NEW JERSEY REGISTER

IN THIS ISSUE
"INDEX OF PROPOSED RULES"

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules of Practice
Jurisdiction of the Office of Administrative Law

Proposed Readoption: N.J.A.C. 1:2-2

Authorized By: Howard H. Kestin, Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-5 e, f and g.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Steven L. Lefelt, Deputy Director
Office of Administrative Law
185 Washington Street
Newark, NJ 07102

At the close of the period for comments, the Office of Administrative Law thereafter may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. The readoption of these rules becomes effective upon acceptance for filing by the Office of Administrative Law of a notice of their readoption.

This proposal is known as PRN 1984-34.

The agency proposal follows:

Summary

The OAL is proposing an extension of its rules governing conference hearings in certain Civil Service contested cases for a period of one year to complete its implementation and evaluation of this summary proceedings experiment.

The conference hearing rules were originally proposed in the January 17, 1983 issue of the New Jersey Register at 15 N.J.R 66(a) and subsequently adopted, effective March 21, 1983, at 15 N.J.R. 435(a) with a one year expiration date. These rules were developed to test the effectiveness of conference hearings in rendering the hearing process speedier, simpler and less formal than the existing plenary hearing procedures in N.J.A.C. 1:1-1.

These rules apply to contested cases from the Civil Service Commission dealing with layoffs, disciplinary actions other than termination from employment, and termination after probationary work period, and, upon request of the employee, to cases dealing with termination from employment. In the interim since their adoption, the OAL has monitored a small, test group of administrative law judges to ascertain the feasibility of permanently implementing these summary procedures for such matters and other appropriate cases.

Although the experiment has thus far proven successful in effectively reducing the formality, complexity and overall length of the hearing process, it is felt that an extension of the expiration date for the conference hearing rules is needed to increase the number of administrative law judges participating in the experiment, to complete the compilation of factual and statistical data, and to draw reasoned conclusions therefrom. If determined to be successful, the conference hearing rules will become permanent for Civil Service cases and may be extended to other appropriate cases.

The text of the proposed readoption does not differ from the conference hearing rules currently in effect. The OAL is not now amending N.J.A.C. 1:2-2.10 on Representation and assistance because a proposed rule is being prepared to implement R.1:21-1(e), dealing with appearances before the OAL, which became effective in September, 1983 after the conference hearings experiment began. Until OAL implements R.1:21-1(e), the Supreme Court rule shall exclusively govern appearances by non-lawyers at OAL; no contrary inferences should be drawn from this readoption. Once the conference hearings experiment has been completed, the OAL will promulgate as expeditiously as possible all appropriate conference hearing rule amendments.

Social Impact

The proposed readoption should have no new or additional adverse social impact. It is anticipated that the continuation of the conference hearing procedures will reduce the length of the hearing process in these Civil Service cases and, thus, alleviate the lingering anxiety of employees and the continuing on-the-job conflict and ill

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will between employees and employers which may occur during the pendency of these proceedings. Permitting certain non-lawyers to assist and accompany pro se parties to the hearing should also remove some burdens from the parties and lead to better presentations at the hearing.

Economic Impact

The proposed readoption should have no new or additional adverse economic impact. It is anticipated that the continuation of the conference hearing procedures will reduce the length of the hearing process and save the parties and the OAL considerable time and expense, while working no inconvenience to the Department of Civil Service.

Full text of the proposed readoption may be found in the New Jersey Register at 15 N.J.R. 66(a), 15 N.J.R. 435(a).

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules of Practice
Jurisdiction of the Office of Administrative Law

Proposed Readoption: N.J.A.C. 1:2-3

Authorized By: Howard H. Kestin, Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-56, e, f and g.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Steven L. Lefelt, Deputy Director
Office of Administrative Law
185 Washington Street
Newark, NJ 07102

At the close of the period for comments, the Office of Administrative Law thereafter may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. The readoption of these rules becomes effective upon acceptance for filing by the Office of Administrative Law of a notice of their readoption.

This proposal is known as PRN 1984-33.

The agency proposal follows:

Summary

The OAL is proposing an extension of its rules governing "hearings on the papers" in certain Division of Motor Vehicles (DMV) contested cases for a period of one year to complete its implementation and evaluation of this summary proceedings experiment.

The paper hearing rules were orginally proposed in the January 17, 1983 issue of the New Jersey Register at 15 N.J.R. 68(a) and subsequently adopted, effective March 21, 1983, at 15 N.J.R. 436(a) with a one year expiration date. These rules were developed to test the effectiveness of paper hearings in rendering the hearing process speedier, simpler and less formal than the existing plenary hearing procedures in N.J.A.C. 1:1-1.

The rules apply to contested cases from the DMV dealing with excessive point violations, other than license revocations. Since their adoption, the OAL has monitored a small, test group of administrative law judges to ascertain the feasibility of permanently implementing the paper hearing process for such matters and other appropriate cases.

Although the experiment has thus far proven successful in effectively reducing the formality, complexity and overall length of the hearing process, it is felt that an extension of the expiration date for the paper hearing rules is needed to increase the number of administrative law judges participating in the experiment, to complete the compilation of factual and statistical data and to draw reasoned conclusions therefrom.

If determined to be successful, the paper hearing rules will become permanent for contested cases from the DMV dealing with excessive point violations, other than license revocations, and may be extended to other appropriate cases.

The text of the proposed readoption does not differ from the paper hearing rules currently in effect. Once the experiment has been completed, the OAL will promulgate, as expeditiously as possible, the changes determined to be appropriate in order to effectuate the conclusions reached.

Social Impact

The proposed readoption should have no new or additional adverse social impact. It is anticipated that the continuation of the paper hearing process will reduce the overall backlog and delay in DMV cases at the OAL, thus resulting in fairer and more efficient law enforcement and a greater remedial effect of the disciplinary action. Time will be saved by eliminating the necessity for a face-to-face hearing, saving the administrative law judges not only travel time but also time involved in scheduling and conducting the hearing; thus, cost saving for OAL will also be experienced. Greater flexibility in the scheduling of these cases should facilitate the scheduling of other cases and judges' time for the hearing of cases and the writing of decisions.

Economic Impact

The proposed readoption should have no new or additional adverse economic impact. It is anticipated that the continuation of the paper hearing procedures will significantly reduce the time and cost involved in these hearings to the benefit of both the licensee and the government. In turn, the time and expense saved by the government can be used to handle other cases more expeditiously.

Full text of the proposed readoption may be found in the New Jersey Register at 15 N.J.R 68(a), 15 N.J.R. 436(a).

AGRICULTURE

(b)

DIVISION OF RURAL RESOURCES

State Agriculture Development Committee Agricultural Management Practices

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

Authorized By: Arthur R. Brown, Jr., Chairman, State Agriculture Development Committee.
Authority: N.J.S.A. 4:1C-15f and 4:1C-16a.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

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

This proposal is known as PRN 1984-40.

The agency proposal follows:

Summary

It is the express intent of the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., to establish as the policy of the State of New Jersey the protection of commercial farm operations from nuisance action where recognized methods and techniques of agricultural production are applied.

In accordance with the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., the State Agriculture Development Committee must develop recommended agricultural management practices which would be applicable to agricultural development areas, municipally approved programs and other farmland preservation programs.

Since agriculture is a dynamic industry which often involves complex, technical and innovative practices, it is in the best interest of agriculture and the public not to exclude the reasonable use of farm practices not in a published document.

The committee, realizing that agriculture is a dynamic industry, has proposed new rules that identify agricultural management practices that will serve the best interest of agriculture and the public. These practices include, but are not limited to air and water quality control, noise control, pesticide control, fertilizer application, soil and water management practices, integrated pest management and labor practices. In addition, proposed new rule N.J.A.C. 2:76-2.3 provides a procedure that shall be utilized to advise and assist municipalities, farmers, and the general public with respect to resolving disputes concerning agriculture management practices involving the operation of a commercial farm. Together, the proposed new rules are designed to provide protection from nuisance action where recognized methods and techniques of agricultural production are applied.

Social Impact

The proposed new rules will assist farmers, municipalities, and the general public by providing for non-judicial procedures for resolving agricultural disputes involving the operation of a commercial farm. The State Agriculture Development Committee encourages the use of the good neighbor policy and therefore is confident that many of these disputes can be resolved through mediation at the local board (county agriculture development board or subregional agricultural retention board) level or where applicable the State Agriculture Development Committee level. Proposed new rule N.J.A.C. 2:76-2.3 provides this mechanism whereby the board or committee shall encourage mediation and implement fact-finding procedures by using expertise from governmental sources or other appropriate sources, and shall provide a written statement of finding regarding the conformance of the agricultural operation with agricultural management practices approved by the committee. If either or both parties are not satisfied at the outcome of the mediation process, they may seek recourse through judicial proceedings.

Economic Impact

The proposed new rules will have a favorable economic impact by improving the agricultural business climate. The proposed rules for implementing a program of recommended agricultural management practices will encourage investment in more intensive farm operations by establishing a better defined framework under which new or expanding agricultural operations can operate. The dispute procedure enables the State Agriculture Development Committee to avoid costly litigation, thereby having a positive economic impact.

Full text of the proposed new rule follows.

SUBCHAPTER 2. AGRICULTURAL MANAGEMENT PRACTICES

2:76-2.1 Applicability

(a) This subchapter applies to all commercial farm operations conforming to the following:

1. Agricultural management practices approved by the State Agriculture Development Committee.
2. All relevant Federal or State statutes or rules and regulations.
3. Not being a direct threat to public health and safety.

2:76-2.2 Definitions

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

"Agricultural management practices" means practices either formally set forth in current published New Jersey Agricultural Experiment Station recommendations or practices which represent the best, collected professional judgment and opinion of the faculty of the New Jersey Agricultural Experiment Station and practices related to soil and water conservation and management approved by the State Soil Conservation Committee.[1]

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

"Commercial farm" means any place producing agricultural or horticultural products worth $2,500 or more annually.

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

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[1]Published New Jersey Agricultural Experiment Station recommendations are available from the Cooperative Extension Service, Cook College, P.O. Box 231, New Brunswick, New Jersey 08903. Soil and water conservation and management practices are available from the State Soil Conservation Committee, New Jersey Department of Agriculture, CN 330, Trenton, New Jersey 08625.

2:76-2.3 Dispute procedures

(a) The following procedure shall be utilized to advise and assist municipalities, farmers and the general public with respect to resolving disputes concerning agricultural management practices involving the operation of a commercial farm:

1. All disputes shall be presented by one or both parties directly to the respective board representing the agricultural operation.
2. For counties without a board, the dispute shall be presented to the State Agriculture Development Committee.
3. The board or committee shall establish in each case a reasonable time within which a written statement of finding shall be provided.
4. The board or committee shall establish and implement fact-finding procedures using expertise from governmental agencies or other appropriate sources.
5. Following fact-finding, the board or committee shall provide a written statement of finding regarding the conformance of the agricultural operation with agricultural management practices approved by the committee.
6. Following the presentation of a dispute, the board or committee shall encourage and provide mediation.
7. No statement or expression of opinion made by any party in the

course of a meeting concerning the dispute shall be deemed admissible in any subsequent judicial proceeding.

CIVIL SERVICE

(a)

COMMISSION REVIEW AND APPEALS

Awarding Back Pay

Proposed Amendment: N.J.A.C. 4:1-5.5

Authorized By: Civil Service Commission, Peter J. Calderone, Assistant Commissioner, Department of Civil Service.
Authority: N.J.S.A. 11:1-7a, 11:5-1a, 11:5-1d, 1:15-6, 11:22-38.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Peter J. Calderone
Assistant Commissioner
Department of Civil Service
CN 312
Trenton, NJ 08625

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

This proposal is known as PRN 1984-22.

The agency proposal follows:

Summary

N.J.A.C. 4:1-5.5 contains the rules governing back pay awards made by the Civil Service Commission. Subsection (f) of this rule sets forth the benefits which would not be included in such an award. In addition to the items listed, sick time and any other leave which would normally have accrued during the period of separation would not be included. Therefore, it is proposed that this rule be amended to clearly notify individuals that these types of benefits are not part of a back pay award.

Social Impact

This amendment would not result in any new or additional social impact, since this amendment reflects current law and practice. The rule as amended clearly sets forth sick time and other leave would not be included in a back pay award. Since this has been the current practice, employees and employers neither lose nor gain any benefit by the proposed amendment.

Economic Impact

This amendment would not result in any new or additional economic impact, since this amendment reflects current law and practice. The rule as amended clearly sets forth sick time and other leave would not be included in a back pay award. Since this has been the current practice, employees and employers neither lose nor gain any benefit by the proposed amendment.

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

4:1-5.5 Awarding back pay

(a)–(e) (No change.)

(f) An award of back pay shall not include items such as interest, overtime pay, overlap shift time and uniform allowance. The employee shall also not be awarded allowances for vacation time, holiday time, **sick time,** [and] administrative leave **or any other leave** which would have normally accrued during the separation period.

(g)–(h) (No change.)

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Nongame and Exotic Wildlife Endangered Species

Proposed Readoption with Amendments: N.J.A.C. 7:25-4 and 25-11
Proposed Recodification: N.J.A.C. 7:25-11 and 7:25-20 to be recodified as 7:25-4

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 23:2A-1 et seq.
DEP Docket No. 066-83-11.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Mark McQuerrey
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, NJ 08625

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

This proposal is known as PRN 1984-35.

The agency proposal follows:

Summary

Executive Order No. 66 of 1978 provides that any agency rule adopted after May 15, 1978 shall expire no later than five years after its effective date. The purpose of this "sunset" provision is to insure that the State's administrative agencies periodically review their rules in order to update archaic rules and repeal unnecessary rules. The rules in N.J.A.C. 7:25-4 and 7:25-11 have been reviewed by the Department pursuant to Executive Order No. 66 and are deemed to be of continued usefulness, with minor changes. These rules establish endangered and nongame species lists and provide standards for and restrictions upon persons who possess such species. The rules set forth in N.J.A.C. 7:25-4 will expire on January 1, 1984 and the rules presently set forth in N.J.A.C. 7:25-11 will expire on February 1, 1984.

As part of the review of these rules, the Department has concluded that it is appropriate to readopt the rules in N.J.A.C.

7:25-4 and 7:25-11. This review further revealed that it is appropriate to consolidate into one subchapter all rules adopted pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A or predecessor or statutes. Accordingly, rules presently set forth in N.J.A.C. 7:25-11 and 7:25-20 are proposed to be recodified in N.J.A.C. 7:25-4.

The rules proposed to be readopted in N.J.A.C. 7:25-4 list and describe exotic and nongame species of animals, the possession of which requires a permit from the Department. Also listed are nongame species which are exempt from the permit requirement. This subchapter includes provisions containing definitions (N.J.A.C. 7:25-4.1), categories of permits (N.J.A.C. 7:25-4.2 and 4.3), permit fees and standards for possession of exotic and nongame species of animals (N.J.A.C. 7:25-4.6 through 4.10), exempted species (N.J.A.C. 7:25-4.4), prohibited species (N.J.A.C. 7:25-4.10) and miscellaneous provisions (N.J.A.C. 7:25-4.11).

The rules proposed to be readopted in N.J.A.C. 7:25-11 (to be recodified in subchapter 4) establish the list of endangered animal species (N.J.A.C. 7:25-4.12) and set additional standards for their possession (N.J.A.C. 7:25-4.13). As with exotic and nongame species, possession of endangered species requires a Department permit, pursuant to N.J.A.C. 7:25-4.13.

Social Impact

The endangered and nongame species regulations set forth lists of endangered and nongame species which are protected in New Jersey. They further establish standards for possession of endangered and certain nongame species and require that a license be obtained for such possession. Were these rules not readopted, provisions of the Endangered and Nongame Species Conservation Act would become unimplemented and protection for endangered and nongame species in New Jersey would be governed only by Federal controls.

This program has resulted in the restoration of the peregrine falcon in New Jersey and increased birdwatching activities by the public for the species saved by this program.

Economic Impact

Readoption of these rules will result in continued economic impact on persons who wish to distribute and possess endangered and nongame species of animals. Severe restrictions on sale of these species and the requirements for licensing are controls specifically contemplated by the Endangered and Nongame Species Conservation Act.

The program is primarily funded through the income tax checkoff provision which has been providing approximately $400–450,000 per year of the approximate $500,000 total program costs. The balance of funding, as required, is provided by dedicated funding.

Environmental Impact

Failure to readopt these rules would result in nonprotection of endangered and nongame species by the Department. Such a result would clearly harm the quality of New Jersey's environment and encourage the further decimation of species threatened with extinction.

Amendments to the list of endangered species were proposed by the Department on October 3, 1983 at 15 N.J.R. 1623.

Full text of the rules being readopted and recodified can be found in the New Jersey Administrative Code at N.J.A.C. 7:25-4, 11 and 20.

SUBCHAPTER 4. ENDANGERED, NONGAME AND EXOTIC WILDLIFE

7:25-4.1 Definitions

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

"Nongame species" means any wildlife for which a legal hunting or trapping season has not been established in New Jersey or which has not been classified as an endangered species by statute or regulation of this State.

"Exotic mammal, bird, reptile or amphibian", means any nongame species or mammal, bird, reptile or amphibian not indigenous to New Jersey.

"Person" shall be defined to include but not limited to corporations, companies, associations, societies including non-profit organizations, firms, partnerships, joint stock companies, individuals and governmental entities.

"Department" means the State's Department of Environmental Protection.

"Division" means the Division of Fish, Game and [Shellfisheries] **Wildlife** or its successor within the Department of Environmental Protection.

"Director" means the Director of the Division of Fish, Game and [Shellfisheries] **Wildlife** or its successor within the Department of Environmental Protection.

"Endangered" (E) means a species whose prospects for survial within the State are in immediate danger due to one or many factors: A loss of or change in habitat, over exploitation, predation, competition, disease. An endangered species requires immediate assistance or extinction will probably follow. See N.J.A.C. 7:25-4.12(b) for listing.

"Threatened" (T) means a species that may become endangered if conditions surrounding it begin to or continue to deteriorate.

"Peripheral" (P) means a species whose occurence in New Jersey is at the extreme edge of its present natural range.

"Undetermined" (U) means a species about which there is not enough information available to determine the status.

"Declining" (D) means a species which has exhibited a continued decline in population numbers over the years.

"Extirpated (Ex) means a species that formerly occurred in New Jersey, but is not known to exist within the State.

"Introduced" (I) means a species not native to New Jersey, that could not have established itself here without the assistance of man.

"Special case" means a species not known to nest regularly in New Jersey (marine reptiles) but that does occur off our shores, some occurring with regularity close to our shore or in our bays (marine reptiles and mammals).

"Stable" (S) means a species whose population is not undergoing any long term increase: decrease within its natural cycle.

"Increasing" (INC) means a species whose population has exhibited a significant increase beyond the normal range of its cycle, over a long term period.

7:25-4.2–4.10 (No change.)

7:25-4.11 Miscellaneous provisions

(a) Any person who transfers possession, as distinguished from ownership, or location of any animal for which a permit has been issued shall, within 48 hours, report to the Division of Fish, Game and [Shellfisheries] **Wildlife** exactly which animals [are] **were** transferred and the name and address of the person to whom the animals were transferred.

(b) (No change.)

SUBCHAPTER 11. [ENDANGERED SPECIES] **(RESERVED)**

7:25-[11.1]**4.12** List of endangered species

(a) Section 23:2A-4 of the revised statutes provides that the [Director of the Division of Fish, Game and Shellfisheries] **Department** shall conduct investigations concerning wildlife in

order to develop information relating to populations, distributions, habitat needs, limiting factors and other biological and ecological factors. On the basis of such investigations of wildlife and other available scientific and commercial data, the [director] **Department** may by regulation promulgate a list of those species and subspecies of wildlife indigenous to the State which are determined to be endangered, giving their common and scientific names by species and subspecies.

(b) (No change.)

7:25-[11.2]**4.13** Requirements for possession of endangered wildlife species

(a) Individuals wishing to apply for a permit to possess endangered wildlife must meet all criteria for the Federal endangered species permit (issued by the United States Fish and Wildlife Service) and for the New Jersey nongame and exotic species permit (issued by the Division of Fish, Game and [Shellfisheries] **Wildlife**). The [division] **Department** will require and review the Federal permit before issuing a State permit.

(b) (No change.)

(c) Individuals applying for a permit to possess endangered wildlife species must demonstrate a working knowledge and expertise in handling and caring for the species desired. The individual must be able to demonstrate this expertise and ability to the satisfaction of the [division] **Department**.

(d) (No change.)

(e) Individuals applying to possess endangered wildlife species must submit to the [division] **Department** a written statement of the purpose and intent of keeping the species. The statement should provide information regarding the individual's compliance with the purpose and intent of the Federal Endangered Special Act of 1973, Public Law 93-205, 87 stat. 884, and the State Endangered and Nongame Species Conservation Act of 1973, c309 s.1, effective December 14, 1973. Amateur attempts or intent to propagate an endangered species will not be considered as sufficient purpose for an individual to be issued a permit to keep an endangered species.

7:25-[11.3]**4.14** Protection of animal and welfare of public

(a) Individuals applying for a permit to possess endangered wildlife species must supply a written description of the housing and caging facilities for the species requested. A summary must be submitted of a continuous feed source available for the specific diet of the animals. [Division] **Department** personnel will inspect the completed facilities and determine if the facilities are suitable for the animal. Facilities must be constructed to prevent the possible escape of the animal.

(b)–(c) (No change.)

7:25-[11.4] **4.17** (No change in text.)

SUBCHAPTER 20. [INDIGENOUS NONGAME WILDLIFE SPECIES OF NEW JERSEY] **(RESERVED)**

7:25-20.1 (Recodified with existing definitions in N.J.A.C. 7:25-4.1 above.)

7:25-[20.2] **4.18** (No change in text.)

HEALTH

(a)

CONSUMER HEALTH SERVICES

Drug Manufacturing
Drug Manufacturer's Labeling Requirement

Proposed Amendments: N.J.A.C. 8:21-1.32

Authorized By: J. Richard Goldstein, M.D., Commissioner, Department of Health.
Authority: N.J.S.A. 24:5-18.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Lucius A. Bowser, RP, MPH
Chief, Drug Control Program
New Jersey State Department of Health
CN 364
Trenton, NJ 08625

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

This proposal is known as PRN 1984-30.

The agency proposal follows:

Summary

Currently there is some ambiguity in the interpretation of the requirements concerning the labeling of drug products by a manufacturing firm which has a related corporate firm under common ownership and control that made the product. This ambiguity will be removed by the proposed amendments and will bring New Jersey law into conformity with Federal statutes promulgated as 48 F.R. Vol. 162, effective September 19, 1983 that defines a "person" as a corporation, parent company, subsidiary or affiliated company. The proposed amendment will clarify the labels on a manufactured drug product by listing who actually produced the product.

Social Impact

The proposed amendments to N.J.S.A. 8:21-1.31 will simplify the labeling requirements for drug manufacturers and will more specifically designate that division or subsidiary of a company that makes the product as the lawful manufacturer of the product.

Economic Impact

There will be very little discernible economic impact on the general public through these proposed amendments, but they will simplify the labeling requirements for drug manufacturers.

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

8:21-1.32 Drug manufacturer's labeling requirements

(a)–(b) (No change.)

(c) If no person performs all of the applicable operations listed in [subsection (b) of this section] **(b) above,** no person may be represented as manufacturer except as follows:

1.–3. (No change.)

4. If the person performs all applicable operations listed in [subsection (b) of this section] **(b) above,** except for those

operations listed in [subsection (d) of this section.] **(d) below. For purpose of this section, person, when it identifies a corporation, includes a parent, subsidiary, or affiliate company where the related companies are under common ownership and control.**

(d) (No change.)

(e) A person performs an operation listed in [subsection (b) of this section] **(b) above,** only if the operation is performed including the performance of the appropriate in-process quality control operations, except laboratory testing of samples taken during processing, as follows:

1.–2. (No change.)

3. On equipment that is continuously owned or leased by the person. **As used in this section, person, when it identifies a corporation, includes a parent, subsidiary, or affiliate company where the related companies are under common ownership and control.**

(f) The name of the person represented as manufacturer under [subsection] (b) or (c) **above** must be the same as **either:**

1. The name of the establishment (as defined in N.J.S.A. 24:6B) under which that person is registered at the time the labeled product is produced; or

2. The registered establishment name of a parent, subsidiary, or affiliate company where the related companies are under common ownership and control. In addition, the name shall meet the requirements of [subsection (g) of this section.] **(g) below.**

(g) The requirement for declaration of the name of the manufacturer, packer, or distributor shall be deemed to be satisfied, in the case of a [corporation] **corporate person,** only by the actual corporate name, [which may be preceded or followed by the name of the particular division of the corporation] **except that the corporate name may be the name of the parent, subsidiary, or affiliate company where the related companies are under common ownership and control. The corporate name may be preceded or followed by the name of the particular division of the corporation.** [A separately incorporated subsidiary shall use its actual corporate name and not the name of its parent company. However, if it chooses, a separately incorporated subsidiary may also identify its parent corporation. Abbreviations for] "Company", "Incorporated", etc., may be abbreviated or omitted and "The" may be omitted. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used.

(h)–(m) (No change.)

(a)

HEALTH PLANNING AND RESOURCES DEVELOPMENT

Hospital Long-Range Strategic Plans

Proposed New Rule: N.J.A.C. 8:31-16.1

Authorized By: J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Authority: N.J.S.A. 26:24-1 et seq.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

John A. Calabria, Coordinator
New Jersey State Department of Health
Health Planning Services
Room 403
CN 360
Trenton, NJ 08625

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

This proposal is known as PRN 1984-26.

The agency proposal follows:

Summary

A new rule, cited as N.J.A.C. 8:31-16.1, Hospital Long-Range Strategic Plans, is to replace the current rule, N.J.A.C. 8:31-16.1, Hospital Long-Range Plans which will expire on January 5, 1984. This new rule proposes to codify current agency and hospital practice in amending the expiring long-range plan requirement by:

1. Requiring the submission of hospital plans every two years rather than every year as previously required. See N.J.A.C. 8:31-16.1(a).

2. Addition of a requirement. See N.J.A.C. 8:31-16.1(c)-9 for an Executive Summary which summarizes the contents of the plan.

3. Addition of a more elaborate capital resource plan. See N.J.A.C. 8:31-16.1(c)-7.

Social Impact

Institutional planning is currently required by both Federal and State law. The Federal planning requirement for institutions receiving Medicare or Medicaid funds is contained in the Social Security Amendments of 1972 (P.L. 92-603). The State requirement was included in the Health Care Facilities Planning Act, Chapters 136 and 138 Laws of New Jersey, 1971. Section 2a(4) of Chapter 136 specifically requires a health care facility to "prepare and review annually a long-range plan compatible with the State Health Plan...".

The development of long-range plans by health care institutions is one method of promoting and improving areawide health planning. It is also intended to encourage institutions to use a proven management process to analyze their present and future role in the health care system in their respective areas. Institutional long-range planning has been required in New Jersey since 1975, with the initial hospital plans submitted in January, 1977. Since that time, plan updates have been submitted by New Jersey hospitals in 1978, 1979 and 1980. The most recent full plan submission was in July, 1982.

A major purpose of this plan requirement is to assist in the integration of the health care system, with all health care providers viewing themselves as part of a system that responds to the needs of the total community. The end result should be carefully considered and thoughtful institutional approaches to the health needs of the communities each serves. Health care institutions are expected to complement and supplement each other to provide the full range of services required for the community.

The institutional plans are public documents. They provide one important resource for regional planning. Both the State and the HSAs have major responsibilities to identify unmet needs, encourage sound approaches to meet those needs, as well as to work for the elimination of unnecessary duplications in services. Professional groups and community agencies can also make important contributions to HSA and State planning process. The result should be a dynamic planning process among planning agencies and providers that focuses regional planning on the health needs of people.

Economic Impact

The proposed new rule is seeking to continue the hospital long-range plan requirement that has been in effect in New Jersey since July 9, 1975. The cost of continuing to require such plans, therefore, does not impose any added economic burdens on existing or future providers or any agency of State Government. This new rule, in fact, will reduce current resources devoted to hospital long-range plan development since plans will be required every two years rather than the yearly plan submission that is currently required.

Full text of the proposed new rule follows.

8:31-16.1 Hospital long-range strategic plans

(a) A planning process designed to satisfy the requirement of N.J.S.A. 26:2H-12 is described in the revised "Planning Guide for Hospital Long-Range Strategic Planning," published initially in March, 1975 by the New Jersey State Department of Health. All hospitals shall prepare and submit two copies of their updated long-range plan to the Department of Health on or before July 1, 1984. Following this update, a fully revised five year long-range plan is to be submitted to the Department of Health on or before July 1, 1986. Thereafter, plan submission dates will be at two year intervals unless otherwise specified by the Commissioner of Health.

(b) Under the direction of the governing body of the hospitals, the plan shall be prepared by a committee consisting of representatives of the governing body, the administrative staff, the medical staff, and the community served by the hospital.

(c) The long-range plan shall contain the following information:

1. An analysis of the external and internal environmental factors that are impacting on the institution;

2. Data base, at least by county, that is pertinent to the hospital's planning effort and includes:

i. Demographic profile;

ii. Health status indicators;

iii. Description of other health services and providers;

iv. Relationships of the institution with those services and providers;

v. Description of the hospital to include at least the following:

(1) Patient origin studies by major services;

(2) Health professional staff;

(3) Utilization patterns by service;

(4) Fiscal data to include an analysis of the institution's major financial ratios over time (for example, liquidity, capital structure, activity, markup and average age of plant ratios);

(5) Medically underserved populations.

3. Forecast of important data: Forecasts at least five years into the future to indicate possible trends for health care needs, services and the institution's capacities;

4. Mission statement;

5. Goals, measurable objectives, and selected courses of action that reflect institutional priorities;

6. Actions requiring Certificate of Need approval or Section 1122 approval (P.L. 92—603) for five years into the future are identified (including anticipated submission dates and sources of funding);

7. A capital resources plan that indicates:

i. The institution's baseline (status quo) financial situation;

ii. The identification of capital gaps (the difference between capital needs and capital sources) that are anticipated in future years;

iii. Potential strategies and their relative impact upon the institution's capital gaps or its access to the capital market;

8. Evaluation of previous institutional planning efforts and the process to be used to evaluate the current plan;

9. Executive Summary.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Process and General Criteria for the Certification of Need and Designation of Regional Services

Proposed Readoption: N.J.A.C. 8:31-28

Authorized By: J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).

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

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

John A. Calabria, Coordinator
Department of Health
Health Planning Services
CN 360, Room 403
Trenton, NJ 08625

The Department of Health thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules expired on December 12, 1983. The readoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-29.

The agency proposal follows:

Summary

In 1978, the Department of Health established rules for the Certification of Need and designation of regional services. Such services include, but are not limited to, perinatal services, end-stage renal disease services, radiation oncology services, cardiac surgical and diagnostic services, computerized axial tomography services, and hemophilia care services.

The purpose of this regulation remains to establish a means by which the Statewide Health Coordinating Council can:

1. Establish priorities for the development of areawide and/or State plans for specialized health services. Such priorities will be developed so that the State and each of the Health Systems Agencies (HSA) can work in concert on the same specialized service.

2. Direct how the planning process for such specialized services is to take place and what elements shall be included in the resulting specialized service plan. Minimum elements include a needs and cost analysis, an inventory of existing resources and a history of their utilization, and a analysis of the criteria for closing the gaps between need and current supply. In addition, a statement of the procedure used by the local HSA in recommending the designation of regional service centers must be included in the HSA plan, as well as a statement by the HSA and the State as to how their plans conform to requirements established by State and Federal regulations and guidelines for that service.

