 4.5	Thermal and lighting efficiency	18 N.J.R. 1089(a)		
14A:20-1.9	Utility energy conservation plans: administrative review	18 N.J.R. 1092(a)		
<b>(TRANSMITTAL 18, dated February 18, 1986)</b>				

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>STATE—TITLE 15</b>				
15:3	State and local records retention	18 N.J.R. 820(b)	R.1986 d.238	18 N.J.R. 1401(b)
(TRANSMITTAL 16, dated February 18, 1986)				
<b>PUBLIC ADVOCATE—TITLE 15A</b>				
(TRANSMITTAL 1, dated March 20, 1978)				
<b>TRANSPORTATION—TITLE 16</b>				
16:27	Bureau of Traffic Engineering	18 N.J.R. 1184(a)		
16:28-1.2	Temporary speed rate on portion of I-80	18 N.J.R. 546(b)	R.1986 d.174	18 N.J.R. 1104(d)
16:28-1.2, 1.3, 1.79	Speed rates along I-80, I-287, and Route 94	18 N.J.R. 621(a)	R.1986 d.210	18 N.J.R. 1308(b)
16:28-1.23, 1.25, 1.57, 1.79, 1.81	Speed rates on Routes 18, 23, U.S. 30, 94, and 49	18 N.J.R. 463(b)	R.1986 d.155	18 N.J.R. 996(a)
16:28-1.25	Speed rate on Route 23 in Wantage	18 N.J.R. 1092(b)		
16:28-1.41, 1.51, 1.75	Speed rates on U.S. 9 in Lakewood, Route 36 in Long Branch, and Route 55 in Cumberland, Salem and Gloucester counties	18 N.J.R. 465(a)	R.1986 d.154	18 N.J.R. 996(b)
16:28-1.107	School zone along Route 48 in Carney's Point	18 N.J.R. 932(a)	R.1986 d.248	18 N.J.R. 1401(c)
16:28A-1.4, 1.7, 1.52	No parking zones on Route 4 in Englewood, U.S. 9 in Howell and Route 173 in Hunterdon County	18 N.J.R. 466(a)	R.1986 d.152	18 N.J.R. 997(a)
16:28A-1.7, 1.18, 1.25, 1.33	Parking along U.S. 9, Routes 27, 35, and 47	18 N.J.R. 622(a)	R.1986 d.208	18 N.J.R. 1309(a)
16:28A-1.7, 1.85, 1.105	Parking and bus stops along U.S. 9, Routes 54 and 161	18 N.J.R. 1092(c)		
16:28A-1.8, 1.15, 1.22, 1.37	No parking zones along Routes 10, 23, 31, and 70	18 N.J.R. 1252(b)		
16:28A-1.13, 1.21, 1.23, 1.26, 1.42	No parking zones along U.S. 22 in Phillipsburg, U.S. 30 in Galloway Twp., Routes 33, 36 and 79 in Monmouth County	18 N.J.R. 547(b)	R.1986 d.179	18 N.J.R. 1105(a)
16:28A-1.23, 1.34	No parking zones along Routes 33 in Hightstown and 49 in Pennsville	18 N.J.R. 549(a)	R.1986 d.178	18 N.J.R. 1105(b)
16:28A-1.25, 1.38, 1.75	No parking along Routes 35, 71 and 35-71 in Belmar	18 N.J.R. 1093(a)		
16:28A-1.46	No parking zone along U.S. 130 in Salem County	18 N.J.R. 549(b)	R.1986 d.176	18 N.J.R. 1106(a)
16:28A-1.46	Bus stop on U.S. 130 in Pennsauken	18 N.J.R. 1094(a)		
16:28A-1.71	Bus stop zones along Route 67 in Fort Lee	18 N.J.R. 1253(a)		
16:29-1.6, 1.7, 1.52-1.56	No passing zones along Routes 34, 36, 181, 70, U.S. 30, 57 and 77	18 N.J.R. 550(a)	R.1986 d.194	18 N.J.R. 1202(a)
16:29-1.21, 1.57	No passing zones along Routes 27 and 28	18 N.J.R. 1254(a)		
16:29-1.51, 1.57	No passing zones along Routes 35 and 28	18 N.J.R. 623(a)	R.1986 d.207	18 N.J.R. 1309(b)
16:30-1.6	One-way traffic along Route 35 in Shrewsbury	18 N.J.R. 551(a)	R.1986 d.175	18 N.J.R. 1106(b)
16:30-2.9	Yield intersection along U.S. 130 in Westville	18 N.J.R. 1254(b)		
16:30-2.10	Elmwood Park: stop intersection at Columbia and Parkview	18 N.J.R. 551(b)	R.1986 d.177	18 N.J.R. 1106(c)
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16:30-3.5	Bus and carpool lane on I-95 approach to GWB	18 N.J.R. 624(a)		
16:30-11.1	Route I-295 rest areas	18 N.J.R. 932(b)	R.1986 d.249	18 N.J.R. 1401(d)
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16:31-1.4	Turns on Route 35 in Shrewsbury	18 N.J.R. 467(a)	R.1986 d.153	18 N.J.R. 998(a)
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17:4-1.4	Police and firemen's retirement system: election of member-trustee	18 N.J.R. 468(a)	R.1986 d.185	18 N.J.R. 1107(a)
17:5-5.12	State Police disability retirant rule	17 N.J.R. 2746(b)		

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18:7-4.5, 4.6	Corporation business tax: indebtedness, interest, and offsets	18 N.J.R. 934(a)		
18:7-5.5	Corporation Business Tax: entire net income tax base	18 N.J.R. 1256(a)		
18:35-1.19	Residential property tax credit: filing extension	Emergency	R.1986 d.169	18 N.J.R. 999(a)
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19:4-6.28	Meadowlands: official zoning map change	17 N.J.R. 1872(a)		
19:9-1.9	Car carrier dimensions on Turnpike	18 N.J.R. 935(a)	R.1986 d.271	18 N.J.R. 1402(b)
19:25-9.2	Designation of joint campaign fund (Form SR-1): filing liability	18 N.J.R. 630(a)	R.1986 d.223	18 N.J.R. 1310(d)
19:25-10.6	Reporting of contributions received prior to an election	18 N.J.R. 630(b)	R.1986 d.224	18 N.J.R. 1311(a)
19:25-15.48—15.51	Inaugural event contributions	18 N.J.R. 631(a)	R.1986 d.225	18 N.J.R. 1311(b)
19:25-17.1	Failure to answer complaint of the commission	18 N.J.R. 632(a)	R.1986 d.226	18 N.J.R. 1311(c)
19:30-2	Economic Development Authority fees	18 N.J.R. 1094(b)		
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19:61-5.5	Positions in State government involving casino industry	18 N.J.R. 936(a)	R.1986 d.247	18 N.J.R. 1404(a)
19:65	Urban redevelopment program	18 N.J.R. 852(a)	R.1986 d.256	18 N.J.R. 1405(a)
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