3. Direct how State or regional (HSA) plans will be submitted to the Statewide Health Coordinating Council and provides for a process for the designation of regional services. Under this process, no health facility will be recommended for designation simply because it was first to apply and no applications for designation will be accepted for review unless an HSA and State plan for the particular service have been accepted by the Council. The process

also specifies that applications for designation shall follow the same review process at both the HSA and State level as do Certificate of Need applications.

4. Establish an evaluation process to examine, after five years, the results of the original regional service center designations. The evaluation shall be accomplished through a "redesignation" review process which will be performed in a manner similar to the original designation process.

Social Impact

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

The New Jersey State Health Plan recognizes the under-utilization of inpatient beds, speciality services, and expensive equipment as an important factor contributing to the rapidly escalating costs of health care. Regionalization of specialty services and equipment is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered, by assuring an adequate patient volume for hospitals offering these expensive services, and by containing the rising costs of health care services.

The Department conducted an internal review of the rules prior to this notice for readoption. In this review, it was determined that the rules adequately and reasonably outline the processes and procedures to be followed by health facilities seeking regional service designations. As such, the rules provide the ability to implement the interest of the State Health Plan and the individual regional services regulations.

The rules have been effective because they establish a clear procedure for the certification of need and designation of expensive regional services.

Economic Impact

The rules basically establish fair and equitable methods, procedures and processes which the Department of Health, its advisory boards, the Health Systems Agencies, and health care facilities must follow when considering applications to provide regional services. Thus, the economic impact of these rules is minimal and consists only of a small filing fee submitted by health care facilities applying for certification or designation.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:31-28, as amended in the New Jersey Register.

(a)

THE COMMISSIONER WITH APPROVAL OF THE HEALTH CARE ADMINISTRATION BOARD

Certificate of Need: Nuclear Magnetic Resonance (NMR) Services

Proposed New Rule: N.J.A.C. 8:33J

Authorized By: J. Richard Goldstein, M.D., Commissioner of the Department of Health (with approval of the Health Care Administration Board).
Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

John A. Calabria, Coordinator
Department of Health
Health Planning Services
Room 403, CN 360
Trenton, NJ 08625

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

This proposal is known as PRN 1984-28.

The agency proposal follows:

Summary

The Department of Health proposes a new rule, to be codified as N.J.A.C. 8:33J, which identifies the Department's approach to the initiation of planning and certificate of need review activities for nuclear magnetic resonance (NMR) services within the State of New Jersey.

Nuclear magnetic resonance imaging offers exciting opportunities to advance the capacity to detect and to diagnose human disease as well as to evaluate the impact of medical interventions. It is, however, a new diagnostic modality whose range of appropriate clinical applications, costs and cost impacts, impact on more traditional diagnostic services, and whose safety remains under continued investigational evaluation. Only a relatively small number of facilities in the country have had direct clinical experience with this technology to date.

The Department of Health does not feel that there is currently sufficient experience with the technology or adequate information upon which to establish specific standards, criteria, and a quantitative methodology for determining the need for NMR services in the State. The questions raised by NMR are many and significant and they apply not only to the technology but to the impact of the technology on the health care system. While there is currently insufficient information to support widespread investments in this new technology, the Department of Health's position is that a diagnostic modality of this promise warrants serious study and preliminary investments.

As a result, the Department proposes in these rules an approach to the initiation of NMR services in the State which involves the establishment of a demonstration period during which no more than four NMR demonstrations would be approved Statewide. The demonstration period would last for two years beginning with the date of operation of the first NMR in the State, but could be

shortened by the Commissioner of Health, upon the recommendation of the NMR Advisory Panel. The Commissioner of Health would establish an NMR Advisory Panel to recommend criteria for eligibilityof applicants for demonstrations, to review the demonstration applications submitted and to offer recommendations to the Commissioner regarding them; to monitor the research undertaken at the approved demonstration sites; and to offer recommendations for specific standards, criteria, and an appropriate and quantitative need methodology to guide the review of future applications for NMR acquisitions, which are expected at the conclusion of the demonstration period.

These rules should be recognized as interim policy and will be reviewed before the conclusion of the demonstration period with the intention of proposing appropriate amendments based upon new information and medical insights into NMR technology as well as the results of research conducted at the demonstration sites. In developing these proposed rules, the Commissioner obtained the recommendations of the Statewide Health Coordinating Council.

Social Impact

Nuclear magnetic resonance is an expensive medical device whose clinical value is still undergoing investigational evaluation. Given the limited use of NMRs in clinical settings to date, much more needs to be known about this new and promising diagnostic modality. Further research must be undertaken and current research concluded in order to achieve a better understanding of: its range of clinical applications; the types of patients most suited to the technology; its costs, both capital and operating, and the impact that these costs can be expected to have on DRG rates in the State; its impact on more traditional diagnostic equipment, including the computerized tomography (CT) scanner; the types of magnets most suited for given clinical settings and applications; the types and qualifications of personnel needed to staff the systems; and the volumes needed to insure efficient utilization of the equipment.

The Department recognizes that the technology offers significant enough clinical potential to warrant preliminary investments and is proposing a demonstration period during which a maximum of four NMR demonstrations will be authorized Statewide. At the same time it believes that the widespread investment in NMR services in the State must await the resolution of these important questions. This is necessary to protect New Jerseyans from unwarranted increases in both aggregate hospital and aggregate medical costs and to promote investments most suited to the clinical needs of the population.

As improved understanding of the technology and new medical insights into its application unfold, the rules will be reviewed and amended accordingly. The rules call for the establishment of an NMR Advisory Panel to advise the State Commissioner of Health regarding appropriate changes in Departmental policy based upon new information as it becomes available.

Economic Impact

The capital cost of an NMR depends largely on the type of magnet selected and whether it will be necessary to renovate or to construct a new area in which to house the unit. A resistive magnet system may require a capital outlay of $2.8 million and a superconducting magnet system, a capital investment of $3.8 million, assuming the need for new construction to house the magnet. In addition, annual operating costs are estimated to range between $.5 million and $1.2, million, depending on the magnet selected.

Since only a small number of facilities in the country has had direct clinical experience with the technology and since most of that on-site experience is of a relatively short duration, the reliability of cost estimates obtained in the literature (which are based largely on manufacturer claims) and their application to the New Jersey market must be treated with reservation. There is insufficient information to know definitively at this time what the actual costs will be, once marketing approvals are issued by the United States Food and Drug Administration and what impact the technology can expect to have on Diagnosis-Related Group (DRG) reimbursement in New Jersey. Much further research is needed.

Twenty-six of the 90 hospitals which filed long-range plans with the Department of Health in July, 1982 indicated an intention to file certificate of need applications for the acquisition of NMR scanners during the five year (1983-87) period covered by their plans.

Of the 26 hospitals noted above, 21 provided a cost projection for their NMR projects. While these cost estimates must be reviewed with reservation (given the possibility that cost will likely increase in a high-demand market following the issuance of marketing approvals) and while hospitals did not indicate what magnets they would choose or whether their estimates were for acquisition alone or for total project costs, the costs cited amounted to a little more than $33 million for the 21 units (or an average of nearly $1.6 million).

Full text of the proposed new rule follows:

CHAPTER 33J
NUCLEAR MAGNETIC RESONANCE
(NMR) SERVICES

8:33J-1.1 Introduction

(a) Nuclear magnetic resonance (NMR) is a new diagnostic modality which produces pictures that are based on the responses of atomic nuclei in a magnetic field. By depicting the concentration, chemical form, and spatial distribution of certain nuclei, NMR can serve to define body constituents and chemistry, directly and non-invasively. Its potential to offer new insights into the chemistry of physiology and for detecting and diagnosing disease states in clinical medicine appears significant.

(b) Given the limited use of NMRs in clinical settings to date, the need for futher research to achieve a better understanding of the range of NMR's clinical applications, the diagnostic categories for which NMR is most suited, the type of NMR systems most appropriate for given clinical settings and applications, the costs and cost impacts, the extent to which costs can be expected to be outweighed by improvements in medical diagnoses and medical outcomes, an incremental and regionalized approach to the initiation of NMR services in the State is warranted.

(c) The Department of Health, recognizing the vast potential of NMR for both diagnosing human disease and evaluating the impact of therapeutic interventions, wants to take an active role in promoting selected demonstrations of NMR technology in the State, recognizing that more widespread investment in the device should follow from experience with the technology, an evaluation of the outcomes of investigational studies conducted both in New Jersey and elsewhere to supplement exisiting knowledge in such a manner as to permit the development of specific standards, criteria and a quantitative needs methodology for reviewing applications for NMR. This chapter identifies Department of Health policy to guide the initiation of planning and review activities for NMR services in New Jersey.

8:33J-1.2 Marketing approvals

The Department of Health shall not process any applications for NMR services in the State until such time as the United States Food and Drug Administration issues marketing approvals ensuring the safety and effectiveness of the devices.

8:33J-1.3 Demonstrations

(a) Following the issuance of NMR marketing approvals by the United States Food and Drug Administration, the Commissioner of Health will establish an NMR demonstration period during which no more than four NMR demonstration applications will be approved Statewide.

(b) The Statewide demonstration period will begin with the date of operation of the first NMR approved demonstration and will

continue for a period of two years. However, the demonstration period can be shortened by the Commissioner of Health, upon the recommendation of the NMR Advisory Panel (see N.J.A.C. 8:33J-1.4).

(c) Once the demonstration approvals, not to exceed a maximum of four Statewide, are issued, the Department of Health shall not process any other applications for NMRs until the conclusion of the demonstration period, not to exceed two years, beginning with the date of operation of the first NMR demonstration.

(d) The Commissioner of Health in issuing approvals for NMR demonstrations shall solicit the recommendations of the Statewide Health Coordinating Council (SHCC) and each of the State's five Health Systems Agencies (HSAs).

(e) The Commissioner of Health shall share the official recommendations of the NMR Advisory Panel with the Statewide Health Coordinating Council and each of the State's five Health Systems Agencies prior to their rendering recommendations to the Commissioner of Health pursuant to (d) above.

(f) Provide written certification of compliance with all Federal and State laws in regard to nondiscriminatory practices to the effect that the applicant shall not directly or indirectly refuse referrals on the basis of the patient's race, religion, sex, age or ability to pay.

8:33J-1.4 NMR Advisory Panel

(a) The Commissioner of Health will establish an NMR Advisory Panel to:

1. Recommend criteria for eligibility of applicants for demonstrations. In developing these criteria the Department will have the panel consider the following:

i. The need to insure that the applicant has historically had sizeable volumes of diagnostic procedures in the clinical categories for which NMR has demonstrated the clearest clinical applications;

ii. That preference in the placement of the NMR demonstration units be given to major teaching hospitals as defined under N.J.A.C. 8:31B-3.22(b);

iii. That consideration be given to the regional nature of the device and the need to encourage a balanced geographic distribution of the approved installations;

iv. The ability of the applicant to finance the acquisition of the NMR with some significant equity contribution from its own resources; and

v. The need to establish research protocols to encourage a clearer understanding of:

(1) The range of appropriate clinical applications of NMR technology;

(2) The cost and cost impacts of the technology, most particularly its operational costs, impact on CT utilization and costs, and impact on hospital costs at the sites selected;

(3) The applicant must develop a protocol clearly identifying its proposed topics of study, staffing pattern, and proposed research budget.

vi. In making appointments to the NMR Advisory Panel, the Commissioner of Health shall include at least one consumer who is involved in the New Jersey health planning process.

2. Review the applications for demonstrations submitted to the Department and offer recommendations to the Commissioner of Health regarding them;

3. Monitor the research conducted at the approved demonstrations and study their findings.

(b) Once the research findings become available (at the end of the demonstration period), the panel should consider those findings as well as new information and medical insights into NMR technology gained in the interim and offer recommendations to the Commissioner of Health concerning specific standards, criteria and an appropriate and quantitative need methodology for potential inclusion within Departmental rules for reviewing future applications for NMR acquisitions, which are expected at the conclusion of the demonstration period.

8:33J-1.5 Department review of exising rules

The Department of Health will review this chapter before the conclusion of the demonstration period.

(a)

THE COMMISSIONER

Certificate of Need: Residential Alcoholism Treatment Bed Standards

Proposed New Rule: N.J.A.C. 8:33K

Authorized By: J. Richard Goldstein, M.D., Commissioner of the Department of Health (with approval of the Health Care Administration Board)

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

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Robert W. Seiz, Health Planning Specialist
New Jersey Department of Health
Health Planning Services
CN 360, Room 403
Trenton, NJ 08625

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

This proposal is known as PRN 1984-27.

The agency proposal follows:

Summary

The Department of Health is responsible for establishing rules governing the planning and certification of need for hospital and related health care facility services. Currently, no rules exist specifically addressing alcoholism residential treatment programs, although need for such criteria has been documented in the current New Jersey State Health Plan. In developing these proposed rules, the Commissioner obtained the recommendations of the Statewide Health Coordinating Council (SHCC) and the New Jersey Advisory Council on Alcoholism. A special subcommittee of the Advisory Council on Alcoholism, the Quality and Utilization Review Committee, assisted with the development of these criteria.

The purpose of the proposed rules is to establish criteria for the review of Certificate of Need applications for the establishment and/or expansion of alcoholism residential treatment beds for adults. The rules utilize the estimates, as presented in the New Jersey State Health Plan, for alcoholism residential bed need on a county and Statewide basis. The rules establish standards and guidelines to determine need, cost effectiveness, continuity of care, accessibility, quality, and endorsements by local and State alcoholism authorities.

Social Impact

N.J.S.A. 26:2H-1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly

utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs.. . ."

The New Jersey State Health Plan recognizes the underutilization of specialty services as an important factor contributing to the rapidly escalating costs of health care. Regionalization of specialty services is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered, by improving the solvency of facilities offering these services, and by containing the rising costs of health care services.

The proposed rules are intended to promote the provision of alcoholism residential treatment services in a cost-effective manner at a level appropriate to the needs of the patient. However, one of the primary objectives the rules address is to maximize the utilization of treatment facilities by assuring that providers develop and deliver services as part of the comprehensive system of alcoholism treatment. Formal transfer and program linkage agreements with hospitals, alcoholism service providers and other community agencies are encouraged, while planning and program development with State and Local Advisory Committees on Alcoholism are promoted.

Economic Impact

Only a small percentage (5 percent) of patients needing alcoholism treatment today require the level of service associated with acute hospital care. While the general hospital has a clear responsibility to provide acute care for the stabilization of life-threatening conditions, the evidence indicates that the level of care and costs associated with acute hospitalization are not generally necessary to provide the alcoholic with the specific counseling, group techniques, and supportive social services that are recognized as essential for this non-acute phase of the recovery process. Treatment for this phase of alcoholism is more appropriately offered in non-hospital, residential settings.

Third party reimbursement has stimulated a surge in the development of relatively low-cost licensed residential alcoholism care facilities offering an average 28-day treatment programs which may, in addition, include 5-7 day initial detoxification. These residential programs complement existing prevention, training, outpatient, day-care, halfway, and extended care programs, and can be offered for a fraction of the cost of comparable care provided on an inpatient hospital basis.

Full text of the proposed new rule follows.

8:33K-1.1 Introduction

The New Jersey Department of Health currently licenses the provision of alcoholism services when offered under medical supervision in health care facilities. A rather small number of licensed beds (55) are provided in acute care general hospitals. The majority of licensed residential alcoholism treatment beds, however, are located in free-standing facilities that offer an average 28 day treatment program which may, in addition, include a 5 to 7 day initial detoxification. The standards in this chapter apply to the addition or establishment of licensed residential alcoholism treatment beds for adult in any existing or proposed health care facility in New Jersey.

8:33K-1.2 Definitions

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

"Cost-effective" means to utilize a program and/or service which is less costly than the alternative program and/or service which yields the same output.

"Guidelines" means those general factors to be considered in applying a given standard, or to guide decision-making in areas for which specific standards are not available or would not be appropriate.

"Linkage agreement" means a contract describing the terms and conditions by which two or more agencies agree to supply or refer eligible clients for specified services.

"Medically indigent" means those persons without the financial resources to afford needed health services.

"Residential alcoholism treatment facility" means a facility or a designated unit of a facility which is licensed by the New Jersey Department of Health to provide services specified in the Manual of Standard for Licensure of Alcoholism Treatment Facilities, N.J.A.C. 8:42A.

"Service area" means the continuous geographic scope of the outreach, intervention, referral and follow-up activities of a residential alcoholism treatment facility delineated in terms of whole counties within the State of New Jersey.

"Standards" means the specific requirements that applicants must satisfy in developing applications for Certificate of Need approval. To the extent practicable, standards address measurable characteristics that such applications must meet.

"The Department" means the New Jersey Department of Health.

8:33K-1.3 Size of facility

(a) The minimum size of an alcoholism residential treatment facility shall be at least 30 beds.

(b) The maximum size for any single facility shall not exceed 90 beds.

(c) The Department may consider exceptions to the 30-bed minimum size in (a) above when the application demonstrates compliance with one or both of the following conditions, but in no case may the minimum size be below 20 beds:

1. The program is designed to serve special target populations as designated in the alcoholism element in the most currently adopted New Jersey State Health Plan.

2. The program to be provided will be done so in a therapeutic environment and in a cost-effective manner not to exceed the average Statewide charge for free-standing residential alcoholism treatment.

8:33K-1.4 Bed need

(a) The number of beds approved for alcoholism residential treatment shall not exceed need as defined in the alcoholism element in the most currently adopted State Health Plan.

(b) Exceptions may be considered by the Department when the applicant has demonstrated compliance with the following conditions:

1. In a service area where the supply of beds exceeds need, as identified in the most currently adopted State Health Plan, additional beds may be granted to facilities operating existing alcoholism residential care beds if they have maintained an average occupancy rate of at least 90 percent for a period of at least 12 months preceding the submission of its Certificate of Need application.

2. The alcoholism services management information system of the Department will be used to verify occupancy data.

3. All other standards identified herein must be satisfied by the applicant.

8:33K-1.5 Occupancy rate standard for bed additions to existing facilities

Facilities currently with licensed alcoholism treatment beds must have maintained an average 12-month occupancy rate preceding the Certificate of Need Application, of at least 90 percent to justify an increase in bed capacity. The applicant must provide plans demonstrating that at the proposed new capacity, occupancy will be at least 90 percent on an annual basis after the second year of operation. The Department's management information system will be used to verify occupancy data.

8:33K-1.6 Average length of stay guidelines for bed additions to existing facilities

Average Length of Stay (ALOS) in facilities seeking to add beds to an existing alcoholism residential treatment facility shall not exceed 28 days for the last 12 months for which data has been reported to the Department of Health, unless a justification for a longer ALOS is documented to the satisfaction of the Department. Justification may include the special nature or characteristics of the client population, and/or the specific approach or focus of the treatment program.

8:33k-1.7 Utilization guidelines; adjacent facilities

Occupancy rates in all licensed residential alcoholism treatment facilities located within the applicant's proposed service area, or within 30 straight miles of the applicant facility, should have been at least 90 percent during the most recent six-month reporting period prior to the application.

8:33K-1.8 Addition of residential alcoholism care beds to hospitals

(a) Licensed general hospitals seeking approval for establishment of residential alcoholism care beds within the hospital may not increase total licensed bed capacity as a result of the project and most convert a comparable number of existing licensed beds to this use. New construction projects are not approvable. Only applications involving modernization and/or renovation will be considered for approval.

(b) Waiver of (a) above may be granted to projects sponsored directly by hospitals or by subsidiary corporations of hospitals involving establishment of free-standing residential alcoholism treatment programs. Priority consideration for granting of this waiver shall be given to projects involving conversion of existing underutilized health care facilities in which capital costs are limited to minor modernization or renovation.

8:33K-1.9 Length of stay/occupancy projections; new facilities

Average length of stay projections based on program design should not exceed 28 days unless a justification for a longer ALOS is documented to the satisfaction of the Department. Justification may include the special nature or characteristics of the client population, and/or the specific approach or focus of the treatment program. The applicant should provide plans demonstrating that at least 90 percent occupancy will be achieved and maintained by the end of the second year of operation.

8:33K-1.10 Cost-effectiveness standard

A determination regarding the cost-effectiveness of any application will be based on comparing actual costs to the reasonableness cost criteria (screens) contained in the current rate-setting methodology.

8:33K-1.11 Continuity of care

(a) Linkages with community alcoholism treatment agencies for purposes of referral and follow-up must be adequately documented by the facility. Evidence must be attached indicating that formal transfer and/or program linkage agreements will be established with each of the following agencies within the facility's service area:

1. Alcoholism treatment facilities and acute care hospitals;
2. Alcoholism aftercare services;
3. Supportive or ancillary services; and
4. Emergency medical services.

8:33K-1.12 Admission criteria

(a) An admissions criteria and/or policy must be developed by the applicant and included as part of the Certificate of Need application.

(b) A written admissions criteria and/or policy should, at a minimum, address the following:

1. Diagnostic or other patient characteristics or factors both acceptable and unacceptable for admission;
2. A description of alternative procedures to be followed with those individuals deemed unacceptable for admission to the facility; and
3. A level of commitment to serve the medically indigent as negotiated by the applicant with the Department of Health.

8:33K-1.13 Treatment program

(a) The applicant must describe in detail the proposed treatment process to include at a minimum the following elements demonstrating compliance with the Manual of Standards for Licensure of Alcoholism Treatment Facilities, N.J.A.C. 8:42A:

1. Intake and assessment;
2. Treatment planning;
3. Modalities of treatment; and
4. Medical and nursing services.

8:33K-1.14 Staffing patterns

The applicant shall document how staffing complies with the Manual of Standards for Licensure of Alcoholism Treatment Facilities, N.J.A.C. 8:42A, and shall include at a minimum a listing of:

1. Job classifications;
2. Job descriptions; and
3. A table of organization.

8:33K-1.15 Physical environment

(a) The applicant shall describe the proposed site location and physical plant, include a prospective floor plan, and provide evidence that the proposed facility will comply with the Manual of Standards for Licensure of Alcoholism Treatment Facilities, N.J.A.C. 8:42A.

(b) Applicants proposing the use of an existing building should include the results of a pre-Certificate of Need building performed by the New Jersey State Department of Health.

8:33K-1.16 Local endorsement

(a) The applicant must provide evidence of local involvement in the project development process.

1. The applicant should include evidence of project consultation with officially licensed or approved alcoholism planning and service delivery agencies in the proposed service area, including State and/or County funded alcoholism agencies.
2. The applicant should include letters of support for the proposed project from officially licensed or approved alcoholism planning and service delivery agencies in the proposed service area, including State and/or County funded alcoholism agencies.

8:33K-1.17 Local advisory committee on alcoholism review

The applicant should provide a copy of the completed Certificate of Need application, at the time of submission to the State Department of Health, to the Local Advisory Committee(s) on Alcoholism in the proposed service area for their review and comment. The comments of the Local Advisory Committee(s) on Alcoholism should be made available to both the Health Systems Agencies in the proposed service area and to the Department.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Standards for Licensure of Hospital Facilities Pharmaceutical Services

Proposed Repeal: N.J.A.C. 8:43B-10
Proposed New Rule: N.J.A.C. 8:43B-10

Authorized By: J. Richard Goldstein, M.D., Commissioner, Department of Health.
Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Wanda J. Marra, Coordinator
Standards Program
Division of Health Facilities Evaluation
Department of Health
CN 367
Trenton, NJ 08625

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

This proposal is known as PRN 1984-39.

The agency proposal follows:

Summary

The proposed rules for pharmaceutical services are a revision of the antiquated, outdated standards for Pharmaceutical Services, Subchapter 10 in N.J.A.C. 8:43B, the Manual of Standards for Hospital Facilities. The existing rules are approximately 20 years old and, since the time of their original promulgation, the role of the hospital pharmacy department has evolved to such an extent that it is no longer reasonable to consider the provision of patient care without simultaneously considering the provision of pharmaceutical services. According to the American Society of Hospital Pharmacists, "Virtually every hospital patient receives drugs, often as the sole therapeutic modality. The pharmaceutical service is, therefore, an essential component of organized health-care delivery."[1]

This evolution of hospital pharmacy in the direction of greater depth of patient care services occurred partially in response to a concomitant increase in the variety and complexity of medications available, to the acute nature of the illnesses which afflict patients in contemporary hospitals, and to a recognition of the advantages of automated data systems, new equipment, and new technology. The need to update the current rules derives from the fact that useful rules must be compatible with the current practices of the service to which they apply and must be cost-effective in this time of increasing health care costs.

The proposed rules have been written in language and format designed to promote clarity and enforceability. To the extent possible, the proposed rules use quantifiable, verifiable terms for ease of interpretation by both facilities and State surveyors.

The Department of Health is indebted to the New Jersey Society of Hospital Pharmacists (NJSHP) for their invaluable assistance in the development of these proposed rules. The NJSHP has supplied documented research, based partially upon a Report to Congress by the United States General Accounting Office[2], justifying the substantive changes incorporated in the proposed rules and demonstrating the cost-effectiveness of these changes. A copy of the NJSHP report to the Department, documentation provided by the NJSHP, and relevant correspondence are on file at the Licensing, Certification and Standards unit of the Department of Health.

The proposed rules contain two important changes: 1) implementation of the unit dose drug distribution system (UDDS) (see N.J.A.C. 8:43B-10.4(a)1); and 2) implementation of a pharmacy-based, centralized intravenous (I.V.) admixture service (see N.J.A.C. 8:43B-10.4(a)21). These two systems have much in common and, together, provide for the efficient, controlled delivery of medications to patients.

A summary of the changes contained in the proposed rules, N.J.A.C. 8:43B-10, follows a description of the unit dose drug distribution system and the pharmacy-based, centralized I.V. admixture service.

N.J.A.C. 8:43B-10.4(a)1 requires a unit dose drug distribution system for New Jersey hospitals, which will have two years from the date of promulgation of the rules to implement the UDDS. The Department believes that the rule must include this two year implementation period in order to ensure that each facility would have sufficient time in which to make the adjustments necessary to satisfy the requirement for a UDDS. The UDDS is a pharmacy-controlled method of distributing drugs in single unit packages from the pharmacy to patient care areas. The distribution involves the delivery and exchange, at least once per day, of a supply of individually packaged and appropriately labelled medications for each patient. No more than a 24-hour supply of medications shall be delivered to or available in the patient care area at any time.

The UDDS promotes the safe and proper use of medications, and facilitates the provision of cost-effective care. The American Society of Hospital Pharmacists has stated[3] that the UDDS is superior to traditional drug distribution systems in that the UDDS is characterized by fewer medication errors, lower total cost of medication-related activities, more efficient use of both nursing and pharmacy personnel, better drug control, more accurate patient billing, smaller drug inventory in patient care areas, and greater adaptability to computerization.

The fact that a considerably lower medication error rate is associated with the UDDS than with more conventional systems can be attributed to several features of the UDDS. Traditional drug distribution systems require many instances of transcriptional activity, such as medication ticketing, throughout the medication cycle. Each instance represents a possible source of error. Also, a transcriptional error is perpetuated when it appears on a document used as a source for further transcription. The UDDS, on the other hand, requires considerably fewer instances of transcriptional activity. For example, information need not be transcribed onto medication tickets.

The New Jersey State Board of Pharmacy Rules requires both the receipt of a direct copy of an original prescriber's order (see N.J.A.C. 13:39-6.2) and the maintenance of a patient medication profile by the pharmacy (see N.J.A.C. 13:39-9.13). Implementation of the UDDS facilitates adherence to these rules since the UDDS also requires the receipt of a direct copy of an original prescriber's order and the maintenance of a patient medication profile by the pharmacy. Conversely, the existence of these two rules facilitates implementation of the UDDS.

The UDDS affords the pharmacist a greater opportunity to apply his or her specialized knowledge and to become involved in the reduction of medication errors. For example, the pharmacist can rectify errors of omission which may have been committed since he or she has the responsibility of seeking an explanation for any unused medications.

Single unit packaging of medications is an essential element of the UDDS. The traditional system of drug distribution, in contrast,

permits, but does not require, the use of single unit packaging. A single unit package contains one individual dosage form. In the UDDS, each medication is clearly identified by trade name, generic name, strength, dose, manufacturer's name, expiration date, and lot number or reference code. In those conventional drug distribution systems which do not use single unit packaging, unused medications are destroyed upon return to the hospital pharmacy. By requiring single unit packaging, the UDDS makes it possible for unused drugs to be redispensed rather than destroyed (see N.J.A.C. 8:43B-10.4(a)13ii).

The UDDS differs from the traditional system in that the UDDS strictly limits the amount of an individual patient's medications available in the patient area at any time. This limitation facilitates the prompt and thorough detection of medication errors. The desire to reduce the error rate underlies the desire to establish the unit dose drug distribution system. Numerous studies have demonstrated the efficacy of the UDDS in minimizing medication errors. Hynniman et al have stated, "It has become generally accepted that there are fewer medication errors in hospitals utilizing unit dose systems than in hospitals with more conventional drug distribution systems."[4]

The centralized intravenous admixture service (see N.J.A.C. 8:43B-10.4(a)21) is a natural companion of the unit dose drug distribution system insofar as its objective also is to prepare, label, and distribute medications, in this case all I.V. solutions admixed with drugs, from a pharmacy-based, centralized operation to patient care areas in ready-to-administer form. Intravenous admixtures are compounded in response to the individual needs of patients. A pharmacy-based I.V. admixture service localizes in the pharmacy the responsibility and accountability for compounding, dispensing, and controlling intravenous admixtures and operates under aseptic conditions through the use of a laminar air flow hood. The pharmacist is able to eliminate the use of unstable, outdated, or otherwise unacceptable drugs, and to check for drug incompatibility. Since the intravenous administration of medications is so critical and potentially hazardous[5], the application of a pharmacist's knowledge of drug compatibility, drug stability, and pharmaceutical chemistry to the preparation of parenteral admixtures is a particularly advantageous consequence of a pharmacy-based, centralized I.V. admixture service.

Some of the advantages[5] which result from the use of a pharmacy-based, centralized I.V. admixture service correspond to those mentioned above in reference to the UDDS such as fewer medication errors, more time for the nursing staff in which to provide direct patient care, standardized labeling, less drug wastage, and improved patient billing. Others are more distinctive of the centralized I.V. admixture service. These include the efficiency attendant upon the centralization of I.V. solutions, medications, and equipment in a specially designated area; the aseptic environment which a laminar air flow hood provides; the derivation of the optimal benefits from medications of low stability which results from the prudent scheduling of I.V. admixture preparation; and adaptability to individual patient needs.[5]

The extent and rate of implementation of the UDDS and the pharmacy-based, centralized I.V. admixture service among hospital pharmacies throughout the United States suggest the level of importance of these modern systems. A 1982 national survey of pharmaceutical services in short-term hospitals conducted by the American Society of Hospital Pharmacists[6] indicated that 61.1 percent of the hospitals were "complete" unit dose hospitals, that is, hospitals in which at least 90 percent of the beds are under the unit dose system. Furthermore, 57.4 percent of the hospitals had "complete" intravenous admixture programs, that is, programs which serve at least 90 percent of the beds in the hospital. The percentage of hospitals having both a complete UDDS and a complete intravenous admixture program "increased dramatically from 9.2% in 1975 to 45.1% in 1982."

A summary of the other major changes contained in the proposed new rules for pharmaceutical services, N.J.A.C. 8:43B-10, follows:

A separate list of definitions, N.J.A.C. 8:43B-10.1, has been added to elaborate upon and explain the terminology used within the subchapter.

Proposed rule N.J.A.C. 8:43B-10.2(a) provides for the 24-hour per day availability of pharmaceutical services through a pharmacy on the hospital premises and is consistent with the current rule, N.J.A.C. 8:43B-10.1(a)4, which requires that provision be made for emergency pharmaceutical services. The necessity of 24-hour pharmaceutical service availability is a consequence of the complex nature of modern medications and of the variety, depth, and complexity of patient care services provided by the pharmaceutical service in modern hospitals. Although the presence of a pharmacy on hospital premises was not previously required, New Jersey hospitals do, in fact, already possess pharmacies.

Proposed new rule N.J.A.C. 8:43B-10.2(b) specifies the facility's responsibility for developing a written organizational plan and is consistent with the current rule, N.J.A.C. 8:43B-5.2.

The proposed rule, N.J.A.C. 8:43B-10.3(a), is a revision of the current rule, N.J.A.C. 8:43B-10.1(e). In contrast to the current rule, the proposed rule is consistent with N.J.A.C. 13:39-7.15 in the New Jersey State Board of Pharmacy Rules. For example, the schedule in the proposed rule and in N.J.A.C. 13:39-7.15 for the meeting of the pharmacy and therapeutics committee is at least two times per year, whereas it is quarterly in the current rule.

N.J.A.C. 8:43B-10.4(a) provides for the development of policies and procedures to ensure that the right drug is administered to the right patient in the right amounts and at the right times. In the interest of both patient safety and flexible management, the proposed rule requires each facility to define its own policies and procedures regarding specific matters affecting the safe and efficient provision of pharmaceutical services to patients. Many of the areas specified in the paragraphs of N.J.A.C. 8:43B-10.4(a) are addressed in some form in the current rules, whereas other areas are not presently addressed. Other paragraphs of the proposed rule clarify the application of existing regulations in the New Jersey State Board of Pharmacy Rules and in the Controlled Dangerous Substances Acts to hospital pharmaceutical services.

The proposed rule, N.J.A.C 8:43B-10.4(a)3, regarding emergency kits and carts is an expansion of the current rule, N.J.A.C. 8:43B-10.2(a)4. Similarly, the proposed rule, N.J.A.C. 8:43B-10.4(a)4, which ensures that all medications are ordered in writing contains more detail than the current rule, N.J.A.C. 8:43B-7.2(c)10i. Policies and procedures regarding the clarification of orders are required by the proposed rule, N.J.A.C. 8:43B-10.4(a)5.

The proposed rule, N.J.A.C. 8:43B-10.4(a)6, regarding the responsibilities of the pharmacist and the monitoring of pharmacy personnel other than the pharmacist is consistent with the current rule, N.J.A.C. 13:39-2.1, in the New Jersey State Board of Pharmacy Rules.

The New Jersey State Board of Nursing policy regarding the calculation and administration of doses of medications by licensed practical nurses is specified in the proposed rule, N.J.A.C. 8:43B-10.4(a)7.

Proposed rule N.J.A.C. 8:43B-10.4(a)8i is similar to the current rule, N.J.A.C. 8:43B-10.1(c)2, regarding the administration of toxic or dangerous drugs. The establishment of the times for the administration of drugs prescribed is required by the proposed rule, N.J.A.C. 8:43B-10.4(a)8ii.

The proposed rules, N.J.A.C. 8:43B-10.4(a)9 through 11, require facilities to develop policies and procedures regarding self-administration of drugs, use of previously acquired drugs of patients, and release of drugs to patients upon discharge if the facilities allow such practices. Since the rules do not completely determine the content of the required policies and procedures, each facility has the opportunity of exercising its own judgment in the development of these policies and procedures.

Documentation and review of adverse drug reactions, medication errors, and drug defects are required by the proposed rule, N.J.A.C. 8:43B-10.4(a)12.

The proposed rule, N.J.A.C. 8:43B-10.4(a)13, requires the development of policies and procedures regarding unused drugs and expands the current rule, N.J.A.C. 8:43B-10.2(a)3.

Policies and procedures are also required (see N.J.A.C. 8:43B-10.4(a)14 through 20) regarding drug repackaging, the immediate delivery of stat. doses, the removal of drugs from the pharmacy, the use of floor stock drugs, outpatient prescriptions, stop orders, and the administration of toxic and dangerous drugs.

The proposed rule, N.J.A.C. 8:43B-10.4(a)21, regarding the use of parenterals requires the implementation of a pharmacy-based, centralized intravenous admixture service which has been described above.

N.J.A.C. 8:43B-10.4(a)22 requires policies and procedures for drug research and the use of investigational drugs, if facility policy permits.

The proposed rules, N.J.A.C. 8:43B-10.4(a)23 through 25, regarding drugs, devices, needles, and syringes, are consistent with the current rules, the New Jersey State Board of Pharmacy Rules, and the Controlled Dangerous Substances Acts and amendments thereto.

The proposed rule, N.J.A.C 8:43B-10.4(a)26, requires policies and procedures regarding the control of drugs subject to the Controlled Dangerous Substances Acts and amendments thereto, in compliance with all Federal and State laws and regulations concerning procurement, storage, dispensing, administration, and disposition. N.J.A.C. 8:43B-10.4(a)26i through iii are consistent with the current rules. The proposed new rule, N.J.A.C. 8:43B-10.4(a)26iv, requires that a declining inventory be maintained by the anesthesia service of all controlled substances. The anesthesia service must also maintain a system of accountability for noncontrolled drugs (see N.J.A.C. 8:43B-10.4(a)26iv(1)). The requirement for a safe in the current rule, N.J.A.C. 8:43B-10.1(c)1, does not appear in the proposed rule because the establishment of regulations pertaining to the accountability for and storage of stock supplies of narcotics is not within the purview of the proposed subchapter.

The proposed rule, N.J.A.C. 8:43B-10.4(a)27, expands the current rules, N.J.A.C. 8:43B-10.2(a)1 and N.J.A.C 8:43B-10.2(a)5, which require that all medications be kept in locked storage areas. The new rule, however, permits each facility to define its own system of accountability for the storage of intravenous infusion solutions.

The proposed new rule, N.J.A.C. 8:43B-10.4(a)28, which expands the current rule, N.J.A.C. 8:43B-10.1(e)4, requires the provision in the pharmacy and at each drug distribution station of drug information approved by the pharmacy and therapeutics committee as well as the telephone number of the regional poison control center.

Further provisions have been made for the maintenance of a list of abbreviations, conversion charts, and chemical symbols to be kept in each drug distribution station (see N.J.A.C. 8:43B-10.4(a)29); the establishment of policies and procedures concerning the activities of medical and pharmaceutical sales representatives and the distribution or use of drug samples (see N.J.A.C. 8:43B-10.4(a)30); and the assignment of a pharmacist to each satellite pharmacy in facilities that operate a decentralized pharmaceutical service (see N.J.A.C 8:43B-10.5).

The proposed rules, N.J.A.C. 8:43B-10.6 and 7, regarding the appointment of a director and an assistant director of pharmaceutical services elaborate upon the current rule, N.J.A.C. 8:43B-10.1(a)1. The reference to a consulting pharmacist in the current rule, N.J.A.C. 8:43B-10.1(a)3ii, does not appear in the proposed rules. Responsibilities of staff pharmacists and clinical pharmacists are enumerated in the proposed rule, N.J.A.C. 8:43B-10.8. N.J.A.C. 8:43B-10.9 requires facilities to provide written job descriptions for pharmacy personnel other than pharmacists.

The proposed rules also include a section, similar to N.J.A.C. 8:43B-10.2 in the current rules, specifically addressing the nurse's responsibility for nursing care services related to pharmaceutical services, such as drug administration and control (see N.J.A.C. 8:43B-10.10). Eventually, the subchapter on nursing services, N.J.A.C. 8:43B-5.3, will be revised. N.J.A.C. 8:43B-10.10 will be incorporated into N.J.A.C. 8:43B-5.3 at that time. The proposed rule, N.J.A.C. 8:43B-10.10(a)1, is consistent with the current rule, N.J.A.C. 8:43B-10.2(b). The proposed rules, N.J.A.C. 8:43B-10.10(a)2 through 14, address many of the concerns addressed by the proposed rules, N.J.A.C. 8:43B-10.4(a). However, the proposed rules, N.J.A.C. 8:43B-10.10(a)2 through 14, are not duplicative because they address these patient safety issues from the nursing perspective. These patient safety issues include: the calculation and administration of drug doses by licensed practical nurses; the acceptance of verbal and telephone orders; the measurement of vital signs prior to drug administration; the prompt administration of drugs after dose preparation, except when a UDDS is used; the self-administration of drugs; the storage of drugs for individual patients; the identification of the patient prior to drug administration; the maintenance of a record of drugs administered; the reporting and documentation of drug errors and adverse drug reactions; the return of drugs to the pharmacy; the storage of drugs in locked areas and the storage of intravenous infusion solutions; the separation of drugs for external use from drugs for internal use; and the procurement, storage, use, and disposal of needles and syringes.

The proposed rules contain a major change regarding the accountability for controlled drugs. N.J.A.C. 8:43B-10.10(a)15iii requires that a declining inventory be made of all substances in Schedule II only of the Controlled Dangerous Substances Acts at the termination of each tour of duty. The requirement of declining inventories of substances in Schedules III and IV of the Controlled Dangerous Substances Acts has been eliminated. The flexibility afforded by this deletion will not jeopardize patient safety.

The proposed rule, N.J.A.C. 8:43B-10.10(a)15iv, describes the procedure to be followed in the event that the inventories of controlled substances cannot be verified or drugs are lost, contaminated, wasted, or destroyed.

Social Impact

The safe and efficient management of pharmaceutical services is crucial for the well-being of hospitalized patients. Assurance is needed that patients will receive medication doses as ordered by a prescriber at the times and intervals prescribed, and that patients will be protected from errors of commission and omission. The proposed rules, N.J.A.C. 8:43B-10, require that hospitals licensed under N.J.A.C. 8:43B-1 use the unit dose drug distribution system and the pharmacy-based, centralized intravenous admixture service, in conjunction with 24-hour pharmacy availability, as a means of safeguarding patient welfare and ensuring that patients derive maximum therapeutic benefits from prescribed medications.

Adoption of these pharmacy-based medication distribution systems will have several highly desirable effects upon the patients and the professional staffs which constitute the hospital community. Efficiency of operation will be enhanced by a substantial decrease in medication errors, a diminution in drug inventory, and a decrease in the loss of drugs through wastage or diversion.

With the advent of the UDDS and the pharmacy-based, centralized I.V. admixture service, pharmaceutical activities are transferred from the nursing staff to the pharmacy staff resulting in a more efficient use of personnel. The principal benefit of each service is the large degree by which medication errors are reduced and patient safety is enhanced. Conventional drug distribution systems do not sufficiently impede the commission of errors and, not surprisingly, high medication error rates are associated with these systems. Similarly, one study[7] demonstrated that parenteral products which were not prepared by a pharmacy-based, centralized I.V. admixture service had a 21 percent error rate due to such contributory factors as use of the wrong drug, solution, or dosage, or drug incompatibility. These problems are alleviated by

the use of the UDDS and the use of the pharmacy-based, centralized I.V. admixture service, respectively. Traditional policies and procedures have the undesirable feature of requiring nurses to devote an inordinate share of their time to the execution of medication-related functions. For example, one study has shown that these activities consume an average of 47.3 percent of a registered nurse's time.[8] The time spent by nursing personnel in performing drug-related tasks is significantly reduced by the use of the unit dose drug distribution system and the pharmacy-based, centralized I.V. admixture service, thereby allowing the nurses additional time in which to provide nursing care to patients and ultimately leading to an improvement in the quality of care provided. This latter benefit is illustrative of the fact that the UDDS and the centralized I.V. admixture service are integral parts of the hospital system rather than isolated pharmacy systems.

The proposed subchapter, N.J.A.C. 8:43B-10, is more progressive, more responsive to the needs of individual facilities, and more clearly written than the current rules. The proposed rules reflect the state of modern hospital pharmacy while capturing the intent of the existing rules. Insofar as the proposed rules are less prescriptive than the current rules with respect to the content of the required policies and procedures, the proposed rules will allow the various types of hospitals the opportunity and flexibility to devise innovative and effective methods of providing pharmaceutical services to patients. The precise language of the proposed rules will facilitate uniform interpretation and the survey process. These characteristics of the proposed rules will render the goals of a higher level of patient care and a higher level of patient safety more achievable.

Economic Impact

An increase in costs for hospital pharmaceutical services will result from the implementation of the unit dose drug distribution system and the pharmacy-based, centralized intravenous admixture service, although it is not possible to provide an estimate of the magnitude of this increase applicable to all hospitals. Nevertheless, review of the literature and consideration of the compensatory benefits which will result from the adoption of the proposed rules suggest the accuracy of the conclusion of the New Jersey Society of Hospital Pharmacists that the proposed measures are cost-effective over time and will actually produce long-term savings for the total hospital budget.

A survey conducted by the New Jersey Society of Hospital Pharmacists has revealed that many hospitals in the state of New Jersey presently use, to some extent, either the UDDS or a centralized I.V. admixture service or both of these systems. Consequently, the cost of complying with the requirement to have a UDDS and a centralized I.V. admixture service will vary from facility to facility. Higher costs could result from a need to reallocate space, a need to purchase additional equipment, or a need to alter the staffing pattern.[2] Institution of a pharmacy-based, centralized intravenous admixture service represents a relatively inexpensive means of achieving a higher level of patient care, of reducing labor costs, and of reducing the medication error rate. The American Society of Hospital Pharmacists has stated that there is reason to believe that an investment of as little as $1,000.00 and a redistribution of functions between the nursing and pharmacy staffs are all that are required to move the preparation of intravenous solutions into the pharmacy.[9]

The initial investment in capital and personnel that is required to convert traditional pharmacy systems to those mandated in the proposed rules will be counterbalanced by a reduction in the amount of time which nurses devote to medication-related activities. This reduction could be utilized in such a way as to reduce the total hospital budget or to increase the degree of direct nursing care provided to patients.[2] Further savings will result from the reduction in drug costs which will accompany the reduction in drug waste. For example, the UDDS permits the redispensing of unused medications. Both the UDDS and the centralized I.V. admixture service facilitate accurate patient billing. The centralized I.V. admixture service provides, as an additional economic benefit, a mechanism for obtaining credit from the manufacturer for defective units, such as those which are contaminated.[5]

The augmentation of the quality of patient care resulting from improved preparation, distribution, and administration of medications, as well as from additional nursing time available for the provision of direct patient care, contributes to the overall cost-effectiveness of the proposed rules.

It is not expected that the proposed rules, considered in their entirety, will substantially increase costs. The flexibility of the proposed rules, as exemplified by the deletion of any reference to a safe for the storage of drugs and by the relaxation of the requirement for a declining inventory of Schedule III and IV drugs, will be economically advantageous. Similarly, each facility is permitted to develop its own system of accountability for intravenous infusion solutions. Among the many advantages of the UDDS is the reduction in the amount of time directed by professional personnel toward the documentation of medication orders. In general, the proposed rules allow the flexible management of personnel. No net increase in surveillance on the part of the Department is anticipated because the proposed rules, although more explicit than the current rules, are no more prescriptive. Furthermore, the proposed rules require less time for interpretation since they contain more detail than the current rules.

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[1]ASHP Comments on Proposed Federal Conditions of Participation for Hospitals, **American Journal of Hospital Pharmacy**, vol. 40, 1983, pp. 1037-41.

[2]Study of Health Facilities Construction Costs, United States General Accounting Office Report to the Congress by the Comptroller General of the United States, November 20, 1972.

[3]ASHP Statement on Unit Dose Drug Distribution, **American Journal of Hospital Pharmacy**, vol. 38, 1981, p. 1214.

[4]Hynniman, Clifford E., Conrad, Wayne F., Urch, William A., Rudnick, Betty R., and Parker, Paul F., "Unit dose system and traditional drug distribution systems in four hospitals," **American Journal of Hospital Pharmacy**, vol. 27, 1970, pp. 803-14.

[5]Burke, Arthur W., "Justifying an I.V. additive program," **Drug Intelligence and Clinical Pharmacy**, vol. 6, 1972, pp. 111-113.

[6]Stolar, Michael H., "National survey of hospital pharmaceutical services- 1982," **American Journal of Hospital Pharmacy**, vol. 40, 1983, pp. 963-9.

[7]Thur, Michael P., Miller, William A., and Latiolais, Clifton J., "Medication errors in a nurse-controlled parenteral admixture program," **American Journal of Hospital Pharmacy**, vol. 29, 1972, p. 298.

[8]Martin, Ruby M., "A pharmacy coordinated unit dose dispensing and drug administration system - nursing implications," **American Journal of Hospital Pharmacy**, vol. 27, 1970, pp. 902-906.

[9]Statement of the American Society of Hospital Pharmacists before the Subcommittees on Health of The Committee on Interstate and Foreign Commerce and The Committee on Ways and Means on The Hospital Cost Containment Act of 1977, May 23, 1977.

Delete in its entirety the current text found in the New Jersey Administrative Code at N.J.A.C. 8:43B-10.

Full text of the proposed new rule follows:

SUBCHAPTER 10. PHARMACEUTICAL SERVICES

8:43B-10.1 Definitions and/or qualifications

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

"Calculated dose" shall mean a drug dose that requires mathematical computation because the amount of drug to be given differs from the dose that has been supplied for administration. The amount of drug prescribed may be:

1. Smaller than that supplied, requiring administration of a fractional part of the drug;
2. Larger than that supplied, requiring administration of more than one tablet, milliliter, or other measurement; or
3. Ordered in one measurement and available in the units of another measurement (for example, the number of drops per minute to administer a prescribed amount of solution).

"Charge nurse" shall mean a person who is licensed in the State of New Jersey as a registered professional nurse.

"Controlled dangerous substances" shall mean drugs subject to the Controlled Substances Act of 1970 (Title II, Public Law 91-513 and the New Jersey Controlled Dangerous Substances Act of 1971).

"Current" shall mean up-to-date, extending to the present time.

"Drug" shall mean a substance as defined in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39-1.1. The word "medication," which also occurs in these standards, has an equivalent meaning and is used interchangeably with the word "drug."

"Drug administration" shall mean a procedure in which a prescribed drug or biological is given to a patient by an authorized person in accordance with all laws and regulations governing such procedures. The complete procedure of administration includes removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying it with the prescriber's orders, giving the individual dose to the patient, seeing that the patient takes it (if oral), and recording the required information, including the method of administration.

"Drug dispensing" shall mean a procedure entailing the interpretation of the original or direct copy of the prescriber's order for a drug and, pursuant to that order, the proper selection, measuring, labeling, packaging, and issuance of the drug to a patient or a service unit of the facility, in conformance with all applicable Federal, State, and local rules and regulations.

"Drug distribution station" shall mean an area as defined in Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities, DHEW Publication No. (HRA) 79-14500.

"Floor stock" shall mean a supply of drugs provided by the pharmacist to a patient or a service unit in a labeled container in limited quantities, as approved by the pharmacy and therapeutics committee of the facility.

"Formulary" shall mean a list of all drugs stocked by the facility. It may also list drugs which are considered appropriate for treating specific illnesses, or may list substitutions of chemically equivalent drugs for trade name prescription drugs.

"Licensed nursing personnel" (licensed nurse) shall mean registered professional nurses or practical (vocational) nurses licensed in the State of New Jersey.

"Licensed practical nurse" shall mean a person who is licensed by the New Jersey State Board of Nursing.

"Medical record" shall mean all records in the facility which pertain to the patient, including radiological films.

"Medication administration record" (MAR) shall mean the documentation of medication administered to a patient.

"Medication error" shall mean the administration of the wrong mediction or dose of medication, drug, diagnostic agent, chemical, or treatment requiring use of such agents, to the wrong patient, or at the wrong time, or the failure to administer such agents at the specified time, or in the manner prescribed or normally considered as accepted practice. Errors may be classified as "commissions," that is, medications incorrectly administered to the patient, such as unordered medication or medication in the wrong strength; and "omissions," that is, medications not administered at prescribed times.

"Medication profile" shall mean a patient profile record system as defined in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39-9.13.

"Pharmacist" shall mean a person who is registered by the New Jersey State Board of Pharmacy.

"Prescriber" shall mean a person who is authorized to write prescriptions in accordance with Federal and State laws and the medical staff bylaws, rules and regulations.

"Registered professional nurse" shall mean a person who is licensed by the New Jersey State Board of Nursing.

"Self-administration" shall mean a procedure in which any medication is taken orally, injected, inserted, or topically or otherwise administered by a patient to himself or herself. The complete procedure of self-administration includes removing an individual dose from a previously dispensed, labeled container (including a unit dose container), verifying it with the directions on the label, and taking orally, injecting, inserting, or topically or otherwise administering the medication.

"Stop order" shall mean a written, signed, and dated statement by the prescriber mandating the cessation of a written order (except those orders indicated in N.J.A.C. 8:43B-10.4(a)19).

"Supervision" shall mean authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his or her sphere of competence, with initial direction and periodic on-site inspection of the actual act of accomplishing the function or activity.

"Direct supervision" shall mean the supervision on the premises within view of the supervisor.

"Unit dose drug distribution system" shall mean a system in which drugs are delivered to the patient areas in single unit packaging. Each patient shall have his or her own medications labeled with his or her name and location in the facility. Each medication shall be individually wrapped and labeled with the generic and trade names and strength of the drug, lot number or reference code, expiration date, dose, and manufacturer's name, and ready for administration to the patient. Cautionary instructions shall appear on the patient's medication administration record (MAR), and the system shall include provisions for noting additional information, such as special times or routes of administration. Delivery and exchange of patient medications shall occur promptly, and at least one exchange of patient medications shall occur daily. The number of doses for each patient shall be sufficient for a maximum of 24 hours.

8:43B-10.2 Pharmaceutical services

(a) Pharmaceutical services shall be available at all times on the premises. The pharmacy shall be licensed by, and operated in accordance with, the New Jersey State Board of Pharmacy and shall possess a current Drug Enforcement Administration registration and a Controlled Dangerous Substance registration from the Department.

(b) The facility shall maintain the organization, management, and operation of the pharmaceutical service in accordance with a written organizational plan which shall describe the responsibility, authority, and accountability relationships of personnel, the functional structure of the service, and the relationship of the pharmaceutical service to other services.

8:43B-10.3 Pharmacy and therapeutics committee's responsibilities

(a) A multidisciplinary pharmacy and therapeutics committee shall be appointed by and accountable to the governing authority. The committee shall meet at least two times a year and shall document its activities, findings, and recommendations, as specified in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39-7.15. The committee shall be responsible for, but not limited to, the following:

1. With the director of the pharmaceutical service, development of policies and procedures, approved by the governing authority, and documentation of their annual review. These policies and procedures shall govern evaluation, selection, obtaining, dispensing, storage, distribution, administration, use, control, accountability, and safe practices pertaining to all drugs used in the treatment of patients;
2. Development and annual review and approval of a current

formulary of drugs for use in the facility. The formulary shall be available to at least nursing personnel and the medical staff;

3. Provision of consultation and in-service education to at least the medical staff, nursing personnel, and the director of the pharmaceutical service concerning the choice of drugs used in the facility;

4. Review of the reports of the director of the pharmaceutical service; and

5. Submission of a report to the governing authority and the medical staff in accordance with the facility's policies and procedures.

8:43B-10.4 Drug administration; policies and procedures

(a) Policies and procedures shall ensure that the right drug is administered to the right patient in the right amounts and at the right times. Policies and procedures shall include, but not be limited to, the following:

1. Specification of a unit dose drug distribution system (Note: All facilities shall have a unit dose drug distribution system within two years of the effective date of this subchapter.) Policies and procedures for the unit dose drug distribution system shall include, but not be limited to, the following:

i. Each patient shall have his or her own medications, labeled with his or her name and room number. Each unit dose of medication shall be labeled to include the generic name, trade name (if appropriate), and strength of the drug, dose, manufacturer's name and expiration date, and lot number or reference code. Cautionary instructions shall appear on the patient's medication administration record (MAR);

ii. Delivery and exchange of patient medications shall occur as scheduled. Patient medications shall be exchanged at least once a day. No more than a 24-hour supply of doses shall be delivered to or available in the patient care area at any time; and

iii. There shall be provisions for noting additional information, such as special times or routes of administration and special precautions;

2. Methods for procuring drugs on a routine basis, in emergencies, and in the event of disaster;

3. Policies and procedures, approved by the pharmacy and therapeutics committee in accordance with the standards in this chapter, regarding emergency kits and emergency carts, including the following:

i. Approval of their locations and contents;

ii. Provision for pediatric doses in areas of the facility where pediatric emergencies may occur, including, but not limited to, the pediatric service, the emergency room, and the operating room;

iii. Determination of the frequency of checking contents, including expiration dates;

iv. Approval of the assignment of responsibility for checking contents; and

v. Ensuring that emergency kits are secure but are not kept under lock and key;

4. A policy and procedures, approved by the medical staff of the facility, to ensure that all medications are ordered in writing, that the written order specifies the name of the drug, dose, frequency, and route of administration, that the order is signed and dated by the prescriber, and that all medications are administered by licensed or authorized personnel, in accordance with the laws of the State of New Jersey;

5. Policies and procedures regarding the clarification of orders, including a definition of "clarification;"

6. A policy that only a pharmacist, or pharmacy personnel other than a pharmacist and under the direction and supervision of a pharmacist, shall compound, prepare, label, or dispense drugs, make labeling changes, or transfer drugs to different containers. Pharmacy personnel other than the pharmacist while performing these functions shall be within view of the pharmacist, who shall check prior to and upon completion of the person's performance;

7. A definition and policies and procedures for doses of drugs that may be calculated and administered by licensed practical nurses, according to directions on an auxiliary label supplied by the pharmaceutical service. A licensed practical nurse may:

i. Administer drugs orally, subcutaneously, and intramuscularly, according to the unit dosage labeling;

ii. Administer drugs that require uncomplicated calculations; and

iii. Administer fractional doses that have been precalculated when the dose to be administered is noted on the vial or container;

8. Policies and procedures for drug administration, including, but not limited to, the following:

i. Specification of additional information and training required for personnel who administer toxic or dangerous drugs (such as chemotherapeutic agents, investigational drugs, or drugs administered intravenously or by clysis), or who administer approved drugs for unapproved uses, new dosage forms, or any unusual or new drug requiring anciliary precautions; and

ii. Establishment of the times for administration of drugs prescribed, for example, q.d., b.i.d., t.i.d., and q.i.d. (one, two, three, and four times a day);

9. If facility policy permits, policies and procedures regarding self-administration of drugs, including, but not limited to, the following:

i. A requirement that self-administration be permitted only upon a written order of the prescriber;

ii. Storage of drugs;

iii. Labeling of drugs;

iv. Methods for documentation in the patient's medical record of self-administered drugs;

v. Assistance in training and education of patients in self-administration and the safe use of drugs; and

vi. Establishment of precautions and policies and procedures so that patients do not share their drugs or take the drugs of another patient;

10. If facility policy permits, policies and procedures regarding the previously acquired drugs of patients. A written order signed by the prescriber shall be required for the administration of such drugs. The drugs shall be given to the pharmacist for identification of contents and dispensing origin, and for relabeling for use in the facility;

i. Policies and procedures regarding drugs brought into the facility by a patient and not authorized in writing by the prescriber;

11. If facility policy permits, procedures regarding release of drugs to patients upon discharge. Drugs shall be released only on the written order of the prescriber, and shall be relabeled and repackaged by the pharmacist, in accordance with the New Jersey State Board of Pharmacy Rules. Released drugs shall be documented in the patient's medical record, in accordance with facility policy;

12. Policies and procedures for documenting and reviewing adverse drug reactions, medication errors, and drug defects, including, but not limited to, the following:

i. Adverse drug reactions and/or allergies shall be documented in the patient's medical record and on its outside front cover; and

ii. Medication errors and adverse drug reactions shall be orally reported immediately to the charge nurse and the prescriber. By the end of the shift, the director of the pharmaceutical service, the nursing supervisor, and the director of the nursing service shall be notified, an entry made in the patient's medical record, and an incident report completed. As determined by facility policy, incident reports shall be reviewed by the pharmacy and therapeutics committee or by another specified committee, or its equivalent, with the participation of the director of the pharmaceutical service or his or her designee;

13. Policies and procedures for unused drugs, including, but not limited to, the following:

i. Drugs in opened containers, in containers with broken seals, or in containers missing drug source and exact identification (for example, control lot number) shall be returned to the pharmacy to be relabeled, replaced, disposed of, or immediately destroyed in

accordance with the New Jersey State Board of Pharmacy Rules;

ii. Drugs in unopened containers and in unit dose packages which have seal and exact identification intact may be redispensed; and

iii. In all areas of the facility where drugs are dispensed, administered or stored, a record shall be made of any controlled substances that are wasted, either by accident or intent. This record shall be signed by the person responsible, any witnesses, and by the nursing supervisor if nursing personnel wasted the substance, and returned to the pharmacy with a written explanation;

14. Policies and procedures concerning drug repackaging;

15. Policies and procedures for ensuring the immediate delivery of **stat**. doses. **Stat.(statim)** shall mean immediately.

16. Policies and procedures to ensure the provision of pharmaceutical services at all times. Drugs shall be removed from the pharmacy in accordance with the New Jersey State Board of Pharmacy Rules;

17. If facility policy permits, policies and procedures for the use of floor stock drugs. A list shall be maintained of floor stock drugs and their amounts stored throughout the facility;

18. Policies and procedures regarding outpatient prescriptions, including, but not limited to, prescription labeling, profiles, and record storage, in accordance with the New Jersey State Board of Pharmacy Rules;

19. Policies and procedures for stop orders, including, but not limited to, the following:

1. The length of time orders may be in effect;

ii. A policy for control of drugs, including intravenous infusion solutions, not specifically limited as to duration of use or number of doses when ordered;

iii. Automatic stoppage of a patient's drugs as of the time of day specified by facility policy, on the day the patient undergoes surgery, unless otherwise specified by the prescriber; and

iv. Notification of the prescriber by specified personnel and within a specified period of time prior to the expiration of a drug order to ensure that the drug is discontinued if no specific renewal is ordered. The prescriber shall rewrite the specific drug orders for postoperative medication, including name of the drug, dose, frequency, and route of administration;

20. Policies and procedures to control the administration of toxic and dangerous drugs, including narcotics, sedatives, anticoagulants, antibiotics, oxytocics, corticosteroid products, and intravenous infusion solutions;

21. Policies and procedures for the use of parenterals, including, but not limited to, the following:

i. Safety measures for the preparation, sterilization, and admixture of intravenous infusion solutions. These shall be prepared only by a pharmacist or by pharmacy personnel under the direction and supervision of a pharmacist, and under a laminar air flow hood except in patient care areas specified by facility policy. Pharmacy personnel other than the pharmacist while performing these functions shall be within view of the pharmacist, who shall check prior to and upon completion of the person's performance;

ii. Documented quality control measures for laminar air flow hoods shall include cleaning of the equipment used on each shift, microbiological monitoring as required by the infection control committee, or its equivalent, and checks at least every 12 months for operational efficiency;

iii. The facility shall have a centralized intravenous infusion admixture service operated by the pharmaceutical service. If the preparation, sterilization, and labeling of parenteral medications and solutions are performed in the exempt areas within the facility, as specified by facility policy, but not under direct supervision of a pharmacist, the director of the pharmaceutical service shall be responsible for providing written guidelines and for approving the procedures; and

iv. Labeling of intravenous infusion solutions, such that a supplementary label is affixed to the container of any intravenous infusion solution to which drugs are added. The label shall include the patient's name and location; the name of the solution; the name and amount of the drug(s) added; the date and time of the addition; the date, time, and rate of administration; the name or initials of the pharmacy personnel who prepared the admixture; the name, initials, or identifying code of the pharmacist who prepared or supervised preparation of the admixture; supplemental instructions, including storage requirements; and the expiration date of the solution;

22. If facility policy permits, policies and procedures for drug research and the use of investigational drugs, in accordance with Federal and State regulations, including, but not limited to, the following:

i. The use, storage, control, and distribution of investigational drugs. The pharmacy shall be accountable for drug storage, control, and distribution;

ii. Authorization of personnel who shall administer investigational drugs;

iii. Procedures for notification of personnel who administer investigational drugs, or who have patients receiving them, that the drugs are approved for investigational pruposes;

iv. Procedures for the provision of information to personnel concerning investigational drugs, including their side effects, actions, uses, and symptoms of toxicity;

v. Establishment of a central location, such as the pharmacy, for the maintenance of information on investigational drugs; and

vi. Authorization of personnel who shall have access to information concerning investigational drugs;

23. If drug dispensing devices are used in the facility, policies and procedures for their limited and restricted use, in accordance with the New Jersey State Board of Pharmacy Rules;

24. Policies and procedures regarding the purchase, storage, safeguarding, accountability, use, and disposition of drugs and devices, in accordance with the New Jersey State Board of Pharmacy Rules and the Controlled Dangerous Substances Acts and amendments thereto;

25. Needles and syringes are procured, stored, used, and disposed of in accordance with the New Jersey State Board of Pharmacy Rules and the laws of the State of New Jersey and amendments thereto. A verifiable record system shall be maintained of the purchase, storage, and distribution of needles and syringes. There shall be a system of accountability for the disposal of used needles and syringes which shall not necessitate the counting of individual needles and syringes after they are placed in the container for disposal;

26. Policies and procedures regarding the control of drugs subject to the Controlled Dangerous Substances Acts and amendments thereto, in compliance with the New Jersey State Board of Pharmacy Rules and all other Federal and State laws and regulations concerning procurement, storage, dispensing, administration, and disposition. Such policies and procedures shall include, but not be limited to, the following:

i. Provision for a verifiable record system for controlled substances;

ii. Policies and procedures to be followed in the event that the inventories of controlled substances cannot be verified or drugs are lost, contaminated, wasted, or destroyed. A report of any such incident shall be written and signed by the licensed nurses involved, any witnesses present, and the nursing supervisor, and copies shall be sent for review to the director of the nursing service and the director of the pharmaceutical service;

iii. In all areas of the facility where drugs are dispensed, administered, or stored, procedures for disposition of partial doses of controlled substances. A second person shall witness the disposition; and

iv. A declining inventory shall be maintained by the anesthesia service of all controlled substances. This inventory shall be checked by actual count by two persons at least once every 24 hours. The following shall be recorded: name of the patient receiving the drug, prescriber's name, name and strength of the drug, date received from the pharmacy, date of administration, dosage administered,

route of administration, signature of the person administering the drug, amount of drug remaining, amount of drug destroyed or wasted (when appropriate), and the signature of the person witnessing the destruction or wasting of the drug (when appropriate). The anesthesia service shall return a record of the inventory to the pharmacy when requesting new supplies;

(1) The anesthesia service shall maintain a system of accountability for all other (noncontrolled) drugs;

27. Policies and procedures to ensure that all drugs are kept in locked storage areas, except intravenous infusion solutions which shall be stored according to a system of accountability, as specified in the facility's policies and procedures;

28. Policies and procedures regarding the provision of current pharmaceutical reference materials and sources of information, approved by the pharmacy and therapeutics committee, to at least pharmacy and nursing personnel and medical staff. These shall include pharmaceutical compendia and periodicals, and current editions of texts and reference books;

i. The pharmacy and therapeutics committee shall approve the minimal reference materials to be retained at the drug distribution stations, those to be kept in the pharmacy and made available to at least nursing personnel and the medical staff, and methods for communicating product information to at least nursing personnel and the medical staff;

ii. Information on drugs, their indications, contraindications, actions, reactions, interactions, cautions, precautions, toxicity, and dosage, shall be provided in the pharmacy and at each drug distribution station. Authoritative, current antidote information and the telephone number of the regional poison control center shall also be provided in the pharmacy and at each drug distribution station; and

iii. Current Federal and State drug law information shall be available to the pharmaceutical service;

29. A list of abbreviations, metric apothecary conversion charts, and chemical symbols, approved by the medical staff, to be kept in each drug distribution station; and

30. Policies and procedures concerning the activities of medical and pharmaceutical sales representatives in the facility. Drug samples shall not be distributed or used in the facility.

8:43B-10.5 Decentralized pharmaceutical service

If the facility operates a decentralized pharmaceutical service, a pharmacist shall be assigned to each satellite pharmacy or separate organizational element during its hours of operation.

8:43B-10.6 Director's responsibilities

(a) A pharmacist shall be appointed as director of the pharmaceutical service. He or she shall be responsible for the direction, provision, and quality of the pharmaceutical services provided. He or she shall be responsible for, but not limited to, the following:

1. Together with the pharmacy and therapeutics committee, developing and maintaining written objectives, standards of practice, policies, a procedure manual, and an organizational plan for the pharmaceutical service;

2. Implementing and reviewing annually all pharmaceutical policies and procedures, which shall be kept current;

3. Participating in planning and budgeting for the pharmaceutical service;

4. Coordinating and integrating the pharmaceutical service with other patient care services;

5. Participating or ensuring representation of the pharmaceutical service in committees of the facility, or their equivalents, including, but not limited to, committees on patient care policies, infection control, utilization review, antibiotic and other drug utilization review, and evaluation, at least on a consultative basis;

6. Maintaining working relationships with administration through conferences, written memoranda, and other methods of exchanging information;

7. Developing and maintaining lines of authority, work schedules, and written job descriptions for pharmacy personnel and the use of pharmacy resources;

8. Recommending the number and levels of pharmacy personnel to be employed;

9. Assisting in selecting for employment, assigning duties to, supervising, and evaluating all pharmacy personnel;

10. Providing a report at least two times a year to the pharmacy and therapeutics committee of the facility's pharmaceutical service, an analysis of any incident reports relating to drug therapy, and results of the monthly inspection of all areas in the facility where drugs are dispensed, administered, or stored;

11. Providing for the generic listing of drugs;

12. Maintaining a means of identifying the signatures of all prescribers authorized to use the pharmaceutical service for prescriptions, as well as a listing of their Drug Enforcement Administration numbers;

13. Maintaining records of the transactions of the pharmaceutical service, as required by Federal, State, and local laws, to ensure control and accountability of all drugs. This shall include a system of controls and records for the requisitioning and dispensing of pharmaceutical supplies to all services of the facility; and

14. Assisting in the development of, and participating in, staff orientation and educational programs for the facility and the pharmaceutical service, and documenting these activities. Orientation and education shall include, but not be limited to:

i. Providing pharmaceutical guidance to other personnel providing patient care;

ii. Instructing facility personnel in continuing education programs concerning the handling and storage of drugs; and

iii. Participating in the education of students of the health care professions, if any.

(b) The director of the pharmaceutical service shall appoint a pharmacist who shall be designated in writing to act in the absence of the director.

8:43B-10.7 Assistant director's responsibilities

(a) If the facility appoints an assistant director of the pharmaceutical service, he or she shall be responsible for, but not limited to, the following:

1. Supervising the daily functions of the pharmaceutical service;

2. Implementing all policies and procedures;

3. Assisting the director of the pharmaceutical service;

4. Representing the director of the pharmaceutical service at meetings of the facility's committees, or their equivalents;

5. Implementing work schedules for supervising and evaluating pharmacy personnel; and

6. Assisting the director of the pharmaceutical service in determining staff education needs and in the planning, organization, and teaching of staff orienttion and staff education programs.

8:43B-10.8 Staff pharmacists' and/or clinical pharmacists' responsibilities

(a) If the facility appoints staff pharmacists and/or clinical pharmacists, they shall be responsible for, but not limited to, the following. In the event that the facility does not appoint staff pharmacists and/or clinical pharmacists, the director of the pharmaceutical service shall ensure that these functions are performed.

1. Supervising drug storage and preparation areas within the pharmacy and throughout the facility. A pharmacist shall inspect at least monthly all areas in the facility where drugs are dispensed, administered, or stored, including, but not limited to, central supply, operating rooms, labor and delivery rooms, drug distribution stations, medication carts, laboratories, emergency service, intensive care service, coronary care service, anesthesia service, and radiological service, and shall maintain a record of such inspections;

2. Clarifying and processing new and refill medication orders. This shall include reviewing medication orders and the patient's drug regimen (medication profile) prior to the dispensing of an initial dose of medication. Any potential allergies, interactions, interferences, incompatibilities or other irregularities shall be reported immediately to the prescriber, with notification through the nurse in charge to the nurse responsible for administering the drug;

3. Conducting and supervising the intravenous additive program;

4. Compounding drugs;

5. Supervising pharmacy personnel;

6. Providing education, training, and consultation to patients and to personnel of the facility;

7. Participating in antibiotic and other drug utilization review, including consultation on the monitoring of drug therapies, monitoring cultures and sensitivities for appropriate antibiotic utilization, and participation in formulary review;

8. Participating in committees, or their equivalents, including, but not limited to, those on infection control and pharmacy and therapeutics;

9. Monitoring patients, drug regimens, use of antibiotics, and patient care, including patients receiving ambulatory care services and patients receiving total parenteral nutrition;

10. Establishing procedures to ensure that patients are instructed concerning medication to be taken following discharge, if so requested by the prescriber or directed by the medical staff;

11. Making available to facility personnel current drug information resources, including information on investigational drugs in use in the facility; and

12. Ensuring that:

i. All medications, except intravenous infusion solutions, are kept in locked storage areas. Medication storage and preparation areas shall be kept locked when not in use;

ii. Drugs requiring refrigeration are kept in a separate, locked box in the refrigerator, in a locked refrigerator, or in a refrigerator in the locked medication room, at or near the drug distribution station. All substances in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be stored in a separate, locked, permanently affixed compartment within the locked medication cabinet, medication room, refrigerator, or mobile medication cart. The key to the separate, locked compartment for Schedule II drugs shall not be the same key that is used to gain access to storage areas for other drugs. The refrigerator shall have a thermometer to indicate temperature in conformance with U.S.P. (United States Pharmacopoeia) reguirements; and

iii. Drugs for external use are kept separate from drugs for internal use.

8:43B-10.9 Pharmacy personnel assisting registered pharmacists

If the facility provides pharmacy personnel, other than pharmacists, who assist the registered pharmacists in preparing, compounding, distributing, and dispensing drugs, their functions shall be specified in written job descriptions.

8:43B-10.10 Nursing care services related to pharmaceutical services

(a) Nursing personnel shall be responsible for, but not limited to, ensuring the following:

1. All medications administered are prescribed in writing and the order signed and dated by the prescriber. Medications shall be administered in accordance with all Federal and State laws and regulations by the following licensed or authorized nursing personnel:

i. Registered professional nurses;

ii. Licensed practical nurses who have undergone formal training in drug administration in programs approved by the New Jersey State Board of Nursing;

iii. Nurses with valid "permission to work" letters issued by the New Jersey State Board of Nursing (N.J.A.C. 13:37-3.5; 13:37-4.6; 13:37-10.4; and 13:37-11.5). This excludes foreign exchange visitor nurses;

iv. Unlicensed nurses who are graduates of domestically accredited nursing schools, pending the results of the first two consecutive licensing examinations immediately following the completion of their nursing program (N.J.A.C. 13:37-2.7 and 13:37-9.5); and

v. Student nurses in a school of nursing approved by the New Jersey State Board of Nursing under the direct supervision and within immediate view of a registered professional nurse;

2. Licensed practical nurses may calculate and administer drug doses, as defined by facility policy and in accordance with N.J.A.C. 8:43B-10.4(a)7;

3. Verbal and telephone orders are accepted only by personnel designated according to title or category by the medical staff, are written into the patient's medical record by the person accepting them, and are authenticated by the prescriber within 24 hours;

4. Measurement of vital signs, as defined in the facility's policies and procedures, prior to drug administration;

5. Drugs are not prepoured. Drugs shall be administered promptly (immediately) after the dose has been prepared, and by the individual who prepared the dose, except when a unit dose drug distribution system is used;

6. If facility policy permits, policies and procedures are implemented regarding self-administration of drugs;

7. Drugs for individual patients are kept in the original prescription containers, and there is no transferring of drugs between containers;

8. The patient is identified prior to drug administration. Drugs prescribed for one patient shall not be administered to another patient;

9. A record of drugs administered is maintained. After each drug administration, the following shall be documented by the nurse who administers the drug:

i. Name and strength of the drug;

ii. Date and time of administration;

iii. Dosage administered;

iv. Method of administration, and

v. Signature of the nurse who administers the drug;

10. Drug errors and adverse drug reactions are orally reported immediately to the charge nurse and the prescriber. By the end of the shift, the director of the pharmaceutical service, the nursing supervisor, and the director of the nursing service shall be notified, an entry made in the patient's medical record, and an incident report completed. As determined by facility policy, incident reports shall be reviewed by the pharmacy and therapeutics committee or by another specified committee, or its equivalent, with the participation of the director of the pharmaceutical service or his or her designee;

11. Discontinued, unused, expired (outdated), recalled, visibly deteriorated, or unlabeled drugs and intravenous infusion solutions, and containers with worn, illegible, damaged, incomplete, or missing labels, are returned to the pharmacy. Drug product defects shall be reported in accordance with the ASHP-USP-FDA (American Society of Hospital Pharmacists, United States Pharmacopoeia, Food and Drug Administration) Drug Product Defect Reporting System;

12. All drugs are kept in locked storage areas, except intravenous infusion solutions which shall be stored according to a system of accountability, as specified in the facility's policies and procedures. Drug storage and preparation areas shall be kept locked when not in use. Drugs requiring refrigeration are kept in a separate, locked box in the refrigerator, in a locked refrigerator, or in a refrigerator in the locked medication room. The refrigerator shall have a thermometer to indicate temperature in conformance with U.S.P. (United States Pharmacopoeia) requirements;

13. Drugs for external use are kept separate from drugs for internal

use;

14. Needles and syringes are procured, stored, used, and disposed of in accordance with the New Jersey State Board of Pharmacy Rules and the laws of the State of New Jersey and amendments thereto. There shall be a system of accountability for the disposal of used needles and syringes which shall not necessitate the counting of individual needles and syringes after they are placed in the container for disposal; and

15. Controlled substances are stored and verified according to the following:

i. Substances in Schedules III and IV of the Controlled Dangerous Substances Acts and amendments thereto shall be stored under lock and key. Substances in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be stored in a separate, locked, permanently affixed compartment within the locked medication cabinet, medication room, refrigerator, or mobile medication cart. The key to the separate, locked compartment for Schedule II drugs shall not be the same key that is used to gain access to storage areas for other drugs (except that substances in Schedule II in a unit dose drug distribution system shall be kept under double lock and key, but may be stored with other controlled substances);

ii. The keys for the storage compartments for controlled substances in Schedules II, III, and IV shall be kept on a person who meets the criteria listed in N.J.A.C. 8:43B-10.10(a)1i through v;

iii. A declining inventory of all substances in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto retained at each drug distribution station or wherever these drugs are maintained shall be made at the termination of each tour of duty. This record shall be signed by both the outgoing and incoming nurses who shall meet the criteria listed in N.J.A.C. 8:43B-10.10(a)1i through v. The following shall be recorded: name of the patient receiving the drug, prescriber's name, name and strength of the drug, date received from the pharmacy, date of administration, dosage administered, method of administration, signature of the licensed nurse administering the drug, amount of drug remaining, amount of drug destroyed or wasted (when appropriate), and the signature of the nurse witnessing the destruction or wasting of the drug (when appropriate); and

iv. In the event that the inventories cannot be verified or drugs are lost, contaminated, wasted, or destroyed, a report of such incident shall be written and signed by the licensed nurses involved, any witnesses present, and the nursing supervisor, and copies sent for review to the director of the nursing service and the director of the pharmaceutical service.

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Proposed Readoption with Amendment: N.J.A.C. 8:71

Authorized By: Drug Utilization Reveiw Council, Leroy L. Schwartz, M.D., Chairman.

Authority: N.J.S.A. 24:6E-1 et seq., specifically 24:6E-6a.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Thomas T. Culkin, PharmD, MPH
Executive Director
Drug Utilization Review Council
120 So. Stockton Street
CN 364
Trenton, NJ 08625

The Department of Health thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Pursuant to Executive Order 66(1978), these rules would otherwise expire on March 6, 1984. The readoption of the existing rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their readoption. The concurrent amendment to the existing rules becomes effective upon publication in the Register of a notice of their adoption.

This proposal is known as PRN 1984-25.

The agency proposal follows:

Summary

In 1977, N.J.S.A. 24:6E-6 et seq. directed establishment of the Drug Utilization Review Council, whose duty is to prepare a list of generic drug products which could safely be substituted for brand name prescription products, thus saving money for consumers. N.J.S.A. 24:6E-6g authorized the Council to adopt reasonable rules and regulations to carry out its duties and functions.

N.J.S.A. 24:6E-6a authorized the Council to prepare a list of interchangeable drug products. The list was to contain the names of drug manufacturers whose products were judged by the Council to be therapeutically equivalent to brand name prescription drugs.

The intent of the legislation was to save money for consumers by dictating circumstances under which one of the therapeutically equivalent products in the list of interchangeable drugs would be substituted for the brand name drug which the physician had ordered, thus saving money for consumers.

The list of interchangeable drug products has been effective in saving money for consumers as outlined under economic impact below.

On December 13, 1983, the Council reviewed N.J.A.C. 8:71 and, with a limited exception, determined that the list of interchangeable drugs is still needed to effectuate the Council's statutory mandate. The only exception is Chlorpheniramine 5 mg/ Phenylephrine 10 mg/Phenylpropanolamine 40 mg/ Phenyltoloxamine 15 mg E.R Tabs - Amide. The Council notes that this extended release product does not have bioequivalency data to show that it is equivalent to Naldecon, the branded product for which it is to be substituted, so the council does not wish to readopt this drug. No other products are proposed for deletion.

Public comment is invited so that the Council can make a fully informed decision as to whether these rules should be readopted before their automatic expiration on March 6, 1984 pursuant to Executive Order No. 66.

Social Impact

Over the past five years,this list of interchangeable drugs has allowed consumers to receive less expensive substitutes in place of brand-name prescription medicines. Studies show that fewer than 5 percent of consumers disallow such substitution, demonstrating consumer acceptance of such substitutes.

Two factors will contribute to an expanded future social impact of the List of Interchangeable Drug Products: (1) an increased number of brand-name prescription products will lose protected patent status in the mid-1980s, thus becoming substitutable if the List is continued and (2) the expanded size of the elderly population, which uses a disproportionate number of prescription medicines.

In the past five years, the number of substituted prescriptions has risen from 2.4 million to 3.2 million annually. It is expected that this increase will continue, with as many as 5 million prescriptions being substituted by the end of the 1980s.

If the List of Interchangeable Drug Products were not readopted, the rate of substitution would rapidly diminish, resulting in lessened access to certain prescription medicines for persons on a fixed income, such as the elderly.

Economic Impact

The economic impact on consumers has been established through prescription surveys in 1980 and 1982 which showed that approximately three million brand name prescriptions are substituted annually, at an average consumer price savings of at least $1.11 per prescription. Consequently, total annual consumer savings is approximately $3 million.

If these rules were not readopted, the practical basis for substituting products in New Jersey would be lost, thereby diminishing consumer savings by approximately $3 million annually.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:71, as amended in the New Jersey Register.

Full text of the proposed amendment to the readoption follows (deletions indicated in brackets [thus]).

[Chlorpheniramine 5 mg, Phenylephrine 10 mg, Phenylpropanolamine 40 mg, Phenyltoloxamine 15 mg E.R. Tabs Amide]

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

County Community Colleges Chargeback Calculation

Proposed Amendment: N.J.A.C. 9:4-1.5

Authorized By: New Jersey Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Authority: N.J.S.A. 18A:64A-7 and 18A:64A-23.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Eric M. Perkins
Administrative Practice Officer
Department of Higher Education
225 West State Street
Trenton, NJ 08625

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

This proposal is known as PRN 1984-38.

The agency proposal follows:

Summary

The Board of Higher Education is statutorily charged with the establishment of chargeback differentials for county colleges. These differentials determine the reimbursement which a county sending a student pays the county college receiving the student. The differentials recognize that certain academic programs cost more to offer than others. The use of these ratios insures that all parties pay an equitable share of the cost offering these academic programs.

Social Impact

The establishment of equitable differentials will encourage colleges to permit the enrollment of non-county resident students providing increased educational programs without unnecessary duplication.

Economic Impact

Counties which send students out of county to attend other county colleges will pay an increased amount for the education of such students. The precise cost per county will depend upon the number of students exported to other counties. Counties which are not importers of students will receive a commensurate increase in funding.

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

9:4-1.5 Chargeback

(a) (No change.)

(b) Eligibility rules include:

1. (No change.)

2. A student residing in a **county which sponsors a** community or county-assisted college and who desires to attend an out-of-county college of the aforementioned type, pursuant to criteria of the aforesaid law, shall first receive certification of eligibility for chargeback assistance from the aforementioned home-county college. This certification will be executed upon a standard Department of Higher Education form.

(c)–(d) (No change.)

(e) The college accepting such out-of-county students shall charge the sending counties, pursuant to N.J.S.A. 18A:64A-23 [or N.J.S.A. 18A:64B-4], **according to a system of differential charge back rates as determined by the Board of Higher Education**, calculating the amount to be charged in the following manner:

[1. The county appropriation shall be divided by the number of FTE in-county residents enrolled, as contained in the annual budget request made to the Department of Higher Education.]

[2. The resultant figure, rounded to the nearest whole dollar, shall be the chargeback cost, per full-time equivalent student, to be charged by the receiving college for any nonresident student in attendance, qualified for chargeback assistance. Such chargeback cost shall be multiplied by the number of eligible full-time equivalent students from each sending county, to be calculated as prescribed in the General Accounting and Procedures Manual for State-Supported County Colleges.]

1. Total the number of the current year's estimated resident credit-hour and equivalent credit-hour enrollments and divide by 30 to equal full-time equivalent student enrollments (resident FTE's).

i. Equivalent credit hours for State fundable non-credit course offerings shall be calculated by dividing total contact hours by 15.

ii. Resident credit-hour and equivalent credit-hour enrollments are defined as all county resident enrollments which are State fundable and/or not self-supporting.

2. Divide the sum of all resident FTE's from (e)1 above into the current county operating appropriation to determine the base chargeback rate.

3. Multiply the sending county's eligible credit-hour and equivalent credit-hour enrollments for each group by their respective differential ratios, and total. Divide by 30 to determine the sending county's eligible weighted FTE's.

4. Multiply the base chargeback rate times the sending county's eligible weighted FTE's to determine the charge to the sending county.

[3.] **5.** The receiving college shall adjust the charge to sending counties when **audited** actual **credit-hour and equivalent credit-hour** enrollments [figures] become available from the **annual enrollment** [budget] audit. The calculations [in (e)1 and 2] **in 1.–4.** above shall be made utilizing the **audited** actual **credit-hour and equivalent credit-hour** enrollments [figures] **divided by 30 to equal FTE's** (and adjusted county [contribution] **operating appropriation**, if applicable). The difference between this adjusted chargeback amount and the previous **State Fiscal Y**[y]ear's chargeback amount to each sending county shall be added to or subtracted from the following year's initial chargeback billing to said sending counties, and be so identified upon that bill.

(f)–(g) (No change.)

[(h) Effective July 1, 1982, the differential chargeback ratio for all courses shall be 1.0.]

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Long Term Care Facilities (LTCF) Appeals Process for LTCFs Whose Medicaid Provider Agreement is Being Denied, Terminated or Not Renewed

Proposed Amendment: N.J.A.C. 10:49-1.16 and 10:63-1.15

Authorized By: George J. Albanese, Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:4D-6a(4)(a), b(13)(14), 7 and 7b 42 CFR 431.151-154.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

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

This proposal is known as PRN 1984-31.

The agency proposal follows:

Summary

This proposal pertains only to long term care facilities (LTCFs), and more specifically, a LTCF whose certification or Medicaid Provider Agreement is denied, terminated or not renewed. The proposal is being promulgated pursuant to Federal regulations (42 CFR 432.151-154), which require an appeals process be made available to LTCFs that have lost, or may be in danger of losing, their Medicaid Provider Agreement. A LTCF whose certification or agreement was not continued would be unable to participate in the Medicaid program.

For purposes of this regulation, the term LTCF includes both skilled and intermediate nursing care facilities.

The proposal allows LTCFs whose provider agreement may be in jeopardy the right to a full evidentiary hearing conducted by the Office of Administrative Law. At the discretion of the Division, all hearings requested pursuant to this section must be completed before the effective date of the denial, termination or non-renewal (of the provider agreement) or within 120 days thereafter. If the Division elects to provide a hearing after the effective date of a denial, termination or non-renewal, then the LTCF is entitled to an informal reconsideration as described in the proposal below.

If the LTCF is a skilled facility (SNF) that participates in both Medicare (Title XVIII) and Medicaid (Title XIX), and if there is a basis for denial under both programs, then the LTCF may opt for a hearing under the Medicare review and appeals procedures. A final decision entered under the Medicare review procedures will be binding upon Medicaid.

It should be noted that decertification of LTCFs in New Jersey has not been a problem.

Social Impact

It is difficult to assess the social impact because the proposal deals with a contingency, i.e., loss of provider certification, that may never occur. In the event that the Division refused to renew a provider agreement, and this position was sustained at a hearing if requested, then the LTCF could not participate in the Medicaid program. Those Medicaid patients residing in the facility would have to be transferred in an orderly manner to a LTCF that was able to accept Medicaid patients.

Economic Impact

This proposal has minimal economic impact on the Division. There would be administrative costs incurred with the hearing, but there has been only one hearing requested on this particular issue since the inception of the Medicaid program.

There is no economic impact on a LTCF whose provider agreement is renewed. There would be an impact on a LTCF whose provider agreement was denied, terminated or not renewed, because there would be no Medicaid reimbursement.

The extent of the impact would depend on the number of Medicaid patients in the LTCF. The loss of Medicaid certification does not necessarily mean that the LTCF would be barred from accepting private patients, or patients covered by other insurance, etc.

There is no economic impact on Medicaid patients.

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

10:49-1.16 Provisions of appeals; fair hearings

(a)–(d) (No change.)

(e) Any long term care facility whose certification or Medicaid Provider Agreement is denied, terminated or not renewed may request a hearing in accordance with the appeals procedure described in N.J.A.C. 10:63-1.15.

10:62-1.15 Program participation

(a) (No change.)

(b) Any LTCF whose certification or Medicaid Provider Agreement is denied, terminated or not renewed shall have the opportunity to request a full evidentiary hearing before an Administrative Law Judge from the Office of Administrative Law.

1. In order to obtain a hearing the LTCF must submit a written request to the Director, Division of Medical Assistance and Health Services, CN 12, Trenton, New Jersey, 08625.

2. At the discretion of the Division all hearings requested pursuant to this section must be completed either before the effective date of the denial, termination or non-renewal or within 120 days thereafter.

3. If the Division elects to provide a hearing after the effective date of a denial, termination or non-renewal the LTCF will be entitled to an informal reconsideration to be completed prior to the effective date of the denial, termination or non-renewal.

4. The informal reconsideration, if requested, will include the following:

i. Written notice to the LTCF outlining the findings upon which the denial, termination or non-renewal is based;

ii. A reasonable opportunity for the LTCF to refute the findings in writing; and

iii. A written affirmation or reversal of the denial, termination or non-renewal.

5. If the LTCF is a SNF participating or seeking to participate in both the Medicare and Medicaid Programs, and if the basis for the Division's denial, termination or non-renewal of participation in the Medicaid Program is also a basis for denial, termination or non-renewal of participation in the Medicare Program, the SNF is entitled to elect:

i. The review and appeals procedures specified for Medicare facilities in Part 405, Subpart 0 of 42 CFR 405.1501, in lieu of the appeal procedures set forth in this section.

6. A final decision entered under the Medicare review procedures will be binding for purposes of Medicaid participation.

(a)

DIVISION OF PUBLIC WELFARE

General Assistance Manual Residential Health Care Facility Allowance Rate

Proposed Amendment: N.J.A.C. 10:85-3.3

Authorized By: George J. Albanese, Commissioner, Department of Human Services.
Authority: N.J.S.A. 44:8-111(d).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Audrey Harris, Acting Director
Division of Public Welfare
CN 716
Trenton, NJ 08625

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

This proposal is known as PRN 1984-32.

The agency proposal follows:

Summary

This amendment serves to eliminate the need to periodically revise the General Assistance Manual in order to align the General Assistance payment for room and board living arrangements in a Residential Health Care Facility (RHCF) with the Supplemental Security Income (SSI) payment for persons in RHCFs. Whenever the SSI payment is adjusted, approval from the Treasurer of the State of New Jersey is sought to align the General Assistance RHCF payment with the SSI level. Subsequently, the fixed dollar amount, which appears at N.J.A.C. 10:85-3.3(f)4i, must then be changed. This amendment deletes reference to an exact dollar amount.

Social Impact

Due to the administrative nature of the amendment, the general public and the General Assistance population will be unaffected.

Economic Impact

Adoption of this amendment will have no influence on actual rates of payment. An administrative saving will result by avoiding redundant publication in the future.

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

10:85-3.3 Financial eligibility
(a)–(e) (No change.)
(f) Assistance allowance standards are as follows:
1.–3. (No change.)
4. Room and board living arrangements: When an individual is purchasing a room and board living arrangement, the following shall apply:
i. Residential health care facility: When an individual who is in need of extensive personal services on a regular and continuous basis is purchasing a room and board living arrangement in a Residential Health Care Facility (licensed by the New Jersey Department of Health for purposes other than the care or treatment of drug or alcohol abuse), the monthly assistance payment including a personal allowance shall not exceed [$430.20,] **the rate approved by the New Jersey Department of the Treasury,** less any countable income. **When a rate increase is approved, a public notice to that effect will be published in the New Jersey Register. Information about the current rate may also be obtained by contacting the Division of Public Welfare.** However, the cost of purchasing such living arrangement shall not exceed the minimum amount which the establishment customarily charges to or for other guests not dependent on public assistance, for the same accommodations and/or services.
ii.–v. (No change.)
5. (No change.)
(g) (No change.)

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Release of Criminal History Record Information

Proposed Readoption: N.J.A.C. 10:121-4

Authorized By: George J. Albanese, Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:1-12, 30:4C-26(a), 9:3-47(b) and 9:3-48(a) (2),(b).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jesse L. Moskowitz, Administrator
Office of Regulatory and Legislative Affairs
Division of Youth and Family Services
1 South Montgomery Street
Trenton, NJ 08625

At the close of the period for comments, the Department of Human Services may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Pursuant to Executive Order No. 66(1978), this rule would otherwise expire on March 19, 1984. The readoption of this rule becomes effective upon acceptance for filing of the notice of its readoption by the Office of Administrative Law.

This proposal is known as PRN 1984-37.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Department of Human Services proposes to readopt N.J.A.C. 10:121-4. This proposal concerns itself with the State Police furnishing the Division of Youth and Family Services with State and Federal criminal history information (CHRI) about prospective adoptive and foster parents. The chapter was originally adopted in March 19, 1979.

This proposed readoption is necessary to continue the CHRI rules although they have not been utilized since October 4, 1982. It was on that date that the screening service was terminated by the State Police due to fiscal constraints and personnel reductions. However, several pieces of legislation have been introduced in the New Jersey State Legislature concerning CHRI checks for these and other purposes.

The State Legislature forwarded to the Governor, Thomas H. Kean, the Criminal History Records Investigation bill (S-3031) which requires background checks of foster and adoptive parent applicants. He conditionally vetoed the bill on June 20, 1983 contingent upon the passage of A-3317 to provide the necessary funding for the required background checks. A-3317 allows the State Police to charge a fee for the processing of fingerprints by State Police for non-criminal matters. The Department supports this bill provided that foster and adoptive parent applicants become exempt from the fee charged to process fingerprints.

Social Impact

The existing rules have provided a positive social impact by minimizing risks of abuse to children who are placed with adoptive and foster parents who were screened by State Police background checks. The readoption of the CHRI rules will continue the protection of children and will enhance the Division's ability to make sound judgments on the suitability of adoptive and foster parent applicants once pertinent legislation is enacted into law to fund the screening program.

Economic Impact

Continuation of the existing regulations will have no significant addtional impact, either to the children being placed or to the prospective adoptive or foster parent applicants. However, expiration of the regulations could have an adverse economic impact because their nonexistence may prevent screening even if legislation which will provide funding to continue the CHRI program is enacted.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:121-4.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Automobile Insurance
Nonrenewal of Automobile Insurance Policies

Proposed Amendment: N.J.A.C. 11:3-8

Authorized By: Joseph F. Murphy, Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22-6.14a1, 2 and 3, 39:6A-3 and 39:6A-19.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

W. Morgan Shumake
Executive Director of Insurance
Department of Insurance
CN 325
Trenton, NJ 08625

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

This proposal is known as PRN 1984-36.

The agency proposal follows:

Summary

On February 22, 1983, the Department of Insurance proposed several amendments to N.J.A.C. 11:3-8 (see: 15 N.J.R. 231(a).) Amendments to this subchapter were subsequently adopted and became effective on June 6, 1983 (see: 15 N.J.R. 927(a).) As noted in the Summary of Public Comments and Agency Responses which accompanied the adoption notice, the Department received certain suggestions for revising the rule which, although outside the scope of that rulemaking proceeding, merited further consideration. Several of the amendments to N.J.A.C. 11:3-8, which are set forth in this proposal, respond to the recommendations received in conjunction with the earlier proposal.

N.J.A.C. 11:3-8.2(a) requires that an insurer offer renewal coverage at least as favorable to the insured as the expiring policy, subject to changes approved by the Commissioner. A 1977 amendment to this subsection clarified that this requirement included the duration of the policy term and, further, provided that insurers must permit policyholders to return to their prior duration of contract upon request. The proposed amendment to this subsection eliminates this latter requirement.

The proposed amendments to N.J.A.C. 11:3-8.2(b) add two new paragraphs to this subsection which require that every notice of nonrenewal contain statements advising policyholders that: (1) A complaint may be filed with the New Jersey Department of Insurance, in the event the policyholder believes that the insurer's termination of coverage is inappropriate; and (2) automobile coverage is available through the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA). Subsection (d) of the proposal provides that policy transfers between company affiliates, which do not adversely affect coverages or rates, are not deemed to be nonrenewals.

The proposed amendment, N.J.A.C. 11:3-8.2(e), clarifies that

in any instance in which an insurer may nonrenew a policy pursuant to the provisions of the subchapter, it may, in the alternative, condition the continuation of the policy upon a change in limits or the elimination of any coverage not required by law.

This proposal eliminates subsection (b) of N.J.A.C. 11:3-8.3, which required that the insurer submit to the Commissioner for prior approval any basis for nonrenewal other than those enumerated under subsection (a) of the rule. In lieu of the prior approval mechanism, the proposed new rule at N.J.A.C. 11:3-8.4 establishes a new procedure which permits an insurer annually to nonrenew up to two percent of its total number of in-force policies in each rating territory. Such nonrenewals are in addition to those nonrenewals permitted under N.J.A.C. 11:3-8.3. The total number of nonrenewals available to an insurer each year will be based upon policies in force as of December 31 of the preceding year.

The proposed new rule, N.J.A.C. 11:3-8.4, incorporates elements of the Model Insurance Declination, Termination and Disclosure adopted by the National Association of Insurance Commissioners and Section 167aa of the insurance laws of New York and specifies that such nonrenewals: (1) May not be arbitrary, capricious or unfairly discriminatory, and in particular, may not be based upon race, religion, age, sex or similar criteria; and (2) must be based upon a failure to meet current standards as contained in the insurer's underwriting guidelines. The proposal further specifies that the elimination of or a reduction in certain minor types of coverage, such as towing and labor, shall not be deemed a nonrenewal of a policy for the purposes of determining the two percent "cap". The proposed new rule also includes an additional incentive to the voluntary writing of automobile policies. N.J.A.C. 11:3-8.4(d), which, again, is similar to a procedure used in New York, provides that for every two new policies written in each territory which are not terminated pursuant to N.J.S.A. 17:29C-7(B) an insurer may nonrenew or conditionally renew one policy in excess of its two percent "cap" in that rating territory.

The proposed new rule, N.J.A.C. 11:3-8.5, contains record maintenance and reporting requirements. In order to monitor the effect of and compliance with the rule, insurers will be required to maintain certain records and file with the Department on an annual basis reports which indicate by rating territory the number of policies subject to this subchapter which are issued, cancelled pursuant to N.J.S.A. 17:29C-7(B), nonrenewed or conditionally renewed.

Finally, at N.J.A.C. 11:3-8.7 the proposal specifies that in addition to any other penalties authorized by law, the Commissioner may after notice and a hearing, suspend or revoke the rights of an insurer under N.J.A.C. 11:3-8.4 of the rule.

Social Impact

The proposed amendment to N.J.A.C. 11:3-8.2(a) eliminates a provision which would require that an insurer offering a six-month policy to a majority of its policyholders also retain annual policies for those insureds who request a return to a "prior duration." Insurers have argued that maintenance of a system providing for both six-month and one-year renewals is costly and inefficient, particularly since few insureds request such a return. One insurer has estimated that in a recent conversion of 340,000 policies from a twelve-month to a six-month term, only 294 policyholders (.0008 percent), requested reversion to a 12-month term. It is therefore expected that the impact of this amendment will be minimal.

The proposed new section, N.J.A.C. 11:3-8.4, which establishes a two percent "cap" on nonrenewals for reasons other than those specified in the rule and provides for additional nonrenewals based upon a demonstrable increase in voluntary writings, is designed to encourage the voluntary writing of automobile policies. It provides for a relaxation of procedural and substantive requirements pertaining to nonrenewals while maintaining proper regulatory oversight. The amendments will afford insurers greater flexibility in evaluating their current book of business and in assuming additional risks and should serve as a stimulus to the voluntary writing of policies. Because insurers may only nonrenew in accordance with their underwriting guidelines as prescribed under N.J.S.A. 17:22-6.14a1 and 2, and are specifically prohibited from nonrenewing on the basis of race, religion or similar discriminatory criteria, the public will be adequately protected. Further notice provisions set forth at N.J.A.C. 11:3-8.2(b) 2 and 3 will ensure that terminated policyholders are apprised of their right to file a complaint with the Department and of the availability of coverage through the NJAFIUA. Finally the two percent "cap" on such nonrenewals, as well as the filing requirements included in the proposal, should prevent any significant market dislocation.

Economic Impact

The proposed amendment to N.J.A.C. 11:3-8.2(a) should result in administrative savings to insurers.

The relaxation of nonrenewal requirements provided under N.J.A.C. 11:3-8.4 should stimulate the underwriting of policies in the voluntary market and aid in the depopulation of the residual market. Consumers should benefit from the enhanced competitive environment.

Insurers will experience certain increased costs as a result of effecting compliance with the record maintenance and reporting requirements set forth at N.J.A.C. 11:3-8.5.

The Department expects to absorb any increased costs resulting from implementation of the amendments within current budget resources.

OFFICE OF ADMINISTRATIVE LAW NOTE: The Department of Insurance intends to make the amendments to this subchapter operative approximately 100 days after their effective date, that is 100 days after publication of a notice of adoption in the New Jersey Register. The Department also anticipates that the amendments will apply to automobile policies with effective dates on or after July 1, 1984.

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

SUBCHAPTER 8. NONRENEWAL OF AUTOMOBILE INSURANCE POLICIES

11:3-8.1 Scope

This subchapter applies to all automobiles as defined in N.J.S.A. 39:6A-2a, excluding those owned by business entities and fleets or insured through any statutorily mandated residual market mechanism, and to all policies or contracts of insurance insuring such automobiles.

11:3-8.2 General provisions

(a) Every insurer shall make an offer to the insured named in a policy subject to this subchapter to renew such policy upon its expiration date, unless a valid notice of nonrenewal **or conditional renewal as specified in (e) below** has been sent by the insurer to the insured in accordance with this subchapter. Such renewal offer shall be in the usual form of either a renewal policy, a certificate, or a renewal bill and shall offer coverage at least as favorable to the insured as the expiring policy and at the same limits and terms including duration of the policy as apply to the expiring policy, subject to changes approved by the Commissioner that had become effective since the commencement of the current policy period. Payment by the insured in accordance with the terms stated in the billing notice or in accordance with terms agreed to with the company or producer shall constitute acceptance of the offer by the insured. The words "same limits" shall not preclude the insurer from offering physical damage coverage with a higher deductible than that in the expiring policy, provided the insured is informed that a lower deductible is available at an appropriate rate. [Insurers must permit insureds to return to their prior duration of policy term upon request.]

(b) No notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured no less than 60 days and no more than 90 days prior to the expiration of the current policy, setting forth the reason(s) for such nonrenewal.

1. No notice of nonrenewal shall be valid unless it includes the text of the designated provision(s) of this subchapter under which action is being taken and the correct facts which bring the insured under the provision(s), including dates and any other facts necessary for identification of the incidents. In the event action is being taken under N.J.A.C. 11:3-8.3(a)1, the text of the exceptions under N.J.A.C. 11:3-8.3(a)2 must be included together with a statement that none of these exceptions are applicable. [(Effective February 21, 1977, for notices sent on or after that date.)]

2. The following notice shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention on all notices of nonrenewals or shall accompany such notices.

i. If you have reason to believe that our decision to nonrenew (or conditionally renew, as appropriate) your policy is not in compliance with New Jersey Regulation N.J.A.C. 11:3-8, you may file a written complaint with the New Jersey Department of Insurance, Division of Investigations and Complaints, CN 325, Trenton, New Jersey 08625. You may obtain a complaint form from that Division.

3. The notice of nonrenwal shall also include or be accompanied by a statement advising the insured of his possible eligibility for coverage through the New Jersey Automobile Full Insurance Underwriting Association.

(c) Nothing in this subchapter shall be construed as prohibiting a renewal policy from being issued for higher limits of coverage and/or additional coverage(s), provided that such additional protection is specifically requested by the insured and the insurer is willing to provide it. Conversely, nothing shall prohibit the renewal policy from being issued for lower limits of coverage and/or fewer coverages provided that such reduction in protection is specifically requested by the insured and further provided that coverage in no case shall fall below the level or levels otherwise required by law.

(d) Policy transfers between affiliates shall not be considered nonrenewals, provided any such transfer is not detrimental to the insured with respect to coverages or rates.

(e) In any instance in which an insurer may, pursuant to the provisions of this subchapter, issue a notice of nonrenewal, it may, in lieu of such nonrenewal, condition the continuation of the policy upon a change of limits or elimination of any coverage not required by law.

[(d)] **(f)** No notice of nonrenewal for any coverage subject to this subchapter shall be valid unless it is based upon one or more of the reasons set forth in N.J.A.C. 11:3-8.3(a) or is otherwise authorized by the Commissioner of Insurance pursuant to [N.J.A.C. 11:3-8.3(b)] **N.J.A.C. 11:3-8.4**.

11:3-8.3 Reasons for nonrenewal

(a) An insurer may issue notice of nonrenewal based upon one or more of the following reasons:

1. Accident involvement: The named insured or any operator who customarily operates the automobile has been involved during the 36 months period ended 90 days prior to the expiration of the current policy in:

i. More than one bodily injury accident if there is one car in the household or an average of more than one accident for all cars in the household, provided a loss payment has been made or a loss reserve has been established for such accidents other than a payment for the personal injury protection benefits; or

ii. More than one accident involving damage to any property including his own of $300.00 or more for which accident a payment was made if there is one car in the household, or an average of more than one such accident for all cars in the household, provided that loss payments under the comprehensive physical damage coverage shall not be counted; or

iii. A combination of more than one such bodily injury or property damage accident; or

iv. More than two such accidents regardless of the number of cars in the household.

2. Exceptions: Accidents under i. to iv. above shall not be counted if the accident occurred under the following circumstances:

i. The accident resulted in a claim or payment only under the Personal Injury Protection Coverage;

ii. The automobile was lawfully parked at the time of the accident (an automobile rolling from a parked position shall not be considered as lawfully parked, but shall be considered as in the operation of the last operator);

iii. The named insured, or anyone customarily operating the automobile, has been reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such persons;

iv. The automobile of the named insured or other customary operator was struck in the rear by another vehicle, and the operator has not been convicted of a moving traffic violation in connection with the accident;

v. The operator of another automobile involved in such accident was convicted of a moving traffic violation and the named insured or other customary operator was not convicted of a moving traffic violation in connection therewith;

vi. The automobile operated by named insured or anyone who customarily operates the automobile is damaged as a result of contact with a "hit and run" driver, provided that the accident has been reported to legal authority within a reasonable time thereafter;

vii. The accident resulted from contact with animals or fowl.

3. Convictions concerning motor vehicle law: The named insured or any operator who customarily operates the automobile:

i. Has been convicted, entered a plea of guilty or nolo contendere, forfeited bail bond or other security for any one of the following motor vehicle law violations during the 36 months ended 90 days prior to the expiration date of the current policy:

(1) Driving while intoxicated or under the influence of drugs;

(2) Leaving the scene of an accident;

(3) Criminal negligence or assault arising out of the operation of a motor vehicle;

(4) Driving while license is suspended or revoked.

ii. Has been convicted, entered a plea of guilty or nolo contendere, or forfeited bail bond or other security for other moving traffic violations during the 36 months period ended 90 days prior to the expiration of the current policy which result in the accumulation of an average of nine points or more, as defined in the New Jersey Motor Vehicle Law, per car in the household or which result in an accumulation of nine or more points for any one such operator, provided that any operator who has been involved in such motor vehicle law violations continues to be an operator of the automobile at the time of renewal.

4. Convictions other than motor vehicle laws: The named insured or anyone customarily operating the automobile is convicted, entered a plea of guilty or nolo contendere, forfeited bail bond or other security for obtaining or attempting to obtain from any other person, insurance company or the Unsatisfied Claim and Judgment Fund any money or any other thing of value by falsely or fraudulently representing that such person is entitled to such consideration under the automobile insurance policy, or falsely or fraudulently making statement or presenting documentation in order to obtain such consideration, or by cooperating, conspiring or otherwise acting in concert with any person seeking to obtain or attempting to obtain falsely or fraudulently such consideration.

5. Use of the automobile in professional racing.

6. Physical or mental impairment of the named insured or anyone customarily operating the automobile which adversely affects the ability to operate the automobile safely, unless a physical disability is compensated for by corrective measures.

i. A nonrenewal premised upon physical or mental impairment must be supported by a current medical examination. The medical examination report must clearly state the nature of the impairment

and, in the case of a physical disability, the extent to which such disability adversely affects the ability to safely operate the automobile. In the event such a current medical examination report is not otherwise available, it must be secured by the insurer at its own expense.

7. Refusal to submit to a medical examination at company expense where there is reason for the company to doubt an operator's ability to operate the automobile safely.

8. Addition of an operator of the automobile during the policy term or for the new policy term with respect to whom any of the above causes for nonrenewal would apply.

9. In the case of companies which limit their writing to members of a church, profession or occupation or similar group, loss of the qualification for such group by the owner of the automobile. In such case an additional 12 months of nonrenewal notice shall be given. The membership of an automobile or travel club does not constitute a qualified group subject to this paragraph.

10. Failure by an insured under the policy to comply with the cooperation or subrogation clause of the policy, subject to reasonable rules established by the Commissioner.

11. Request by producer of record not to renew the policy, provided the request is accompanied by a true statement by the producer that he has replaced like coverage at approved rates in the voluntary market with an admitted carrier, specifying the name of the carrier; provided also that the transferor carrier has advised the insured in writing of his right to renewal in the same company before obtaining the insured's consent to transfer, and of the insured's right to renew if he or she is cancelled by the new carrier for reasons other than nonpayment or suspension or revocation of registration or driver's license. The producer's request for nonrenewal shall be made no later than 90 days prior to the expiration of the policy and a copy thereof shall be sent by the producer to the named insured. A nonrenewal based on such request shall be invalid and the company shall renew the policy at the request of the insured through an active agent and/or broker, or directly if the replacement policy is cancelled by the carrier for any reason other than the reasons allowed for cancellation by N.J.S.A. 17:29C-7 (nonpayment of premium or suspension or revocation of registration or driver's license).

i. Failure by a terminated agent to request renewal during the period of nine months from the effective date of termination as provided in N.J.S.A. 17:22-6.14(a) shall be construed as request not to renew in the context of this subchapter.

[(b) Any refusal to renew which is not based upon the reasons set forth in (a) above shall be submitted to the Commissioner of Insurance for review no later than 90 days prior to the expiration of the policy. No insurer shall issue such a nonrenewal to the insured unless the insurer has received the authorization of the Commissioner.]

11:3-8.4 Additional nonrenewals

(a) In addition to the standards set forth at N.J.A.C. 11:3-8.3, an insurer may issue notice of nonrenewal based upon a failure to meet current underwriting standards as specified in such insurer's underwriting guidelines.

(b) Pursuant to the provisions of N.J.S.A. 17:22-6.14a1, such guidelines shall not be arbitrary, capricious or unfairly discriminatory.

1. Nonrenewals based upon one or more of the following reasons are specifically prohibited:

i. The race, religion, nationality or ethnic group of an insured;

ii. Solely upon the lawful occupation or profession of an insured, except that this provision shall not apply to any insurer, agent, or broker which limits its market to one lawful occupation or profession, or to several related lawful occupations or professions;

iii. The principal location of the insured motor vehicle, unless such decision is for a business purpose which is not a mere pretext for unfair discrimination;

iv. Solely upon the age, sex or marital status of an insured, except that this subparagraph shall not prohibit rating differentials based upon age, sex or marital status;

v. The insured previously obtained insurance coverage through a residual market insurance mechanism.

vi. Another insurer previously declined to insure the insured or terminated an existing policy of the insured.

(c) Except as provided under (d) below, the total number of notices of nonrenewal issued by an insurer pursuant to this section in any rating territory in any calendar year shall not exceed two percent of the total number of policies in force for that insurer in that territory as of December 31 of the preceding year.

1. In the event an insurer does not nonrenew policies up to the full two percent per year allowance, by territory, the unused percentage credit, by territory, may be utilized during the next 12-month period.

(d) For every two new policies which an insurer voluntarily writes in any rating territory, which are not terminated in accordance with N.J.S.A. 17:29C-7(B), such insurer shall be entitled to nonrenew one additional policy in that territory over and above the two percent limitation specified in (c) above.

1. A policy issued by the insurer in this State as a result of the relocation of its insured from another state or jurisdiction to this State shall not be deemed a newly written policy in the context of this subsection.

(e) For the purposes of this section, a notice of nonrenewal shall also include any notice of intent to condition renewal of the policy upon a change of limits or elimination of any coverage excluding the following:

1. Towing and labor;

2. Rental reimbursement.

11:3-8.5 Reporting requirements

(a) Every insurer shall maintain a record, in such detail as may be required by the Commissioner, of all policies subject to this subchapter which are:

1. In force in each rating territory as of December 31 of each calendar year;

2. Voluntarily written by the insurer in each rating territory;

3. Terminated by the insurer in each rating territory pursuant to the provisions of N.J.S.A. 17:29C-7(B); and

4. Nonrenewed or conditionally renewed by the insurer in each rating territory.

(b) In order to monitor compliance with the provisions of this subchapter, each insurer shall file with the Commissioner an annual report containing the information required to be maintained by (a) above. The report shall be in a format to be prescribed by the Commissioner.

1. Reports for the six-month period ending December 31, 1984 and for each full calendar year thereafter shall be filed with the Commissioner annually on May 1 after the close of the preceding calendar year.

(c) The Commissioner may require the filing of such additional reports as he deems necessary to effectuate the requirements of this subchapter.

11:3-8.6 Separability

If any provision of this subchapter or its application to any person or circumstances is held invalid, the remainder of this subchapter and its application to other persons or circumstances shall not be affected.

11:3-8.7 Penalties

(a) Any person violating the provisions of this subchapter shall be subject to such penalties as may be authorized by law.

(b) In addition to any such penalties the Commissioner may, after notice and hearing, suspend or revoke the rights of any insurer or group of insurers under N.J.A.C. 11:3-8.4.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

DEPARTMENT OF INSURANCE

Joint Proposal: Motor Vehicle Insurance Surcharge Collection Supplemental Surcharges

Proposed New Rule: N.J.A.C. 13:19-13

Authorized By: Clifford W. Snedeker, Director, Division of Motor Vehicles, and Joseph F. Murphy, Commissioner, Department of Insurance.
Authority: P.L. 1983, c.65, § 6b and § 6e (N.J.S.A. 17:29A-35).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Clifford W. Snedeker, Director
Division of Motor Vehicles
25 South Montgomery Street
Trenton, NJ 08666, and

Joseph F. Murphy, Commissioner
Department of Insurance
201 East State Street
Trenton, NJ 08625

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

This proposal is known as PRN 1983-629.

The agency proposal follows:

Summary

The proposed new rule establishes surcharge amounts for convictions and administrative suspensions in addition to those violations specifically enumerated in the New Jersey Merit Rating Plan of the New Jersey Automobile Insurance Reform Act of 1982. The Act provides that the Merit Rating Plan is not limited to the provisions specifically set forth therein and that surcharge amounts in addition to those set forth in the statute may be imposed by rules and regulations promulgated by the Director of the Division of Motor Vehicles and the Commissioner of Insurance.

Surcharges are levied for serious motor vehicle violations for which points are not assessed and which are not specifically dealt with in the Act. These violations include refusal to submit to a chemical test, driving while suspended, driving without insurance and driving while intoxicated in another jurisdiction.

The addition of these offenses reflects existing insurance industry practices because many of the violations being surcharged in the proposed new rule are currently the subject of premium increases.

Further, the inclusion of surcharges for driving without insurance reflects recent legislation designed to enhance enforcement of the laws mandating insurance coverage and legislation requiring that uninsured drivers bear their own medical and wage losses if they are involved in accidents.

The surcharge for refusals to submit to chemical tests and for alcohol related offenses in other jurisdictions serves to make application of these surcharges uniform without regard to the jurisdiction where such offenses occurred.

Social Impact

The proposed new rule has a beneficial social impact in that it implements the intent and purpose of the New Jersey Automobile Insurance Reform Act of 1982 by assessing surcharges for serious motor vehicle offenses. The purpose of the legislation being implemented is to make those who violate the traffic safety laws financially responsible for the increased costs of insurance. Net revenues collected through the imposition for surcharges are used to fund a Joint Underwriting Association to replace the assigned risk pool of insurance companies.

Economic Impact

State expenses incurred in collecting surcharges are reimbursable in that 20 percent of the surcharge monies collected by the Division of Motor Vehicles are retained by it for administrative expenses. Additional revenue will be collected by the Division of Motor Vehicles by inclusion of the surcharges in the proposed new rule.

It is predicted that a significant shortfall in revenue collected for the New Jersey Automobile Insurance Reform Act will result under current funding provisions. Failure to collect additional revenue may result in a substantial increase in automobile insurance rates. These additional surcharges are designed to raise sufficient revenue to offset this predicted shortfall.

Full text of the proposed new rule follows.

SUBCHAPTER 13. MOTOR VEHICLE INSURANCE SURCHARGE; SUPPLEMENTAL SURCHARGES

13:19-13.1 Surcharges for three year period; convictions; amounts

(a) Plan surcharges shall be levied by the Division of Motor Vehicles for convictions of violations set forth in (b) below which violations occurred on or after the effective date of the New Jersey Automobile Insurance Reform Act. The surcharges shall be annually assessed for a three year period.

(b) The following violations shall be subject to surcharges as indicated in (a) above for the amount set forth below:

1.	N.J.S.A. 39:3-10	Unlicensed driver	$100.00
2.	N.J.S.A. 39:3-40	Driving while suspended	$250.00
3.	N.J.S.A. 39:4-14e	Failing to have insurance on motorized bicycle	$100.00
4.	N.J.S.A. 39:6b-2	Failing to maintain liability insurance on motor vehicle	$250.00

13:19-13.2 Surcharge for refusing to submit to chemical test; amount

(a) Plan surcharges shall be levied by the Division of Motor Vehicles for convictions of refusal to submit to a chemical test under N.J.S.A. 39:4-50.4a, which refusal occurred on or after the effective date of N.J.S.A. 17:29A-33 et seq. The surcharge shall be assessed once and shall be $1,000 for each of the first two convictions and $1,500 for the third conviction occurring within a three year period.

(b) A driver convicted under both N.J.S.A. 39:4-50 and N.J.S.A. 39:4-50.4a for offenses arising out of the same incident may in the

discretion of the Director of the Division of Motor Vehicles be assessed only one surcharge for both offenses.

13:19-13.3 Surcharges for three year period; administrative violations; amounts

(a) Plan surcharges shall be levied by the Division of Motor Vehicles for violations resulting in license suspensions imposed administratively which are set forth in (b) below and which violations have occurred on or after the effective date of the New Jersey Automobile Insurance Reform Act of 1982. The surcharge shall be assessed each year for a three year period and shall be in addition to the license restoration fee charged pursuant to N.J.S.A. 39:3-10a.

(b) The following violations resulting in administrative license suspensions shall be subject to surcharge as indicated in (a) above for the amount set forth below:

1. Operating while suspended $250.00
2. Failure to maintain liability insurance on motor vehicle $250.00
3. Any motor vehicle violation resulting in fatal accident $250.00

(c) Plan surcharges levied pursuant to (b)3 above shall be in addition to any other plan surcharge to which a driver is subject under the Merit Rating Plan.

13:19-13.4 Surcharges for administrative violations; amounts

(a) Plan surcharges shall be levied by the Division of Motor Vehicles for violations resulting in license suspensions imposed administratively which are set forth in (b) below, which violations occurred on or after the effective date of the New Jersey Automobile Insurance Reform Act of 1982. The surcharge shall be assessed once and shall be in addition to the license restoration fee charged pursuant to N.J.S.A. 39:3-10a.

(b) The following administrative license suspensions shall be subject to surcharge as indicated in (a) above for the amount set forth below:

1. Driving a motor vehicle while under the influence of or while impaired by intoxicating liquor or a narcotic drug in another jurisdiction $1,000.00
2. Refusal to submit to a chemical test for intoxication in another jurisdiction $1,000.00

PUBLIC UTILITIES

(a)

OFFICE OF CABLE TELEVISION

Rules of Practice and Procedure Petitions to Set Aside Zoning Variance Refusal

Proposed New Rule: N.J.A.C. 14:17-6.21

Authorized By: Office of Cable Television, John P. Cleary, Director.
Authority: N.J.S.A. 48:5A-10, and -17(e).

A **public hearing** concerning this proposal will be held on Tuesday, February 7, 1984 at 10:00 A.M. at the address below.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

John P Cleary, Director
Office of Cable Television
Board of Public Utilities
1100 Raymond Blvd.
Newark, NJ 07102

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

This proposal is known as PRN 1984-24.

The agency proposal follows:

Summary

N.J.A.C. 14:17-6.21 is a new rule establishing content requirements for a CATV company petition pursuant to N.J.S.A. 48:5A-17(e) to set aside refusal of municipal zoning or necessary authorization (other than municipal consents).

The proposed new rule requires the same information generally required in petitions before the Office of Cable Television. Additional minimum information must be included which apprises the Board of municipal proceedings as well as evidence of alternatives considered by petitioner. The municipality, the denying board or agency, and adjoining property owners must be notified upon filing.

Social Impact

The proposed new rule will provide for notice to potentially interested parties, as well as for establishing minimum informational requirements for petitions asking the Board to set aside a local action denying a CATV company a necessary authorization. In the past this Office has had many queries as to the procedures for such petitions.

Economic Impact

There is no significant economic impact as a result of the proposed new rule, other than the anticipated increased efficiency in processing such petitions.

Full text of the proposed new rule follows.

14:17-6.21 Petition to set aside refusal pursuant to N.J.S.A. 48:5A-17(e)

(a) Petitions for an order setting aside municipal refusal for zoning variance, or other act or necessary authorizaton pursuant to N.J.S.A. 48:5A-17(e), shall conform to N.J.A.C. 14:17-5 (Pleadings Generally), and N.J.A.C. 14:17-6.1 through 6.5, to the extent applicable, and shall include, but not be limited to the following:

1. A map or site plan for the proposed facility showing the locations of any other sites or facilities in relation to the one in question;
2. A listing of alternative sites investigated or considered;
3. A copy of the decision or order below denying the requested approval;
4. Proof of service of a copy of the petition to be filed within five days of service upon each of the following:

i. The municipal governing body;

ii. The agency, authority, board or other entity which denied the requested approval;

iii. Any adjoining property owners within 200 feet of the property for which approval is sought.

(b) A petition pursuant to this section must be filed with the Office within 60 days of written notice of the denial to the petitioner.

(c) The Board or administrative law judge may, in his or her discretion, hold a hearing on the matter in the community affected.

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Routes US 9 and 27

Proposed Amendments: N.J.A.C. 16:28A-1.7 and 16:28A-1.18

Authorized By: John P. Sheridan Jr., Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and 39:4-199.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

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

This proposal is known as PRN 1983-591.

The agency proposal follows:

Summary

The proposed amendments will establish "no parking" zones along Route US 9 in Freehold Township, Monmouth County and Route 27 in Rahway City, Union County in the areas designated and at established bus stops for the safe and efficient flow of traffic and the enhancement of the safety of the populace. The proposed amendments are summarized of follows:

N.J.A.C. 16:28A-1.7 Route US 9, establishes new bus stops in Freehold Township, Monmouth County.

N.J.A.C. 16:28A-1.18 Route 27, restricts parking along the westerly side (St. Georges Avenue) in Rahway City, Union County.

Based upon requests from local officials, the Department's Bureau of Traffic Engineering conducted engineering studies in the areas. The engineering studies and data obtained indicated that the installation of signs restricting parking and establishing "no parking" zones would facilitate traffic flow in the areas.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.7 "no parking" zones at bus stops along Route US 9 in Freehold Township, Monmouth County and N.J.A.C. 16:28A-1.18 concerning "no parking" zones along Route 27 in Rahway City, Union County, in compliance with requests from local officials.

Social Impact

The proposed amendments will establish "no parking" zones along Route US 9 in Freehold Township, Monmouth County and Route 27 in Rahway City, Union County, for the safe and efficient flow of traffic and the on/off loading of passengers at established bus stops. Additionally, the regulations will enhance public safety in the respective areas designated and the interest of mass transit.

Appropriate signs will be erected advising the motoring public.

Economic Impact

The Department and local authorities will incur direct and indirect costs for personnel for mileage and equipment requirements. There will be no economic impact on any businesses within the areas where parking is being restricted. However, fines will be levied for the motoring public in violation of the law. Local authorities will be responsible for the placement of signs establishing "no parking" zones.

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

16:28A-1.7 Route US 9

(a) 1.–17. (No change.)

(b) The certain parts of State highway Route US 9 described in [(b) of] this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is [hereby] granted to erect appropriate signs at the following established bus stops:

1.–2. (No change.)

3. Along [Route US 9] **the** northbound [on the] **(easterly)** side [thereof] in Freehold Township, Monmouth County, at:

[i. Elton - Adephia Road (Co. Rd. 524), near side:

(1) Beginning at the southerly curb line of Elton-Adephia (Co. Rd. 524) and extending 120 feet southerly therefrom.]

i. Far side bus stops:

(1) Schibanoff Road - Beginning at the northerly curb line of Schibanoff Road and extending 140 feet northerly therefrom.

(2) Craig Road - Beginning at the northerly curb line of Craig Road and extending 280 feet northerly therefrom.

4. Along the southbound (westerly side in Freehold Township, Monmouth County, at:

i. Mid-block bus stop:

(1) County Route 537 - Beginning 2,420 feet south of the Route 537 overpass to a point 150 feet southerly therefrom. (At jughandle in front of the Central Jersey Bank.)

4.–5. Renumbered **6.–7.** (See notice at 13 N.J.R. 105(d).)

6.–7. Renumber **7.–8.** (See notice at 13 N.J.R. 106(a).)

8. Renumbered **9.**

9.–23. as **10.–24.**

16:28A-1.18 Route 27

(a) The certain parts of State highway Route 27 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.–14. (No change.)

15. No stopping or standing in Rahway City, Union County:

i. Along the westerly side of (St. Georges Avenue):

(1) From the northerly curb line of West Lake Avenue to a point 100 feet northerly therefrom.

Renumber 15.–17. as **16.–18.** (See 13 N.J.R. 373(c).)

(b)–(d) (No change.)

(a)

PUBLIC TRANSPORTATION

Autobus Specifications Vans, Small Buses, Recreational Vehicles, Sedans, Special Equipment for Wheel Chairs, Modified Interiors for Charter or Special Bus Operations, Certificates, Public Liability Insurance

Proposed Readoption: N.J.A.C. 16:53

Authorized By: John P. Sheridan Jr., Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 52:14D-1 et seq., Executive Order on Reorganization Plan for Board of Public Utilities, September 19, 1978. (See: 10 N.J.R. 466(a).)

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

The Department of Transportation thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Under Executive Order No. 66(1978), these rules expire on March 19, 1984. The readoption of these rules become effective upon acceptance for filing by the Office of Administrative Law of the notice of their readoption.

This proposal is known as PRN 1984-43.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66 (1978), the Department of Transportation proposes to readopt N.J.A.C 16:53, concerning Autobus Specifications.

The existing regulations regarding Autobus Specifications, provide for certain vehicular standards, pertaining to the construction of autobuses, vans, sedan-type autobuses and special equipment to transport passengers in wheelchairs. In view of recent technological advances, the rule provides guidelines and requirements for periodic maintenance and inspection and established a self-inspection system by New Jersey Transit Corporation, its subsidiaries and the private Motor Carrier Industry in addition to inspection performed by the Department.

The following outlines the contents of each subchapter:

N.J.A.C. 16:53-1 establishes specifications for vans formerly van-type autobuses to include methods of maintenance and inspection.

N.J.A.C. 16:53-2 provides special equipment for vehicles used to transport passengers in wheelchairs.

N.J.A.C. 16:53-3 outlines the specifications for autobuses.

N.J.A.C. 16:53-4 prescribes modified interiors for autobuses used for charter or special bus operations.

N.J.A.C. 16:53-5 outlines the requirements for certificates of inspection.

N.J.A.C. 16:53-6 outlines specifications for small buses.

N.J.A.C. 16:53-7 outlines specifications for special autobus type recreational vehicles.

N.J.A.C. 16:53-8 prescribes specifications for sedan-type autobuses.

N.J.A.C. 16:53-9 prescribes the requirement for public liability insurance.

Social Impact

The autobus regulations provide for a system of checks and balances wherein the safety and well-being of passengers including the handicapped are top priority and enhanced through the inspection and maintenance system requirements. The system entails the periodic as well as the on the road inspection and ensures that the minimum safety standards imposed are met and promote the safety of passengers, especially thehandicappedon a regular basis.

Additionally, the chapterprovidesrequirements for a safe transit system within the States.

Economic Impact

The Department will incur direct and indirect costs for its workforce for personnel and equipment requirements for the periodic inspection of vehicles. In view of the introduction of autobuses equipped to transport various types of passengers, this will allow carriers to upgrade equipment and transport more passengers at an appreciable cost saving. The added expense involved in conforming the buses to these regulations is passed on to the buyers of the buses. Despite the financial burden placed on some carriers, the safety factor outweighs the economic burden. However, the expense may or may not be passed on to the riders. Autobuses meeting the specifications prescribed will result in lower maintenance and operating costs.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:53, as amended in the New Jersey Register at 14 N.J.R. 1347(a) and 15 N.J.R. 877(b).

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

THE COMMISSIONER

Nonpublic Records
Rental Assistance Applications

Adopted Amendment: N.J.A.C. 5:3-2.1

Proposed: November 21, 1983 at 15 N.J.R. 1910(a).
Adopted: December 27, 1983 by John P. Renna, Commissioner, Department of Community Affairs.
Filed: December 29, 1983 as R.1983 d.643, **without change**.

Authority: N.J.S.A. 47:1A-2, 52:27D-3(f) and 55:13B-4.

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): September 1, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Hotels and Multiple Dwellings Maintenance Regulations

Readoption: N.J.A.C. 5:10

Proposed: May 16, 1983 at 15 N.J.R. 727(a).
Adopted: December 21, 1983 by John P. Renna, Commissioner, Department of Community Affairs.
Filed: December 23, 1983 as R.1983 d.629, **without change**.

Authority: N.J.S.A. 55:13A-6(e), -7 and -7.1.

Effective Date: December 23, 1983.
Expiration Date pursuant to Executive Order No. 66(1978): December 1, 1988.

Summary of Public Comments and Agency Responses:

No comments were received recommending that the chapter not be readopted. However, the following proposals for amendment of the regulations were made by tenant representatives:

1. Municipal officials should be required to enforce all provisions of the chapter in response to tenant complaints.
2. Notice should be required to be given to all tenants when an owner applies for an exception from any regulation.
3. "Multiple dwelling" should be defined in the regulations so as to include any building that was a multiple dwelling at the time of its initial inspection, even if it were converted to a two-family house subsequently, for the purpose of securing abatement of any violations originally cited.
4. The phrase "unless it is clearly unnecessary" should be deleted from the regulation at N.J.A.C. 5:10-8.2(c) governing the requirement for periodic painting of units.
5. Unit entrance doors should be required to be of at least a minimum thickness and strength.
6. Language presently limiting the heating requirement to the period from October 1 to May 1 should be deleted.
7. A separate deadbolt should be required in addition to the key operated lock.

In reply, the Department states that:

1. The regulations already require any municipality participating in the State–Local Cooperative Housing Inspection Program to perform any complaint inspections referred by the Bureau of Housing Inspection and to enforce local codes. The Deparment, however, does not have authority to order municipalities who are not in the Cooperative Program to enforce its regulations.
2. The Department believes that there is merit in the proposal that notice of exception requests be given to tenants and intends to prepare a rule to that effect for presentation to the Hotel and Multiple Dwelling Health and Safety Board.
3. The definition of "multiple dwelling" is statutory and the Department cannot extend the jurisdiction of the Bureau of Housing Inspection by regulation.
4. The Department does not believe owners should be required to paint an apartment when the inspector has determined that painting is "clearly unnecessary."
5. The minimum thickness and strenth requirements already established for doors for fire safety purposes by subchapter 25 also provide security protection.
6. The Department will discuss the implications of extending the heating season with the Hotel and Multiple Dwelling Health and Safety Board and may propose rules on the subject.
7. The Department will also discuss with the Board the need for requiring a separate deadbolt in addition to a medium duty dead latching lockset.

The Department also received comments from two fire protection officials protesting the inadequacy of the common area smoke alarm requirements and of some of the systems that have been allowed to be installed. The Department is aware of this problem. Recently enacted legislation creates a Uniform Fire Safety Act and a Fire Safety Commission and Bureau of Fire Safety within the Department to enforce it. The adequacy of the smoke alarm requirements for hotels and multiple dwellings will be a subject examined by the Commission.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Enforcing Agencies

Adopted Amendment: N.J.A.C. 5:23-4.14

Proposed: September 6, 1983 at 15 N.J.R. 1406(a).
Adopted: December 27, 1983 by John P. Renna, Commissioner, Department of Community Affairs.
Filed: December 29, 1983 as R.1983 d.642, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

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

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 1, 1988.

Summary of Public Comments and Agency Responses:

Comments were received from a representative of a private inspection agency asking if he was correct in understanding "municipal construction code official" to refer only to subcode officials and inspectors and protesting as unwarranted the restrictions on employment of municipal code enforcement personnel and on the agencies which might employ them which are contained in the proposal. The Department replied that the wording would be changed to make it clear that only subcode officials and inspectors would be eligible for employment by private enforcing agencies. As to the limitations, however, the Department believes them to be necessary in order to prevent possible conflicts of interest that would be detrimental to the entire State code enforcement system.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

5:23-4.14 Private enforcing agencies - administration and enforcement

(a) Private on-site inspection and plan review agencies.

1.–5. (No change from proposal.)

6. No person employed by an on-site inspection agency as an employee, officer, director, partner or manager shall engage in or otherwise be connected directly or indirectly, for purposes of economic gain, with any business or employment furnishing labor, materials, products or services for the construction, alteration [,] or demolition of buildings or structures within the State. Nor shall any such official or employee engage in any other activity or work which conflicts with his official duties.

i. (No change from proposal.)

ii. An on-site inspection agency may employ municipal * [construction code]* *subcode* officials *and inspectors* on a part-time basis. This employment, however, shall be subject to the following conditions:

(1) (No change from proposal.)

(2) The written approval of the construction official supervising a municipal *[construction code]* *subcode* official *or inspector* shall be obtained by the on-site inspection agency prior to hiring such municipal *[construction code]* * subcode* official *or inspector*.

(3) An on-site inspection agency that hires a municipal * [construction code]* *subcode* official *or inspector* shall thereupon waive the right to bid or contract in the employed * [construction code]* *subcode* official*['s]* *or inspector's* municipality or municipalities.

(4) If the employed *[construction code]* *subcode* official * or inspector* terminates employment with the municipalities and continues to be employed by the agency*,* or by another agency providing similar services, the agency or agencies shall waive the right to contract with that municipality, or those municipalities, for a period of two years.

(5) (No change from proposal.)

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Departmental fees; licensing

Adopted Amendments: N.J.A.C. 5:23-4.20, 5.5 and 5.9

Proposed: November 21, 1983 at 15 N.J.R. 1911(a).
Adopted: December 27, 1983 by John P. Renna, Commissioner, Department of Community Affairs.
Filed: December 29, 1983 as R.1983 d.641, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

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

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 1, 1988.

Summary of Public Comments and Agency Responses:

A comment was received from the counsel for certain license applicants who are currently involved in an administrative proceeding contesting their license denial for failure to complete the required course work before February 1, 1982. This attorney recommends amending the proposal to make July 1, 1982 the last date allowed for completion of the courses for an applicant to be eligible without taking the examinations. The Department thinks it preferable to enlarge the class of persons eligible without examination by requiring that any such person have been **enrolled** in the course prior to February 1, 1982.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

5:23-5.5 Requirements for a license

(a)–(d) (No change from proposal.)

(e) Applicants for a technical license for building inspector R.C.S., building inspector I.C.S., plumbing inspector I.C.S. or electrical inspector I.C.S. who *[completed]* *were enrolled in* the required educational courses pursuant to N.J.A.C. 5:23-5.5 and 5:23-5.6 prior to February 1, 1982 but who did not make a formal application prior to February 1, 1982 may be granted such license(s) without having to successfully complete the National Certification Examination required by N.J.A.C. 5:23-5.9 if the applicant applies for the licenses(s) by March 31,

licenses(s) by March 31, 1984 and is determined by the Department to be otherwise qualified.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Rooming and Boarding Houses Home Energy Assistance Payments

Adopted New Rule: N.J.A.C. 5:27-11.7

Proposed: October 3, 1983 at 15 N.J.R. 1622(a).
Adopted: December 21, 1983 by John P. Renna, Commissioner, Department of Community Affairs.
Filed: December 23, 1983 as R.1983 d.628, **without change.**

Authority: N.J.S.A. 55:13B-4.

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): July 1, 1985.

Summary of Public Comments and Agency Responses:
No comments received.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER RESOURCES

Allocation of Water Supply Costs for Emergency Water Projects

Adopted New Rule: N.J.A.C. 7:1D-1

Proposed: February 7, 1983 at 15 N.J.R. 117(a).
Adopted: December 22, 1983 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: December 29, 1983 as R.1983 d.639, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: P.L. 1981, c.28 and P.L. 1981, c.29.
Docket No.: 061-82-12.

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): December 1, 1988.

Summary of Public Comments and Agency Responses:

Written comments were received from the Elizabethtown Water Company, Passaic Valley Water Commission and Commonwealth Water Company.

Comment: Each purveyor questioned whether any "benefit" was received by the construction of the emergency water supply projects.

Response: Each project was constructed to improve and provide for improved capabilities for the delivery of potable water supplies in northeastern New Jersey. The completion of those projects has presented all affected purveyors with the increased water supply capabilities for any emergency situations requiring transfer of water supplies, and in the case of Passaic Valley Water Commission, the improved capability to treat water at its facilities on the Passaic River.

Comment: Elizabethtown Water Company, Commonwealth Water Company questioned the propriety of requiring application to the Board of Public Utilities (BPU) within 60 days of adoption of these rules.

Response: This provision was deleted inasmuch as the payback period will begin upon approval of the rate scheduled by the BPU or within one year of the effective date of this chapter, whichever occurs first.

Comment: Commonwealth Water Company questioned when the interest charges would commence.

Response: The adopted rules specify the interest charges commence effective the date of adoption of this chapter.

Comment: Commonwealth Water Company stated that each of the payments should be equal in amount.

Response: The adopted rules have been amended to provide that the payments are to be made in equal amounts.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

7:1D-1.7 Interest cost determination

The purveyors shall pay interest at the rate of 9.2 percent upon the unpaid balance of the principal cost. Such interest rate shall be applied to the reimbursement percentage allocation of the principal cost to be borne by each purveyor***, upon the effective date of this chapter*.**

7:1D-1.8 Payback period and annual accounting

(a) Reimbursement for the projects can be calculated on the basis of repaying the costs in equal payments over a 10-year period. This period shall be used for the purposes of computing the total principal and interest costs, and such computation shall be made in a manner which will permit each purveyor to make payments over the course of such payback period. Any cost overruns shall be compensated for by continued equal payments until the debts are satisfied.

(b) The payback period shall commence upon there being in place and in effect a rate permitting each purveyor to recover the full amount of said charge through such rate.

1. No purveyor shall be obligated to make any payment until such a rate is in effect for all applicable water purveyors ***or one year from the effective date of this chapter, whichever occurs first*.**

2. Within 60 days after the effective date of this chapter, the purveyors shall make appropriate application to the Board of Public Utilities for inclusion of the reimbursement costs in their respective rate schedules.

(c) Purveyors shall make quarterly payments to the State during the payback period***, upon commencement of the payback period*.**

(d) The Department shall make an annual accounting to all **NEW**

purveyors of payments made by each purveyor pursuant to the repayment program.

7:1D-1.10 Water emergency projects
(a) Projects for which reimbursement shall be made and the costs of each of such projects, shall be the following:

	[Total Cost]	Total State Expenditure	Open Balance
1. Bolster Interconnection between Elizabethtown Water Company and the Newark System:	*[$6,394,507.96]*	*[$6,285,255.92]* ***$6,394,984.17***	*[$109,252.04]* ***0***
2. George Washington Bridge Interconnection:	*$[5,597,440.00]*	*[$5,324,032.94]* ***$5,331,903.13***	$273,407.06
3. Great Notch Interconnection Multiple Exchange Facilities:	*[$1,777,899.17]* *[$2,500,000.00]*	*[$722,183.00]* ***$2,500,000.00***	*0*
***4. Passaic Valley Water Commission Treatment Plant Improvement**		**$400,000.00***	***0***
Total (Principal Cost):	*[$14,491,947.96]*	*[$13,387,188.03]* ***$15,226,887.30***	*[$1,104,759.93]* ***$273,407.06***

(c) An additional $600,000.00 is the direct responsibility of the Passaic Valley Water Commission based on the Memorandum of Agreement, dated April 30, 1981 between the Department and the Passaic Valley Water Commission.

(a)

DIVISION OF COASTAL RESOURCES

Boat Regulation Commission Boating Regulations

Readoption: N.J.A.C. 7:6

Proposed: November 7, 1983 at 15 N.J.R. 1799(a).
Adopted: December 22, 1983 by Robert E. Hughey, Commissioner of Environmental Protection and Kenneth Husted, Chairman, Boat Regulation Commission.
Filed: December 29, 1983 as R.1983 d.640, **without change**.

Authority: N.J.S.A. 12:6-1(e), 12:7-34.1 et seq., 12:7-34.40, 12:7-34.49 and 12:7-44.

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No 66(1978): December 19, 1988.
DEP Docket No. 056-83-09

Summary of Public Comments and Agency Responses:
No comments received.

(b)

DIVISION OF FISH, GAME AND WILDLIFE

List of Endangered Species and Status of Indigenous Nongame Wildlife Species

Adopted Amendments: N.J.A.C. 7:25-11.1 and 7:25-20.2

Proposed: October 3, 1983 at 15 N.J.R. 1623(a).
Adopted: December 22, 1983 by Robert E. Hughey, Department of Environmental Protection.
Filed: December 29, 1983 as R.1983 d.638, **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. 23:2A-4.

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): February 1, 1984 for 7:25-11 and September 16, 1985 for 7:25-20.

Summary of Public Comments and Agency responses:

The Department received one negative comment, relating to this proposal. The commenter criticized the Department of Environmental Protection for its failure to incorporate more extensive evaluation of the social, economic, and environmental impact of the rule amendments.

Regarding social impact, the commenter requested evaluation of negative social impacts, but identified no such impacts. Though the Department cannot guarantee that no negative social impacts will result from these rule amendments, none are readily apparent to this agency. Preservation of endangered species and their habitat is a goal which the staff of this Department believes to be in the social best interest of the people of the State.

The commenter's criticism of the Department's economic impact analysis is better founded. Though no specific impacts are foreseeable, the possibility that impact will occur clearly exists. If a future land development project threatens the habitat of an endangered species, including those added in this proposal, project modification or termination could result. Such anoccurrenceclearly would result in substantial economic impact on those who would economically benefit from the project.

Despite the possibility of economic impact, the Department believes that the facts justify adding species of animals to the endangered and nongame species lists. The Endangered and Nongame Species Conservation Act was enacted to insure that endangered and nongame species in New Jersey are protected and preserved. The economic impacts resulting from this protection and preservation were contemplated by the Legislature and considered to be acceptable, in light of the public interest in preserving and protecting threatened animal species.

The commenter asserted that the Department was lax in its failure to address the environmental impact of the proposal on humans and other "ecologically successful" species. As the rule proposal notice stated, positive environmental impact on humans is foreseen. The Department believes that man's environment is improved by habitat preservation. Development already has destroyed most natural areas of New Jersey and threatens what remains. Preservation of

undeveloped land areas and the unique wildlife which may inhabit those areas is a primary goal of this Department. This is so because the people of this State believe that our survival as an ecologically successful species may be dependent upon recognition of the need for achieving and maintaining ecological balance among the various species, including humans.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

7:25-20.2 Defining status of indigenous nongame wildlife species of New Jersey

(a) The following table defines the status of indigenous nongame wildlife species of New Jersey:

AMPHIBIANS (No change from proposal.)	
BIRDS	STATUS
. . .	
Golden Eagle, Aquilachrysartos	*[E]***U***
. . .	
Northern Harrier, Circus cyaneus(b)	
(wintering migrant pop.)	U
(breeding pop.)	*[U]***E***
. . .	
Sedge Wren, Cistothorus platensis(b)	E
*[Sedge Wren, Cistothorus platensis(b)	E]*

Agency Note: All of the rules in N.J.A.C.7:25-11 and 25-20, including the sections amended in this rule adoption are to be recodified with the provisions of N.J.A.C. 7:25-4. This will result in the consolidation of all rules governing endangered and nongame species, developed under the Endangered and Nongame Species Conservation Act.

(a)

DIVISION OF WASTE MANAGEMENT

Hazardous Waste Management On-Site Recycling Exemption

Adopted Amendments: N.J.A.C. 7:26-1.4, 9.1 and 12.1

Proposed: December 20, 1982 at 14 N.J.R. 1435(a).
Adopted: December 20, 1983 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: December 20, 1983 as R.1983 d.623, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

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

Effective Date: January 17, 1984.
DEP Docket No. 059-82-11.
Expiration Date pursuant to Executive Order No. 66(1978): June 30, 1983 for subchapter 1; October 8, 1986 for subchapters 9 and 12.

Summary of Public Comments and Agency Response:

The New Jersey Department of Environmental Protection published a notice of proposal in the New Jersey Register on December 20, 1982 (14 N.J.R. 1435 (a)) to amend the hazardous waste regulations by exempting on-site recycling of hazardous waste from permitting and operating requirements (DEP Docket No. 059-82-11). A public comment period was held from December 20, 1982 through a public hearing held at the New Jersey State Library, Trenton, New Jersey, on January 26, 1983. Ten individuals submitted to the Department written comments on the proposed amendments. A written transcript of the public hearing was prepared.

Nine of the ten commenters were in general support of the proposed amendments. The specific recommendations are summarized below, as well as a Department response to each issue.

Comment: Four commenters, while supporting the amendments as proposed, recommended that the Department include off-site or commercial, hazardous waste recycling within the exemption to the hazardous waste permitting and operating requirements. One commenter recommended that any recycling of metallic materials be included in the exemption.

Response: The Department has decided not to extend the proposed exemption to include off-site or commercial hazardous waste recycling operations at this time. The Department's regulatory and enforcement experience supports this position. Problems encountered with off-site recyclers have included potential and actual fire hazards, accumulation of hazardous wastes not being recycled and eventual abandonment of the site, and numerous unauthorized releases of hazardous waste to the air, land and waters of the State. The cumulative record of the off-site hazardous waste recyclers within New Jersey, therefore, does not support relaxation of regulatory requirements.

Furthermore, the Department is reviewing the changes to the Federal hazardous waste regulations relating to these issues, which were proposed by the Environmental Protection Agency on April 4, 1983 at 48 F.R. 14472. The Department will review the final promulgated Federal amendments for possible future modification of the New Jersey hazardous waste regulations.

Comment: One commenter pointed out that the definition of "recycling" or "reclamation" distinguishes between "solid waste" and "what would ordinarily become solid waste." The commenter suggested that such a distinction would exclude recycling from the coverage of N.J.A.C. 7:26.

Response: The Department has amended the definition of "recycling" or "reclamation" to refer to solid wastes and not to "what would ordinarily become solid waste."

Comment: Two commenters pointed out that the proposed zero discharge limitation on recycling or reclamation activities is inconsistent with the overall RCRA-based hazardous waste program in New Jersey and would significantly discourage recycling of hazardous waste by imposing stricter requirements on these activities than on other hazardous waste treatment, storage and disposal facilities.

Response: The Department's intent here was not to allow an exempted hazardous waste recycling operation more discretion in any releases, discharges or escapes into the air, water or land of this State than is allowed from a permitted hazardous waste treatment, storage or disposal facility. The Department has modified the definition of "recycling" or "reclamation" to prohibit any unauthorized release, discharge or escape into air, water or land.

Comment: The combustion of hazardous waste for the recovery of heat energy for use as a fuel should be viewed as a legitimate recycling activity. Three commenters suggested that incineration should be included in the definition of "recycling" or "reclamation".

Response: The Department has modified the proposed amendments to exempt, from the hazardous waste permitting and operating requirements, on-site activities that recycle hazardous

waste into a usable fuel to be used on-site. This exemption is expressly conditioned on the compliance of the owner or operator of the on-site recycling process with the requirements of N.J.A.C. 7:26-9.1(c)10 and 12.1(b)9.

The end product of an authorized on-site recycling process that generates a usable fuel from a hazardous waste would not be considered a hazardous waste. The use of this end product would be regulated by the Bureau of Air Pollution Control in the Division of Environmental Quality. As a result, any person who intends to use such a fuel in a combustion device must still obtain a "Permit to Construct, Install or Alter Control Apparatus or Equipment" pursuant to N.J.A.C. 7:27-8. The Department does not intend to classify generators who merely blend waste on-site as recyclers within the meaning of the N.J.A.C. 7:26-9.1(c)10 and 12.1(b)9.

The Department intends to coordinate the evaluation and issuance of approvals for the recycling facility and device burning the fuel.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

7:26-1.4. Definitions

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

. . .

"Recycling" or "reclamation" means any lawful method, technique, or process used to collect, store *[to accumulate a treatable quantity but in no circumstances for more than 90 days]*, separate, process, modify, convert, treat, or otherwise prepare *[what would ordinarily become]* solid waste in a manner such that its component materials or substances * [may]* *will* be beneficially used or re-used, but shall not include *[burning or incinerating nor shall it include any method, technique or process that allows for the release, discharge or escape of the substance being recycled, its by-products or end-products, into the ambient environment (for example the use of the recycling substance for road oiling).]*;

1. Storage of hazardous waste for more than 90 days for any purpose including, but not limited to, treatment, reclamation or any other disposition; or

2. Collection, separation, storage, intermediate processing, modification, conversion or treatment of mixed nonhazardous solid waste; or

3. Any method, technique or process that allows for an unauthorized release, discharge or escape of the material being recycled or reclaimed, its by-products or end products into the air, water or land of the State (for example, the use of the recycled material for road oiling).

7:26-9.1 Scope of applicability

(a)–(b) (No change.)

(c) The standards and requirements of this subchapter do not apply to:

1.–9. (No change.)

10. Persons who recycle or reclaim hazardous waste on the site where such wastes are generated (see definitions of "Recycling" or "reclamation" and "On-site" at N.J.A.C. 7:26-1.4) *[. This paragraph does not exempt the generator from annual reporting requirements of N.J.A.C. 7:26-7.4(g).]* * provided:*

i. Where the reclaimed or recycled hazardous waste is used as a fuel:

(1) The owner or operator shall submit the following information to the Department:

(A) A chemical and physical analysis of the material to be recycled and the quantities involved; and

(B) Schematic designs of the process equipment to be utilized, including the throughput capacity of the equipment and all flows to and from the equipment; and

(C) Explanation of the processes used to produce the fuel and demonstration of the capability of removing water and potential air contaminants including, but not limited to, halogens, metals, total ash, and sulfur from the waste; and

(D) Anticipated quality and quantity of the materials to be produced by the proposed processing of each waste from the process and a material balance; and

(E) A plot plan of the facility depicting the location of the recycling operation; and

(F) A description of the sampling, analytical and quality assurance procedures that will be used to ensure the quality of material being produced for use as fuel including, but not limited to, chemical testing frequency and record keeping procedures; and

(2) Written approval from the Department shall be obtained for the recycling facility prior to start-up of the recycling process; and

(3) Any material produced to be burned shall be utilized on the site where produced; and

***(4) The burning of the material is accomplished in accordance with N.J.A.C. 7:27. (Rules of the Bureau of Air Pollution Control) and specifically a "Permit to Construct, Install or Alter Control Apparatus or Equipment" has been issued that explicitly includes the recycled material to be burned; and ***

(5) The generator must comply with the annual reporting requirements of N.J.A.C. 7:26-7.4(g).

ii. The generator must comply with the annual reporting requirements of N.J.A.C. 7:26-7.4(g) where the recycled or reclaimed hazardous waste is not a fuel under 10i, above.

7:26-12.1 Scope and applicability

(a) (No Change.)

(b) The following persons are not required to obtain a permit pursuant to this subchapter to conduct the following activities or construct or operate the following hazardous waste facilities:

1.–8. (No Change.)

9. Persons who recycle or reclaim hazardous waste on the site where such* [waste] wastes* are generated (see definitions of "Recycling" or "reclamation" and "On-site" at N.J.A.C. 7:26-1.4) *[. This paragraph does not exempt the generator from annual reporting requirements of N.J.A.C. 7:26-7.4(g).]* * provided:**

i. Where the reclaimed or recycled hazardous waste is used as a fuel:

(1) The owner or operator shall submit the following information to the Department:

(A) A chemical and physical analysis of the material to be recycled and the quantities involved; and

(B) Schematic designs of the process equipment to be utilized, including the throughout capacity of the equipment and all flows to and from the equipment; and

***(C) Explanation of the processes used to produce the fuel and demonstration of the capability of removing water and potential air contaminants including, but not limited to, halogens, metals, total ash, and sulfur from the waste; and ***

(D) Anticipated quality and quantity of the materials to be produced by the proposed processing of each waste from the process and a material balance; and

(E) A plot plan of the facility depicting the location of the recycling operation; and

(F) A description of the sampling, analytical, and quality assurance procedures that will be used to ensure the quality of material being produced for use as fuel including, but not limited to, chemical testing frequency and record keeping procedure; and

(2) Written approval from the Department shall be obtained

for the recycling facility prior to start-up of the recycling process; and*

(3) Any material produced to be burned shall be utilized on the site where produced; and

(4) The burning of the material is accomplished in accordance with N.J.A.C. 7:27. (Rules of the Bureau of Air Pollution Control) and specifically a "Permit to Construct, Install or Alter Control Apparatus or Equipment" has been issued that explicitly includes the recycled material to be burned; and

(5) The generator must comply with the annual reporting requirements of N.J.A.C. 7:26-7.4(g).

ii. The generator must comply with the annual reporting requirements of N.J.A.C. 7:26-7.4(g) where the recycled or reclaimed hazardous waste is not a fuel under 12.1(b)9i, above.

The following is a list of those who submitted written comments and those who testified at the public hearing:

Mr. James E. Anderson, Manager
Environmental Affairs
JCP&L/GPU
Madison Avenue at Punch Bowl Road
Morristown, New Jersey 07960

Mr. Daniel R. Bandura, Manager
Safety, Security and Environmental Affairs
Permacel
U.S. Highway No. 1
P.O. Box 671
New Brunswick, New Jersey 08903

Ms. Georgia Hartnett
Assistant Vice President
New Jersey Business and Industry Association
102 West State
Trenton, New Jersey

Mr. James R. Hulm
Vice President
Solvents Recovery Service of New Jersey, Inc.
1200 Sylvan Street
Linden, New Jersey 07036

(a)

DIVISION OF WASTE MANAGEMENT

BOARD OF PUBLIC UTILITIES

Interdistrict and Intradistrict Solid Waste Flow

Joint Adopted Amendment: N.J.A.C. 7:26-6.5

Proposed: November 21, 1983, at 15 N.J.R. 1914(a).
Adopted: December 29, 1983 by Robert E. Hughey, Commissioner, Department of Environmental Protection, and December 28, 1983 by Barbara A. Curran, President, Board of Public Utilities.
Filed: January 4, 1984 as R.1984 d.4, **without change**.

Authority: N.J.S.A. 13:1B-3, 13:1E-6, 13:1E-23 and 48:13A-1 et seq.

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): December 5, 1987.

DEP Docket No. 060-83-10.

BPU Docket No. 839-778.

Summary of Public Comments and Agency Responses:

On November 21, 1983, the Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) proposed an amendment to the "waste flow rules", N.J.A.C. 7:26-6 to redirect solid waste generated in various municipalities in Warren, Hunterdon and Morris Counties from disposal in the High Point Sanitary Landfill located in Franklin Township, Warren County to the Ocean County Landfill Corporation landfill, located in Manchester Township, Ocean County. The proposed redirection was necessary in order to prevent additional waste from being disposed of at the environmentally unsound and operationally unsafe facility in Warren County. The proposal also permitted the affected municipalities to utilize disposal facilities outside of New Jersey when such disposal is in compliance with the laws and regulations of the receiving state.

Two public hearings concerning the redirection were held on December 7, 1983 in Franklin Township and on December 8, 1983 in Lakehurst, Manchester Township. The DEP and the BPU have carefully reviewed the transcripts of the hearings and the written comments which were submitted during the comment period which closed on December 21, 1983. The following is a summary of the major issues raised which were germane to the proposal and the agencies' response. Copies of a more complete "Response to Comments and Questions" document may be obtained from Barbara M. Greer, Office of Regulatory Services, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625.

Comment: The DEP has not examined other disposal options for accepting the solid waste redirected from the High Point Sanitation Landfill.

Response: The disposal of solid waste in northern New Jersey has reached a crisis state. As the DEP is being forced to close existing landfills due to environmental and/or capacity problems, and counties fail to site and construct new landfills as mandated by the Solid Waste Management Act, the DEP and BPU are required to redirect solid waste to landfills that still have remaining capacity.

Prior to issuing the Emergency Redirection Order on October 16, 1983, the DEP examined all other disposal options for the waste to be redirected from High Point. Since there are no major landfills operating in Hunterdon, Morris, Warren, Passaic, Mercer, Somerset, Union, Essex or Hudson Counties, the only alternatives for the redirection of the High Point waste were HMDC, Sussex County, Middlesex County, Monmouth County, Burlington County and Gloucester County districts. A review of each facility in those districts was undertaken. A summary of that review appears in the more detailed Response to Comments and Questions document which is mentioned above. The conclusion drawn from the review, of facilities which were considered to be viable options for environmentally sound disposal, was that no facility other than the Ocean County Landfill Corporation could provide sufficient operating capacity and long-term stability without violating the integrity of the receiving district's solid waste management plan.

In considering the planning principles embodied in the Statewide Solid Waste Management Plan, the fact that the Ocean County Landfill Corporation facility is not overloaded and has an estimated

10-year remaining capacity outweighs the disadvantage of requiring the waste to be hauled over a greater distance than if facilities in HMDC, Sussex, Middlesex, Monmouth or Burlington were designated to accept the waste. In addition, the option to use out-of-state facilities will relieve the hardship involved in hauling waste over long distances.

Comment: The DEP has not addressed the issue of increased truck traffic in the vicinity of the Ocean County Landfill Corp. or the deterioration of nearby roads resulting from the redirection.

Response: According to testimony offered at the December 8, 1983 public hearing, the redirection of waste from High Point has increased traffic only to the extent of an additional 18 trucks per day. Since the landfill averaged 105 trucks per day during 1982, the increase caused by the redirection represents only a 17 percent increase in truck traffic. This modest increase should not adversely impact upon vehicular traffic or road conditions in the vicinity of the landfill.

Comment: The DEP should consider redirecting any or all of High Point's wastes to other landfills in Ocean County.

Response: Ocean County public officials have indicated their intent to close all other landfills in the county, except Southern Ocean landfill, within a short period of time; therefore, long term stability of disposal could not be provided by redirecting the waste to other Ocean county landfills. Southern Ocean landfill, under the Pinelands rules, may accept waste only from counties located within the Pinelands.

Comment: The DEP has indicated by letter to the Ocean County Freeholders that the redirection of High Point's waste would be temporary. However, the adoption of the waste flow amendment would indicate this redirection is permanent.

Response: The redirection of High Point waste to Ocean County, while it may be of a long duration, is not intended to be of a permanent nature. The redirection does not relieve the Counties of Warren, Hunterdon and Morris from fulfilling their statutory obligations to provide for solid waste disposal within their districts or to negotiate interdistrict agreements for long term disposal. When these Counties amend their plans to designate other disposal facilities, the waste flow rules will again be amended. The DEP is pursuing litigation to force Morris County to select disposal facilities, while Hunterdon and Warren Counties are taking steps to site resource recovery facilities and/or landfills.

Comment: The redirection of waste to Ocean County should have been delayed until the Ocean County Landfill Corp. landfill completed the necessary environmental improvements.

Response: The owner/operator of the facility will be required to install environmental improvements. According to DEP records and studies which have been conducted at the site, some groundwater contamination exists beneath the landfill, however the plume of contamination has not moved off-site and as such does not pose a present danger to off-site potable water wells. The environmental improvements will be designed to prevent the plume from moving off-site.

Comment: Collector/haulers will experience a significant increase in expenses, e.g., for additional equipment, fuel, manpower and other expenses related to traveling greater distances to dispose of solid waste. What relief is available to the collector/haulers to enable them to continue rendering safe, adequate and proper service?

Response: The Board recognized the existence of such increased expenses and the necessity for emergent rate relief because thereof for affected collector/haulers. Accordingly, in cooperation with the Office of Administrative Law and the Department of the Public Advocate, Division of Rate Counsel, an expedited procedure was established to process applications for interim rate relief by affected collector/haulers, pending final determination. Twelve applications were filed. To date, ten of the applications for interim relief have been processed to conclusion and two are outstanding.

BPU general response to comments:

The Board notes it is obvious from an economic viewpoint that the utilization by collector/haulers of a more proximate disposal site is more desirable than the use of one far more distant. However, the Board believes that public policy requires that environmental considerations must supersede economic concerns. The Board recognizes the primary jurisdiction of the Department of Environmental Protection in determining the environmental considerations in the redirection of solid waste from one county/district to another county/district and in respect to when, based upon environmental considerations, a particular landfill should cease operations. When the Department closes a particular landfill for environmental reasons, the Board's role is normally limited to analyzing the economic repercussions thereof. When, as here, the Department determines that the only available landfill is one far more distant, the Board's role is to minimize to the extent possible under existing law and regulations the effects of the use of the distant landfill on affected collector/haulers and, perhaps, on the distant landfill as well. In regard to solid waste redirection under the Mastrangelo decision however, the Board's jurisdiction is essentially limited to an economic comparison of potential sites within the receiving county/district. In actuality, there is no county/district to which solid waste can be directed where there is more than one possible redirection site.

HEALTH

(a)

THE COMMISSIONER

Certificate of Need: Psychiatric Inpatient Beds;
Adult Open Acute Psychiatric Bed Standards

Adopted New Rule: N.J.A.C. 8:43E-2

Proposed: October 17, 1983 at 15 N.J.R. 1717(a).
Adopted: December 12, 1983 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board)
Filed: December 23, 1983 as R.1983 d.627, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

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

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order 66(1978): January 17, 1988.

Summary of Public Comments and Agency Responses:

Six written comments were received during the comment period.

The first comment was from an Executive Director of a Health Systems Agency who asked for a technical language change in the bed need methodology. The second commentor was a consumer member of the Statewide Health Coordinating Council (SHCC) Psychiatric Bed Task Force who was concerned that State hospital system data was not included in the bed need formula, as the State hospital should be an integral part of planning for mental health services.

The third commentor represented the New Jersey Psychiatric Association, which was represented on the SHCC Task Force by two individuals. It was indicated the Association opposed the proposed regulation, since it would discourage the expansion of hospital psychiatric units for adults.

An accessibility guideline (N.J.A.C. 8:43E-2.7c) which limits acceptance of individuals with primary substance abuse diagnoses where alcohol and drug treatment facilities are available was opposed as it "denies needed psychiatric care" to patients with dual diagnoses. A rule (N.J.A.C. 8:43E-2.12) which promotes conversion of existing underutilized hospital capacity in establishing new psychiatric units was termed inappropriate because it "denies needed psychiatric services." In another rule (N.J.A.C. 8:43E-2.15), the construction of units in a manner emphasizing the "least restrictive clinical environment" was found "poor" as this would not always be the "most appropriate" setting. A rule which defined the role of the Department of Human Services in the Review process was urged to detail the circumstances for denial recommendations. And in Appendix B, the commentor felt that inclusion of State psychiatric hospital admissions was inappropriate as current State policy precluded voluntary admissions.

The fourth commentor represented the Medical Society of New Jersey, which supported the objections of the New Jersey Psychiatric Association.

The fifth commentor was the administrator of a private psychiatric hospital. This commentor opposed adoption of the rules, on the basis that they did not take into account the distinctions between general hospital psychiatric units and free standing psychiatric hospitals. The definition of adult open acute psychiatric units was termed "unclear" in its application to specialty hospitals. The lowering of the 90 percent occupancy rule prior to expansion was urged, as it was felt to be a high standard that would result in waiting lists and inaccessibility. The guidelines recommending that average length of stay (ALOS) of applicants should be within 110 percent of Statewide ALOS was felt to be discriminatory to private psychiatric hospitals.

In N.J.A.C. 8:43E-2.11, guidelines for reviewing utilization of psychiatric services within a 20-mile radius are established. The commentor asked for the rationale for the 20 miles and its relationship to private psychiatric hospitals to be clarified. The conversion of excess bed capacity rule (N.J.A.C. 8:43E-2.12) was urged to exclude private psychiatric hospitals, and the commentor wanted clarification of the rule (N.J.A.C. 8:43E-2.13) on projected length of stay which was felt to discriminate against specialty hospitals. In reference to endorsement guidelines, rule N.J.A.C. 8:43E-2.16 concerning local mental health agencies was termed too vague while rule N.J.A.C. 8:43E-2.18 concerning the Department of Human Services' endorsement was felt to go beyond the intent and scope of CON law. Several concerns and questions were raised in regard to the bed need formula, including suggestions that population projections be based on a five year basis; outmigration data be utilized; that the 85 percent occupancy figure be lowered; and that the Mental Health Need Modifer be explained in more detail.

The sixth commentor represented a county Medical Society and opposed the rule as "it would discourage the expansion of hospital adult psychiatric units."

RESPONSE:

The first commentor suggested that in Appendix A, Step 5 be changed from "Total Bed Need - Total Bed Supply" Net Bed Need (Excess)" to "Bed Need" Beds Required less Total Beds Available", as this is less confusing and consistent with past rules. The Department believes that the terms in the rules are clearly defined, and that there is no compelling reason to change language. The SHCC and its advisory committee have accepted and recommended use of these terms.

The second commentor correctly pointed out that psychiatric bed planning cannot be performed without consideration of State psychiatric hospitals. The Department specifically involved Division of Mental Health and Hospitals' staff on the SHCC Task Force, and the Director of Planning responsible for State Hospitals participated in the development of the rules. Inpatient psychiatric care must be viewed as a continuum, and adult open psychiatric units in the community are a different level of care which generally cannot directly replace State hospitals. This essentially is why State hospital data was not incorporated into the methodology.

The third, fourth, and sixth commentors opposed the rules on the basis that they restrict growth of hospital psychiatric units. The Department believes that it cannot implement its authority under Certificate of Need without formal review criteria. The rules do not preclude growth in bed capacity where appropriate but are intended to guide it where the formula and criteria indicate potential need.

The third commentor was also concerned about patients with dual psychiatric/substance abuse diagnoses being precluded proper treatment under Admissions Criteria guidelines. The SHCC Psychiatric Bed Task Force fully discussed this issue and the language addresses only patients with a primary substance abuse disorder. Patients with equal psychiatric and substance abuse diagnoses can be properly treated on psychiatric units. The intent of the rule is to promote use of more appropriate and far less costly free-standing substance abuse treatment facilities. The Department's studies have shown that as many as 20 percent of psychiatric unit admissions Statewide are patients with a primary substance abuse diagnoses. Many of these individuals could be served more appropriately in an alcohol or drug abuse program at less cost, thus freeing up psychiatric beds for patients having primary diagnoses of mental disorders.

The third commentor expressed further concern about requiring conversion of underutilized existing capacity in hospitals as an alternative to constructing new beds. This rule is viewed by the Department as an appropriate and basic approach to hospital management and cost containment. Several exceptions were permitted that will preclude this rule from being unrealistically applied. In regard to the concern on requiring a "least restrictive clinical environment", this is a rule intended to promote a more open construction design than use of traditional hospital corridors. It is not intended to preclude construction of required and necessary unit components such as isolation or observation rooms.

The commentor also requested that the basis of the Department of Human Services' recommendation be detailed in the rule. The Department believes this concern has been addressed within existing language of N.J.A.C. 8:43E-2.18, where it is specified that the basis must be upon the adopted criteria. This concern was discussed by the SHCC Psychiatric Bed Task Force and the proposed language was considered sufficient to address the issue.

The last comment dealt with Appendix B methodology, which details the approach to determining bed need for State and county hospital "replacement" beds. The commentor correctly indicated that voluntary patients currently constitute a small proportion of State hospital admissions. The Department recognizes this, yet as involuntary patients are directed to general hospitals through Inpatient Screening Units (N.J.A.C. 8:43E-3), additions to adult open acute beds may be necessary. It is expected that 75 percent of such patients will convert to voluntary status and thus utilize an open unit bed, which may or may not be available under existing hospital capacity. Thus, the Appendix B methodology is appropriate to this rule.

The fifth commentor representing the private psychiatric hospital

asked for clarification of the applicability of the regulations to special hospitals. The Department has indicated under N.J.A.C. 8:43E-2.1, Scope, that the rules apply to any beds or facilities which proposes to provide adult open acute psychiatric services, as defined in N.J.A.C. 8:43E-2.2, Definitions. This applies even where length of stay is projected at beyond 30 days by the applicant. In designing the criteria, the SHCC Task Force clearly recommended that they should apply to any facility, regardless of ownership. The Task Force futher identified eight sub-categories of psychiatric beds, and there was no suggestion that private psychiatric hospital beds should be licensed or considered separately. However, it is recognized by the Department that not all services provided in private psychiatric hospitals will meet the definition of Adult Open Acute Psychiatric Services, and such units will be considered outside of the rule. As there are innumerable possibilities for such specialty services, each proposal will have to be reviewed individually for such determinations. Any such applications or portions of proposed facilities not considered adult open acute bed must justify need and satisfy the general review criteria of the Hospital Policy Manual (N.J.A.C. 8:43E-1) and the Chapter 33 Guidelines and Criteria for Submission of Applications for Certificate of Need unless other regulations are applicable. When sufficient volume of applications for specific specialty units becomes evident, the Department will request the SHCC Psychiatric Bed Task Force to reconvene to discuss the need for specific CON criteria.

As a general response to many concerns raised by this commentor, the Department would like to point out that a number of the criteria are guidelines, which may be considered as general guidance in a review rather than specific requirements for approval.

The commentor indicated that the 90 per cent occupancy rate standard which would be a prerequisite to expansion of existing capacity was too high. Thirteen of fifty-five psychiatric units for facilities in New Jersey operated above this level in 1981, and three asked for additional beds through CON and were approved. Overall occupancy in psychiatric units averaged 78 percent Statewide during 1981, indicating that a patient could locate a bed in New Jersey if needed in an acute situation. In addition, in order to promote cost containment, the Department believes a 90 percent level is appropriate and would not result in unnecessary hardships on potential applicants or patients.

The rules contain guidelines in which applicants for expansion or for new units must have or project an average length of stay (ALOS) within 110 percent of all adult open acute psychiatric units in the State. This rule is consistent with actual reimbursement policies under DRG's. Psychiatric unit ALOS shows extreme variation Statewide. Since DRG implementation, psychiatric units have shown perhaps the most significant decreases in ALOS. There is limited correlation between recorded diagnosis and ALOS, which is evident when the private psychiatric hospital case mix is reviewed. As special hospitals are not under DRG's, there is little financial incentive to reduce ALOS, particularly where the majority of payors are commercial insurors who pay charges rather than approved cost-based rates. Despite these concerns, the rules were written to permit an applicant to justify a longer ALOS based upon several general factors. The Department agrees that there is more burden of proof on private psychiatric facilities, but it believes there is justification for these concerns to be addressed as the private hospital reimbursement system does not adequately provide incentives to shorter hospital stays.

The establishment of a 20-mile radius within continuity of care guidelines was also questioned. The Department believes that adult open acute psychiatric units are services which must be reviewed in a regional context. As less than half of New Jersey's hospitals provide inpatient psychiatric care, with occupancy of these units less than 80 percent Statewide, there is a basis for assuming that every hospital in every area does not require a unit. The Department believes that a "20 mile radius" should assure both reasonable access and regionalization. This criteria has also been termed a guideline, and is considered a more appropriate approach than the original proposed rule which utilized average driving time. For a number of other services, driving time has been considered virtually impossible to measure. It is recognized that private psychiatric hospitals may have larger service areas but as a guideline, the Department may consider this factor in the review.

In reference to concerns expressed on endorsements, the Department believes that as the commentor states, there is a continuum of care in mental health. The local endorsement guideline is intended to promote a more unified system of care as opposed to one which is two-tiered, for example, private and public. The efforts to obtain endorsements from community mental health centers will serve to at least initiate discussions about meeting needs of the community in the planning of a new inpatient psychiatric unit.

The commentor also questioned the basis for N.J.A.C. 8:43E-2.18 regarding the Department of Human Services CON recommendations. The authority of the Commissioner of Health in statute regarding Certificate of Need approvals is not compromised by the rule. The Commissioner of Human Services is a member of the SHCC whose views will be and are expressed regularly. This rule outlines the basis and process for his CON recommendations.

The commentor suggests that 1985 population figures used in Appendix A be modified to 1988 or 1989. The Department agrees theoretically with this suggestion but offical population projections are prepared by the New Jersey Department of Labor on five-year intervals. The Department accepts a modification of Appendix A which deletes "1985" from Steps 1 and 2, and Derivations, B.3. In place of this, the Department proposes to substitute "1990" in each of the above noted sections.

In regard to outmigration of New Jersey residents to out-of-state psychiatric facilities, there is no reporting mechanism uniformly available to capture this data, and it therefore cannot be incorporated into the methodology.

In regard to use of an 85 percent occupancy factor in Appendix A, this is considered to be an optimal and reasonably achieved utilization figure which should be incorporated into bed need planning. The figure was approved by the SHCC Task Force.

The Mental Health Need Modifier is a complex methodology which may more appropriately be reviewed by obtaining a copy of the cited report from the listed office of the Division of Mental Health and Hospitals.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus*** deletions from proposal shown in brackets with asterisks *[thus]*).

APPENDIX A
ADULT OPEN ACUTE PSYCHIATRIC
BED METHODOLOGY

A. Formula for determining county bed need

Step 1. (Statewide Use Rate X
Projected *[1985]* ***1990*** County Population

1000

÷ 365 * = *
Bed Need at 100% occupancy x (2-.85) =
bed need at 85% occupancy (Method 1)

Step 2.
Current Patient Days *[1985]* ***1990*** Projected County Population

1000 x 1000 *= *

Projected Patient Days ÷ 365 = Bed Need at 100% occupancy x (2-.85) =
Bed Need at 85% occupancy (Method 2)

Step 3.–5. (No change from proposal.)
B. Derivation of Formula Components
1.–2. (No change from proposal.)
3. "* [1985]* ***1990*** Projected Population" is derived from the New Jersey Department of Labor official projections, utilizing the "preferred" model ***(ODEA Economic/Demographic Model)***
4.–6. (No change from proposal.)

(a)

THE COMMISSIONER

Certificate of Need: Psychiatric Inpatient Beds; Inpatient Screening Bed Standards

Adopted New Rule: N.J.A.C. 8:43E-3

Proposed: October 17, 1983 at 15 N.J.R. 1720(a).
Adopted: December 12, 1983 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board)
Filed: December 22, 1983 as R.1983 d.626, **without change**.

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

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order 66(1978): January 17, 1988.

Summary of Public Comments and Agency Response:

COMMENT:
The Department received three written comments during the public comment period. The first commentor represented the New Jersey Psychiatric Association, who was concerned that the rule was unneeded as it established a category of beds no different than involuntary beds, and that they would not be cost-effective limiting patient stays to 72 hours. The second commentor represented the New Jersey Medical Society, who supported the concerns of the New Jersey Psychiatric Association. The third commentor represented a county Medical Society that opposed the rules because they would encourage involuntary commitments in general hospitals.

RESPONSE:
The Department proposed these rules as a method to assess need and appropriateness of new inpatient psychiatric beds where the hospital had chosen to admit involuntary commitments. The Department currently or historically never had a separate licensure or Certificate of Need category for "involuntary beds". The rules address the "inpatient screening" model of providing such care, supported by the Division of Mental Health and Hospitals. Limiting involuntary commitments to 72 hours is cost-effective, as patients assessed to need more restrictive environments or longer term care will be transferred to State or county hospitals, with significantly lower per diem costs.

The third commentor was concerned that involuntary commitments to general hospitals would be encouraged by this rule. The Department is not in any way mandating provision of inpatient screening units in New Jersey hospitals. It is responding to need indicated by a significant number of hospitals in their long-range plans to independently submit a Certificate of Need application to initiate these services.

(b)

THE COMMISSIONER

Certificate of Need: Psychiatric Inpatient Beds Childrens Acute Psychiatric Bed Standards

Adopted New Rule: N.J.A.C. 8:43E-4

Proposed: October 17, 1983 at 15 N.J.R. 1723(a).
Adopted: December 12, 1983 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board)
Filed: December 23, 1983 as R.1983 d.625, **without change**.

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

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order 66(1978): January 17, 1988.

Summary of Public Comments and Agency Responses:

COMMENT:
Five written comments were received during the comment period. The first was from a consumer member of the Statewide Health Coordinating Council (SHCC) Psychiatric Bed Task Force who was concerned about defining individuals up to age 18 as "children", as an 18-year-old should be treated in an adult psychiatric unit.

The second commentor represented the New Jersey Psychiatric Association, who felt that the rule was unneeded. If the Department was "accepting applications for licensure without prior approval or consultation"; refusing "to accept a CON seems equivalent to waiving the requirement" to the commentor. The phrase "adolescents ages 16 to 21" was termed inappropriate in a rule concerning children.

The third commentor was from the New Jersey Medical Society who supported the above concerns of the New Jersey Psychiatric Association.

The fourth commentor represented a private psychiatric hospital. The validity and use of national use rate data to 1988 needs assessment was questioned. Children were cited as the "most underserved population, ranking high in priorities for care." The State was urged to consider each application on a case-by-case basis rather than waiting for more recent data.

RESPONSE:
While the rules are termed Children's Acute Psychiatric Beds, the definition does not distinguish between adolescent and children's units, as pointed out by the first and second commentors. When need methodology and review criteria are proposed by the Department in the future, it is intended to separately address two age groups, who have clearly different clinical treatment needs. However, during the interim period, applications for Certificate of Need for either type of unit are affected by the rules. It is recognized as the first commentor states, that older adolescents may be treated appropriately in an adult unit. Up to 15 percent of adult unit admissions are permitted to be of adolescent age, within the exceptions stated in the rules.

The second commenter felt the rule was not needed. The Department, without an adopted regulation, must accept Certificate

of Need applications for health care services covered by the statute. Therefore, it finds this rule necessary. No new beds for children or adolescents can be licensed as Psychiatric beds without prior Certificate of Need approval.

The fourth commentor questioned use of national use rate data from 1975. The Department did a thorough analysis of available research and could not locate any more recent or relevant data. As stated in the Social Impact, new children's units in New Jersey have recently been established and utilization data will begin to be available shortly. The lack of more appropriate data was a determinant in seeking this rule, as well as the extremely high costs of children's psychiatric units. While children are designated as an underserved population group by the New Jersey Division of Mental Health and Hospitals, they have supported this rule. The Division of Mental Health and Hospitals remains actively involved with developing a community service network for children and adolescents, including cost-effective and needed programs such as partial care and residential treatment services.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Standards for Licensure of Residential Health Care Facilities
Dietary Services

Adopted Repeal: N.J.A.C. 8:43-6
Adopted New Rule: N.J.A.C. 8:43-6

Proposed: October 17, 1983 at 15 N.J.R. 1710(a).
Adopted: December 16, 1983 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).
Filed: December 27, 1983 as R.1983 d.630, **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. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): January 17, 1989.

Summary of Public Comments and Agency Responses:

The Department received two letters of comment regarding the proposed new rule for dietary services in residential health care facilities. One letter, from the Division of Medical Assistance and Health Services of the New Jersey State Department of Human Services, supported the proposed new rule as published and offered no recommendations for revision. The second letter, from the New Jersey Association of Health Care Facilities, stated that "The proposed revisions will require the facility to implement unnecessary paperwork and documentation" which will require additional time and recommended that the existing rule be readopted. In addition, the New Jersey Association of Health Care Facilities (NJAHCF) recommended specific revisions in the proposed new rule as follows:

It was recommended that the proposed N.J.A.C. 8:43-6.1(a) through N.J.A.C. 8:43-6.1(b)2 be deleted because "The wording in these sections is entirely too complex" and the existing N.J.A.C. 8:43-6.1(c) and (d) be added. The Department did not concur with these recommendations since policies and procedures are required of other types of health care facilities and the content of the existing N.J.A.C. 8:43-6.1(c) and (d) is included in the proposed N.J.A.C. 8:43-6.2(a)2 and 3. However, editorial changes were made in proposed N.J.A.C. 8:43-6.1(a) and (b)1 to make them more realistic.

Revisions were recommended for proposed N.J.A.C. 8:43-6.1(b)5 since both a glass and a cup and a knife may not be needed at each meal. This rule was revised to reflect the recommendation.

An addition was recommended for N.J.A.C. 8:43-6.1(b)6 to indicate that certain items might be contraindicated in a resident's diet. The suggested addition was made to the rule.

It was recommended that reference to residents' cultural backgrounds, food habits, and personal food preferences of residents be deleted from N.J.A.C. 8:43-6.2(a)1. The recommended deletion was made, and proposed N.J.A.C. 8:43-6.2(a)2 was amended to reflect current practice in the facilities as indicated by NJAHCF.

N.J.A.C. 8:43-6.2(a)6 was deleted as requested since the provision of snacks would increase the cost to the facility and the residents have spending money with which to buy snacks if they so wish. N.J.A.C. 8:43-6.2(a)5 was amended to require an evening snack if the evening meal is served before 5:00 P.M., as requested by NJAHCF.

N.J.A.C. 8:43-6.2(a)7 was deleted as requested since the revision of N.J.A.C. 8:43-6.2(a)2 incorporates the intent of the proposed rule in a manner administratively acceptable to the facilities.

The NJAHCF recommended that N.J.A.C. 8:43-6.2(a)10 be deleted since it was thought to be duplicative of N.J.A.C. 8:43-6.2(a)3. The Department contends that this recommendation was made because of a misinterpretation of the rule, and N.J.A.C. 8:43-6.2(a)10 was revised to clarify the Department's intent.

It was recommended that N.J.A.C. 8:43-6.2(a)11 be revised to require thermometers in freezers but not in storerooms. The Department concurred and the requested changes were made.

The NJAHCF requested that perishable foods be exempted from N.J.A.C. 8:43-6.2(a)14. The Department is unaware of the reason for this request and does not agree with the recommendation. No change was made.

N.J.A.C. 8:43-6.2(a)15 was deleted as requested. The Department agrees that the proposed rule required additional documentation which could be burdensome.

In addition to the changes described above, which resulted from consideration of the recommendations of the NJAHCF, the following changes were made by the Department:

An editorial change was made in N.J.A.C. 8:43-6.1(b)3 since the 1975 edition of the **New Jersey Diet Manual** is no longer available. A revised edition is expected to be available in the near future.

An editorial change was made in N.J.A.C. 8:43-6.2(a)1 deleting "Selects" and adding "Provides" to more accurately describe the administrator's responsibility.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

8:43-6.1 Facility's responsibilities

(a) The facility shall establish, implement, and perform a documented annual review of written policies *[,]* ***and*** procedures*[, and methods]* for the provision of dietary services. It shall also maintain the organization, management, and operation of dietary services in accordance with a written organizational plan which shall describe the responsibility, authority, and accountability of personnel*[, and the relationship of the dietary service to other services]*.

(b) The facility shall provide:

1. Policies*[,]* ***and*** procedures*[, and methods]* for planning,

preparing, and serving meals, purchasing food, supervising residents at mealtime, and providing therapeutic diets in accordance with admission policy of the facility and as prescribed by the resident's physician. "Therapeutic diet" shall mean a diet prescribed by a physician, and may include modifications in nutrient content, caloric value, consistency, methods of food preparation, content of specific foods, or a combination of these modifications;

2. (No change from proposal.)

3. A current diet manual approved by the Department, such as the New Jersey Diet Manual *[1975]*;

4. (No change from proposal.)

5. For each resident at each meal, a place setting consisting of at least a dish(es), a glass*[,]* ***and/or*** cup, knife, ***if needed,*** fork, spoon, and napkin; and

6. For each resident's use at the table, at each meal, salt, pepper, sugar or sugar substitute, dairy or non-dairy additives for beverages, and condiments*, **unless contraindicated by the resident's physician***.

(c)–(d) (No change from proposal.)

8:43-6.2 Administrator's responsibilities

(a) The administrator or his/her alternate shall ensure that the dietary service:

1. *[Selects]* ***Provides*** food and drink and prepares menus with regard for the nutritional and therapeutic needs*[, cultural backgrounds, food habits, and personal food preferences]* of residents;

2. Has written and dated menus, planned at least seven days in advance for all diets, and does not use the same menu more than once every seven days*[;]* *. **The facility shall offer substitute food and drink if requested by a resident at least five days in advance;***

3.–4. (No change from proposal.)

5. Adheres to written policies regarding meal hours. No more than 14 hours shall elapse between an evening meal and breakfast the next morning, and the first meal shall not be served before 7:00 A.M.;

i. If the evening meal is served before 5:00 P.M., additional food and drink shall be served as an evening snack to all residents;

*[6. Provides between-meal and bedtime snacks, including beverages, for each resident;

7. Offers substitute foods and drinks to all residents who refuse the food served at meal times. Such substitutes shall be of equivalent nutritive value;]*

8.–9. renumbered as **6.–7.** (No change from proposal.)

[10.] ***8.*** Maintains a file of recipes for menu items ***that require a recipe***, adjusted to yield, which shall be used in preparing foods listed on the posted menus;

[11.] ***9.*** Maintains thermometers in refrigerators and *[storerooms used for perishable items]* ***freezers***;

12.–13. renumbered as **10.–11.** (No change from proposal.)

[14.] ***12.*** Maintains at least a five-day supply of food on the premises; *and*

[15. Prepares a monthly summary of the numbers and kinds of diets served daily to residents; and]

16. renumbered as **13.** (No change from proposal).

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Standards for Licensure of Residential Health Care Facilities
Resident Rights; Facility Responsibilities, Policies, Procedures

Adopted Amendment: N.J.A.C. 8:43-7.2

Proposed: October 17, 1983 at 15 N.J.R. 1713(a).
Adopted: December 16, 1983 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).
Filed: December 27, 1983 as R.1983 d.631, **without change**.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26-2H-5 and 55:13B-17.

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): October 3, 1988.

Summary of Public Comments and Agency Responses:

COMMENT:

The Department received two comments regarding the benefits generated from the Home Energy Assistance Program on the proposed amendment to Resident Rights; Facility Responsibilities, Policies, Procedures, N.J.A.C. 8:43-7.2(a)15iv, for the **Manual of Standards for Licensure of Residential Health Care Facilities**. Mr. David G. Kostinas, Vice President, New Jersey Association of Health Care Facilities, questioned the Department's authority to regulate the benefits received from the Home Energy Assistance Program since the funding for the program is the responsibility of the Department of Human Services and the Federal government. He further stated that the Department of Health has no regulatory authority over the benefits received by residents from the Home Energy Assistance Program and the adoption of the amendment would require its annual revision because the determination of the distribution of these monies is made annually. He suggested the withdrawal of the amendment.

Mr. Dennis H. Hett, Executive Director, New Jersey Association of Non-Profit Homes for the Aging, regarded the proposed amendment as a reversal of the prevalent practice according to which the check is divided equally between the resident and the home. He recommended that the Department should continue this practice but with prohibition against coercion.

RESPONSE:

The Department does not concur with the comments received on the proposed amendment and no changes were made. The Department contends that it is not overstepping its jurisdiction by protecting the rights of the residents in Residential Health Care Facilities. The Department of Health is not involved in the determination of the amount to be disbursed to the residents which is the function of the Department of Human Services. The Department further contends that adoption of the proposed amendment protects the residents from coercion, intimidation, or exploitation by the facility's owner, operator, employee, or representative of the facility who might want to obtain a portion or entirety of residents' home energy assistance checks. If the proposed amendment is not adopted, the rights or residents in Residential Health Care Facilites could be infringed.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Manual of Standards for Hospital Facilities Cardiac Diagnostic and Surgical Services

Readoption with Amendments: N.J.A.C. 8:43B-17

Proposed: October 17, 1983 at 15 N.J.R. 1713(b).
Adopted: December 16, 1983 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).
Filed: December 27, 1983 as R.1983 d.632, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

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

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): January 1, 1989.

Summary of Public Comments and Agency Responses:

COMMENT:
The Department received five comments on the proposed amendments to Cardiac Diagnostic and Surgical Services, N.J.A.C. 8:43B-17, for the **Manual of Standards for Hospital Facilities**. The Chairman of the Commissioner's Cardiac Advisory Committee, Dr. A. Bernstein, commented on the nurse to patient staffing ratio after the first 24 hours following surgery in the cardiovascular surgical intensive care services, N.J.A.C. 8:43B-17.14(d), and the definition of pump technician, N.J.A.C. 8:43B-17.16. Dr. V. Parsonnet, a member of the committee, Dr. J. Mackenzie, Professor, and Chairman, Department of Surgery, Rutgers Medical School, and Ms. Dorothy Flemming, Associate Director, New Jersey State Nurses Association, also commented on the nurse to patient staffing ratio in the cardiovascular surgical intensive care service, N.J.A.C. 8:43B-17.14(d). All of them indicated that the proposed amendment to the current regulation will affect patient care and safety.

Mr. Thomas Russo, Director, Division of Medical Assistance and Health Services, in his letter supported the amendments as proposed.

Dr. Bernstein did not favor the revision of the definition of "pump technician/perfusionist," N.J.A.C. 8:43B-17.16. He regarded the proposed amendment as going beyond the "grandfathering" of experienced personnel and relegating certification to "relative unimportance." Though not intending to penalize the employed "pump technician/perfusionist," he recommended that new candidates should be "required to meet certification eligibility requirements."

RESPONSE:
The staff of the Standards Program, Department of Health, attended the meeting of the Commissioner's Cardiac Advisory Committee meeting on November 3, 1983, to discuss the proposed amendments. The committee members discussed and agreed to the fact that the nurse-to-patient staffing ratio at all levels of care for the cardiac patients needed further exploration and discussion. The committee agreed that the regulation will remain as is currently written. The committee members concurred to meet in the future to explore and discuss the nurse-to-patient-staffing ratio and to forward recommendations to the Health Planning Services. In the event that the planning guidelines on Cardiac Diagnostic and Surgical Centers, N.J.A.C. 8:33E, are revised, appropriate amendments will be made in the licensure regulation. In regards to the qualifications and experience of pump technicians, the committee members agreed to leave the definition as is currently written. In order not to penalize a "pump technician/perfusionist" without certification, the credentials of a person may be reviewed on an individual basis and a waiver can be granted by the Department.

Following the recommendations of the committee and others, the proposed amendments to N.J.A.C. 8:43B-17.14(d) and N.J.A.C. 8:43B-17.16 are withdrawn and the regulations shall remain as are currently written. The proposed text of N.J.A.C. 8:43B-17 is being readopted with amendments except the aforementioned two regulations. These regulations have been in existence for the last five years and their continuation would not adversely affect the health and safety of patients.

No comments were received on the other proposed amendments.

Full text of the changes between proposal and adoption follows (deletions from proposal shown in brackets with asterisks *[thus]*).

SUBCHAPTER 17. CARDIAC DIAGNOSTIC AND SURGICAL SERVICES

8:43B-17.14 Cardiovascular surgical intensive care service or recovery room.

(a)–(c) (No change from proposal.)

(d) There shall be a ratio of at least one registered professional nurse to one patient in the cardiovascular surgical intensive care service *[during the first 24 hours following surgery. After the first 24 hours following surgery the ratio shall be at least one registered professional nurse to two patients]*. The charge nurse shall not be included in the nurse/patient ratio if there are more than three patients in the service or recovery room.

(e) (No change from proposal.)

8:43B-17.16 Glossary of terms

. . .

"Pump technician" shall mean a person who is certified or eligible for certification by the American Board of Cardiac Perfusionists *[or who meets the qualifications and experience as specified in the hospital's policies]*.

. . .

(b)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: February 7, 1983 at 15 N.J.R. 127(a).
Adopted: December 21, 1983 by the Drug Utilization Review Council, Leroy Schwartz, M.D., Chairman.
Filed: December 27, 1983 as R.1983 d.633, with portions of the proposal **not adopted** and **portion not adopted but still pending**.

Authority: N.J.S.A. 24:6E-6b.

Effective Date: January 17, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): March 6, 1984.

Summary of Public Comments and Agency Responses:

NPC supported their erythromycin estolate suspension, 125 mg/5 ml, pointing out that previous expert clinical testimony on erythromycins stated that differences of up to 40 percent between the brand and generic products were of no clinical importance.

While not necessarily agreeing that 40 percent differences would be unimportant, the Council agreed that the NPC product's differences would not be therapeutically harmful.

The following product and its manufacturer were **adopted**:

Erythromycin estolate susp. 125/5 ml	**NPC**

The following products and their manufacturer were **not adopted**:

Dipyridamole tabs 25, 75 mg	Superpharm

The following products are still **pending**:

Chlorthalidone tabs 25, 50 mg	Cord

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: June 6, 1983 at 15 N.J.R. 846(a).
Adopted: December 21, 1983 by the Drug Utilization Review Council, Leroy Schwartz, M.D., Chairman.
Filed: December 27, 1983 as R.1983 d.634, **with portions of the proposal not adopted and portions not adopted but still pending**.

Authority: N.J.S.A. 24:6E-6b.

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order 66(1978): March 6, 1984.

Summary of Public Comments and Agency Responses:

Sandoz opposed Mylan's thioridazine tablets, stating that Mylan's product failed to meet FDA criteria for bioequivalency, specifically the "70-70" rule, for the AUC thioridazine blood level component. A psychiatrist also commented that the percentage differences between Mellaril and the Mylan thioridazine would be harmful to psychiatric patients.

Mylan countered that the FDA listed Mylan's thioridazine as "AB" - that is, therapeutically equivalent to Mellaril, and that Mylan satisfied the Council's requirements for no statistically significant differences in AUC, C-max, and T-max in comparison to Mellaril.

The Council was informed that the power of the statistical test Mylan used was much lower than originally presented, causing the Council's bioequivalency experts to doubt the bioequivalency of the Mylan product, thus the Council rejected Mylan's thioridazine.

The following products and their respective manufacturers were **adopted**:

Butalbital/Aspirin/Caffeine tabs, caps	**Chelsea**
Doxycycline Hyclate caps 50, 100 mg	**Barr**
Prenatal vitamins/Folic acid, 1 mg	**Amide**

The following products and their respective manufacturers were not adopted:

Carisoprodol comp. tabs	Danbury
Furosemide tabs 40 mg	Superpharm
Furosemide tabs 20, 40 mg	P-D
Hydralazine 25/Hydrochlorothiazide 15 tabs	Bolar
Phenazopyridine/Sulfamethoxazole tabs	Amide
Phenazopyridine/Sulfisoxazole tabs	Amide
Sulfasalazine tabs 0.5g	Bolar
Thioridazine HCL tabs 10, 25, 50 mg	Mylan
Theophylline (Anhydrous) E.R. tabs 300 mg	Geigy
Warfarin Sodium tabs 5 mg	Bolar

The following products are still **pending**:

Ampicillin caps 250, 500 mg	Pfizer
Ampicillin for susp. 125/5, 250/5 ml	Pfizer
Isosorbide Dinitrate tabs 20 mg	Barr
Spironolactone 25/Hydrochlorothiazide 25 tabs	Cord
Spironolactone tabs 25 mg	Cord

(b)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: November 7, 1983 at 15 N.J.R. 1819(a).
Adopted: December 21, 1983 by the Drug Utilization Review Council, Leroy Schwartz, M.D., Chairman.
Filed: December 27, 1983 as R.1983 d.635, **with portions of the proposal not adopted and portions not adopted but still pending**.

Authority: N.J.S.A. 24:6E-6b.

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order 66(1978): March 6, 1984.

Summary of Public Comments and Agency Responses:

Chelsea commented that their doxycycline hyclate tablets, 100 mg, should be adopted (despite having no direct comparison to Vibratabs) because Chelsea's product is bioequivalent to Vibramycin capsules, which are themselves bioequivalent to Vibratabs. The Council agreed.

The following products and their respective manufacturers were **adopted**:

Aminophylline tabs 100, 200 mg	**Duramed**
Amitriptyline HCL tabs 25 mg	**Purepac**
Amitriptyline HCL tabs 10, 25, 50, 75, 100, 150 mg	**Ikapharm**
Belladonna/Phenobarbital elixir	**Purepac**
Betamethasone Valerate cream 0.1%	**K-Line**
Brompheniramine/Phenylephrine/ Phenylpropanolamine Elixir	**Copley**
Caramiphen Edisylate/Phenylpropanolamine Liquid	**NPC**
Carbinoxamine/Dextromethorphan/ Pseudoephedrine Syrup	**NPC**
Chlorothiazide tabs 250 mg	**Chelsea**
Chlorpheniramine/Phenylephrine/ Phenylpropanolamine Phenyltoloxamine Syrup	**NPC**

Diphenhydramine HCL caps 25, 50 mg	**LNK International**
Doxycycline Hyclate tabs 100 mg	**Chelsea**
Hydrocodone/Phenylpropanolamine Syrup (full and 1/2 Strength)	**NPC**
Hydrocodone/Pseudoephedrine Syrup	**NPC**
Hydrocodone/Pseudoephedrine/ Guaifenesin Syrup	**NPC**
Hydrocodone/Homatropine HBr Syrup	**NPC**
Hydroflumethiazide tabs 50 mg	**Bolar**
Hydroxyzine HCL Syrup 10 mg/5 ml	**NPC**
Hydroxyzine HCL tabs 25, 50, 100	**Barr**
Lidocaine Viscous Solution 2%	**NPC**
Multivitamins/Fluoride chew tab 0.5, 1.0 mg	**Copley**
Multivitamins/Fluoride/Iron tab	**Copley**
Nitroglycerin Oint. 2%	**Pharmafair**
Nystatin/Neomycin/Gramicidin/ Triamcinolone cream	**K-Line**
Phenazopyridine HCL tabs 100 , 200 mg	**Copley**
Phenylbutazone caps 100 mg	**Zenith**
Potassium CL 40 mg/15 ml	**Gentek**
Promethazine HCL 6.25/5, 25/5 Syrup	**NPC**
Sodium Fluoride Chew Tab 1.1, 2.2 mg	**Copley**
Sodium Fluoride Drops 0.125 mg/drop	**Copley**
Triple Vitamins (A,D,C)/Fluoride chew tabs	**Amide**
Triple Vitamins (A,D,C)/Fluoride tabs	**Copley**

The followng products and their respective manufacturers remain **pending**:

Allopurinol Tabs 100, 300 mg	Chelsea
Brompheniramine/Phenylephrine/ Phenylpropanolamine ER tabs	Amide
Butalbital 50/Aspirin 325/Caffeine 40 tabs	Purepac, Zenith
Chlorothiazide tabs 500 mg	Chelsea
Chlorzoxazone/Acetaminophen tabs	Amide
Dexamethasone tabs 0.25, 0.5, 0.75, 1.5, 4.0 mg	Par
Dexchlorpheniramine Maleate tabs 4, 6 mg	Amide
Dipyridamole tabs 25 mg	Bolar
Furosemide tabs 20, 40 mg	Heather
Indomethacin caps 25, 50 mg	Chelsea
Iodoquinol tabs 650 mg	Duramed
Metronidazole tabs 500 mg	Par
Phenobarbital elixir 20 mg/5 ml	NPC
Potassium Bicarbonate effervescent tabs 25 mEq	Copley, Nomax
Potassium Iodide Solution, Saturated (SSKI)	NPC
Propoxyphene 65/Aspirin 389/Caffeine 32 caps	Zenith
Sulfamethoxazole/Trimethoprim tabs 400/80, 800/160	Danbury
Theophylline (Anhydrous) E.R. tabs 300 mg	Forest
Theophylline/Ephedrine/Hydroxyzine tabs	Amide
Thioridazine tabs 10, 15, 25, 50, 100 mg	Zenith
Triprolidine HCL Syrup 1.25/5	NPC

The following products and their respective manufacturers were **not adopted**:

Dipyridamole tabs 25 mg	Purepac, Danbury

HIGHER EDUCATION

(a)

HIGHER EDUCATION ASSISTANCE AUTHORITY

Reduction in Default Rate; Institutional Monetary Incentive Objectives; Eligibility Qualifications

Adopted New Rules: N.J.A.C. 9:9-10.1 and 10.2

Proposed: August 15, 1983 at 15 N.J.R. 1336(b).
Adopted: December 21, 1983 by Higher Education Assistance Authority, Jerome Lieberman, Chairman.
Filed: December 29, 1983 as R.1983 d.647, **without change**.

Authority: N.J.S.A. 18A:72-10(2).

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): September 8, 1988.

Summary of Public Comments and Agency Responses:

The authority received 24 letters commenting on the proposal. All of the comments were from officers of institutions of higher education. Most of the comments concerned what was expected of institutions which entered agreements pursuant to the proposed new rules. The Authority responded that institutions were at liberty to take any and all possible actions which might reduce default rates utilizing the monies provided pursuant to the agreements. Evaluations of effectiveness will be made solely upon reduced default levels. Other comments misapprehended the purpose of the rule and were satisfied upon a more complete explanation of the rule and its intent.

(b)

EDUCATIONAL OPPORTUNITY FUND BOARD

Financial Aid Guidelines
Academic Year Program Support Funds
Summer Program

Adopted New Rules: N.J.A.C. 9:11-1, 9:12-1 and 2

Proposed: September 6, 1983 at 15 N.J.R. 1428(a).
Adopted: December 21, 1983 by the Educational Opportunity Fund Board, T. Edward Hollander, Chairman.
Filed: December 29, 1983 as R.1983 d.646, **without change**.

Authority: N.J.S.A. 18A:71-33 through 36.

Effective Date: January 17, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): January 17, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Physician's Services Procedure Code Manual

Adopted Amendments: N.J.A.C. 10:54-3

Proposed: October 17, 1983 at 15 N.J.R. 1730(a).
Adopted: December 14, 1983 by George J. Albanese, Commissioner, Department of Human Services.
Filed: December 15, 1983 as R.1983 d.614, **without change**.

Authority: N.J.S.A. 30:4D-7 and 7b.

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): June 5, 1984.

Summary of Public Comments and Agency Responses: **No comments received.**

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Vision Care Manual
Eye Care; Professional Services and Optical Appliances

Readoption: N.J.A.C. 10:62-1 and 2

Proposed: October 17, 1983 at 15 N.J.R. 1731(a).
Adopted: December 16, 1983 by George J. Albanese, Commissioner, Department of Human Services.
Filed: December 19, 1983 as R.1983 d.620, **without change**.

Authority: N.J.S.A. 30:4D-3h, 6a(5)b(6)(7), 7 and 7b.

Effective Date: December 19, 1983.
Expiration Date pursuant to Executive Order No. 66(1978): December 19, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

(c)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medical Day Care Manual, Independent Clinic Services Manual
Definition and Authorization

Adopted Amendments: N.J.A.C. 10:65-1.2, 1.6, 1.7 and 2.4; 10:66-1.2

Proposed: August 15, 1983 at 15 N.J.R. 1337(a).
Adopted: December 22, 1983 by George J. ALbanese, Commissioner, Department of Human Services.
Filed: December 27, 1983 as R.1983 d.637, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:4D-3h, 4D-6b(16), 7 and 7b.

Effective Date: January 17, 1984.
Operative Date: February 1, 1984.
Expiration Date pursuant to Executive Order 66(1978): Medical Day Care Manual (N.J.A.C. 10:65-1&2): August 17, 1984. Independent Clinic Services Manual (N.J.A.C. 10:66-1): December 15, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Summary of Changes between Proposal and Adoption

The changes that are being made to N.J.A.C. 10:65-1.6 and 2.4 are designed to clarify language in the original proposal.

The revised text clearly indicates that an initial authorization may be granted by the MET (Medical Evaluation Team) for up to 90 days; a reauthorization may be granted by the MET for up to six months. These times were exactly the same as contained in the original proposal.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

10:65-1.6 Prior Authorization

(a) (No change.)

(b) A Request for Medical Day Care Authorization or Reauthorization Form FD-140, (Exhibit IV) must be submitted by the Medical Day Care Center *[on]* ***for*** each potential participant as a basis for determining a prior authorization or reauthorization for Medical Day Care Services. In order to avoid delay in approval, all information must be individualized, complete and comprehensive. The FD-140 will be reviewed by the [Local] Medical Evaluation Team, consisting of the Medical Consultant, Regional Staff Nurse, and Medicaid Social Worker and a determination will be made as to the person's eligibility for the Medical Day Care. The maximum duration for *[a single authorization or reauthorization]* [is 90 days.] ***an initial authorization is 90 days (or less); reauthorization* may be for a period up to six (6) months.**

[1. The 90 days (or less) limitation will be retained on new patients for at least the first authorization period.]

(c) While an authorization/reauthorization for Medical Day Care services is in effect and the condition of the patient changes, indicating the need for additional or decreased services, the Medical Day Care Center after consultation with the attending physician *[,]* may submit a revised FD–140.

[(c)] **(d)** (No change in text.)

10:65-2.4 Prior authorization
(a)–(b) (No change.)
(c) Prior authorization is required for all persons participating under the Medical Day Care Program. An individual care plan must be submitted to the Medicaid District Office for approval and authorization on form FD-140. [Authorization shall not exceed ninety days.] **The maximum duration for *[a single]* *an initial* authorization *[or reauthorization]* *is 90 days (or less); reauthorization* may be for a period up to six (6) months.** Reauthorization can be obtained by the submission of the FD-140 form, Request for Medical Day Care Authorization or Reauthorization, which must include in item 19 recommendations for extension of such continued participation in medical day care. Allow at least two weeks prior to termination date of previous authorization for processing of a reauthorization of this request.
1.–3. (No change.)
4. Period covered by authorization: An approved request for ***an initial*** authorization *[/reauthorization]* will only be valid for a period [not to exceed three months] ***of 90 days (or less); reauthorization may be for a period* up to six (6) months** as indicated in Item 21 on form FD-140 - Request for Medical care Authorization or Reauthorization.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Independent Clinic Services Manual
General Provisions

Readoption: N.J.A.C. 10:66-1

Proposed: October 17, 1983 at 15 N.J.R. 1732(a).
Adopted: December 14, 1983 by George J. Albanese, Commissioner, Department of Human Services.
Filed: December 15, 1983 as R.1983 d.615, **without change**.

Authority: N.J.S.A. 30:4D-6(b)(2), 7 and 7b.

Effective Date: December 15, 1983.
Expiration Date pursuant to Executive Order No. 66(1978): December 15, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

(b)

DIVISION OF PUBLIC WELFARE

General Assistance Manual
Work Registration Requirements

Adopted Amendment: N.J.A.C. 10:85-3.2

Proposed: October 3, 1983 at 15 N.J.R. 1630(a).
Adopted: December 16, 1983 by George J. Albanese, Commissioner, Department of Human Services.
Filed: December 19, 1983 as R.1983 d.622, **without change**.

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

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): July 25, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

INSURANCE

(c)

DIVISION OF ADMINISTRATION

Automobile Insurance
Insurance Identification Cards

Readoption with Amendments: N.J.A.C. 11:3-6

Proposed: November 21, 1983 at 15 N.J.R. 1919(a).
Adopted: December 28, 1983 by Joseph F. Murphy, Commissioner, Department of Insurance.
Filed: December 29, 1983 as R.1983 d.648, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 39:3-29.1.

Effective Date: December 29, 1983 for Amendments; January 17, 1984 for Readoption.
Expiration Date pursuant to Executive Order No. 66(1978): October 25, 1988.

Summary of Public Comments and Agency Responses:

The Department received only two comments on the proposal, both of which were favorable. The Independent Insurance Agents of New Jersey and IIR/ACORD expressed approval. However, IIR/ACORD noted that the version of the ACORD ID Card actually available to the industry has an edition date of 1-83. Although the content and format is unchanged from the 7-82 version, the latest edition (1-83) is incorporated into the adoption as a technical change.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

11:3-6.2 Permanent identification card (Form IV-I)
(a)–(b) (No change from proposal.)
(c) Insurers may, as an alternative to (b) above utilize the design and format copyrighted by the ACORD 50 *[7-82]* ***1-83*** insurance identification card.
(d) (No change from proposal.)

LAW AND PUBLIC SAFETY

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Regulation of Use of Manufacturers' Rebates and Coupons

Adopted Amendment: N.J.A.C. 13:2-24.11

Proposed: November 7, 1983 at 15 N.J.R. 1830(a).
Adopted: December 21, 1983 by John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Filed: December 29, 1983 as R.1983 d.644, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 33:1-39, 33:1-39.2 and 33:1-93.

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 11, 1984.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

13:2-24.11 Manufacturers' rebates and coupons

(a) Subject to the provisions of this section, a manufacturer, distiller, blender and rectifier, brewer, vintner, or any importer may offer mail-in rebates or refunds of a portion of the purchase price of an alcoholic beverage directly to consumers for the purpose of introducing or reintroducing consumers to its product(s) or for advertising, promotion or market-testing purposes.

1.–4. (No change.)

5. No such rebate offered in accordance with this section shall require the purchase of more than one alcoholic beverage product or the purchase of any other item or product as a condition for either obtaining a rebate or enhancing the value of a rebate.

6. Any rebate offered in accordance with this section shall be limited to one refund or rebate per household or family for any one rebate or refund program and the rebate offer form shall specifically indicate such restriction. Any manufacturer, distiller, blender and rectifier, brewer, vintner or importer offering a rebate or refund program shall maintain adequate records, or shall cause the clearinghouse processing such rebates to maintain adequate records, in order to assure compliance with the limitation of one rebate or refund per household or family as set forth herein.

(b) (No change.)

(c) No retail licensee shall advertise a lower price or a reduction in the price of an alcoholic beverage product or package it is offering for sale by reason of a manufacturer's rebate or refund. A retail licensee, however, may indicate in advertising that manufacturer's rebate is being offered on a particular alcoholic [bevevage] ***beverage*** product or package but any such advertising must also indicate that the rebate is limited to one per household or family.

(b)

DIVISION OF CIVIL RIGHTS

Processing of Civil Rights Complaints; When Hearings Ordered; Temporary Injunction

Readoption: N.J.A.C. 13:4-12.1 and 12.3

Proposed: November 21, 1983 at 15 N.J.R. 1922(a).
Adopted: December 28, 1983 by Pamela S. Poff, Director, Division on Civil Rights.
Filed: December 30, 1983 as R.1983 d.650, **without change**.

Authority: N.J.S.A. 10:5-8(g).

Effective Date: December 30, 1983.
Expiration Date pursuant to Executive Order No. 66(1978): December 28, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

(c)

MOTOR VEHICLE FRANCHISE COMMITTEE

Motor Vehicle Franchise Committee Procedural Rules

Adopted New Rule: N.J.A.C. 13:21-19

Proposed: August 1, 1983 at 15 N.J.R. 1232(a).
Adopted: September 28, 1983 by Clifford W. Snedeker, Chairman, Motor Vehicle Franchise Committee.
Filed: December 19, 1983 as R.1983 d.621, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: P.L. 1982, c.156 (C. 56:10-25).

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): January 17, 1989.

Summary of Public Comments and Agency Responses:

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

SUBCHAPTER 19. [(RESERVED)] **MOTOR VEHICLE FRANCHISE COMMITTEE**

13:21-19.1 Notice of intent; copies served on Chairman

A motor vehicle ***franchisor*** shall serve on the Chairman of the Motor Vehicle Franchise Committee an original and three copies of the notice of intent simultaneously served on existing franchisees pursuant to N.J.S.A. 56:10-19. Service shall be made in person, by certified mail return receipt requested or by regular mail.

13:21-19.2 Failure of franchisor to provide actual notice; protest letter; time for filing

(a) When a motor vehicle franchisor has failed to provide advance written notice to a motor vehicle franchisee entitled to receive advance written notice pursuant to N.J.S.A. 56:10-19 or did not provide a motor vehicle franchisee with any appeal procedure to which the parties consented, a protesting motor vehicle franchisee may file a protest letter with the Chairman of the Motor Vehicle Franchise Committee.

1. If advance written notice of intent was not served on the protesting franchisee(s), the protest letter shall be filed within 30 days of the date the franchisee(s) first learned of the motor vehicle franchisor's intention to grant, relocate, reopen or reactivate a franchise or establish, relocate, reopen or reactivate a business, or within 10 days of the occurrence of that action, whichever is earlier.

2. If advance written notice of intent was not received by the protesting franchisee(s), the franchisee(s) shall include with its protest letter a sworn affidavit detailing when and how the franchisee(s) became aware of the franchisor's intent to perform an action regulated by the Act. An original and three copies of the protest letter and affidavit shall be filed with the Chairman.

3. If a motor vehicle franchisor does not provide the protesting franchisee(s) with any appeal procedure to which the parties consented, the protest letter shall be filed within 30 days of the date the protesting franchisee(s) first learned that the appeal procedure would not be provided.

13:21-19.3 through 13:21-19.7 (No change from proposal.)

13:21-19.8 Denial, suspension or revocation of dealer license

A motor vehicle dealer license may be denied, suspended, or revoked pursuant to N.J.A.C. 13:21-15 because of failure to comply with a final determination of the Motor Vehicle Franchise Committee concerning the granting, relocating, reopening or reactivating of a ***franchise or*** business.

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Routes 5 and 93

Adopted Amendments: N.J.A.C. 16:28A-1.5 and 1.68

Proposed: November 7, 1983 at 15 N.J.R. 1836(a).
Adopted: December 8, 1983 by David W. Gwynn, Chief Engineer, Transportation Operations and Local Aid.
Filed: December 15, 1983 as R.1983 d.617, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-6, 29:4-138.1, 39:4-139 and 39:4-199.

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

(b)

TRANSPORTATION OPERATIONS

Restricted parking and Stopping Route 179

Adopted Amendment: N.J.A.C. 16:28A-1.53

Proposed: November 21, 1983 at 15 N.J.R. 1929(a).
Adopted: December 22, 1983 by David W. Gwynn, Chief Engineer, Transportation Operations and Local Aid.
Filed: December 29, 1983 as R.1983 d.645, **without change**.

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

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

(c)

TRANSPORTATION OPERATIONS

Miscellaneous Traffic Rules Mid-Block Crosswalk on Route 28

Adopted New Rule: N.J.A.C. 16:30-10.1

Proposed: November 7, 1983 at 15 N.J.R. 1837(a).
Adopted: December 8, 1983 by David W. Gwynn, Chief Engineer, Transportation Operations and Local Aid.
Filed: December 15, 1983 as R.1983 d.616, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-34.

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

TREASURY–GENERAL

(a)

DIVISION OF PENSIONS

Social Security
Transmittals, Reports and Forms

Adopted Amendments: N.J.A.C. 17:1-1.3, 8.9, 8.10, 8.11, 8.12 and 8.14

Proposed: October 17, 1983, at 15 N.J.R. 1741(a).
Adopted: December 8, 1983, by the Division of Pensions
Filed: December 8, 1983 as R.1983 d.599, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 52:18A-96.

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): May 15, 1988.

Summary No comments received.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

17:1-8.11 Wage reports, **transmittals and remittances and Federal forms**; employer responsibility

(a) *[The State Agency for Social Security]* *Each employer* is charged with the responsibility of transmitting and remitting contributions for each semi-monthly period. A transmittal without the proper check or a check without the proper transmittal cannot be forwarded to the Federal Government and still meet the State's contractual obligation. Where the amount reported on *the* transmittal as being remitted does not agree with *the* accompanying check, neither item can be accepted and both will be returned to the employer. Failure to resubmit *the* correct information and money in a timely manner will result in a deliquency notice.

(b) (No change from proposal.)

TREASURY–TAXATION

(b)

DIVISION OF TAXATION

Motor Fuels Tax
Retail Sales

Adopted Amendment: N.J.A.C. 18:19-2.7

Proposed: October 17, 1983 at 15 N.J.R. 1742(a).
Adopted: December 23, 1983 by John R. Baldwin, Director, Division of Taxation.
Filed: December 27, 1983 as R.1983 d.636, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 56:6-6.

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 8, 1984.

Summary of Public Comments and Agency Responses:

During the comment period, a meeting was held with representatives of a petroleum company. In addition to the proposed changes related to cash price posting, a request was made by the company for an option to use a split price sign. A model was demonstrated at the meeting. It was suggested that such signs would more easily put the motorist on notice of the cash price available at the pump. This possibility would have a beneficial impact on motorists who would then not have to do a mental subtraction calculation to arrive at the per gallon cash price if such signs were employed. Based on experience and the present State statute which does not permit self-service of gasoline or other inflammable liquid (N.J.S.A. 34:3A-1), it was concluded that such signs would assist and not confuse motorists and would facilitate service station operators in supplying fuel.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

18:19-2.7 Posted prices and brand names; cash discounts; self-service of diesel fuel

(a) (No change from proposal.)

(b) A retail dealer may sell similar fuels at different prices to cash and credit customers, and the price posted on top of the pump and on the pump meter shall be the credit purchase price. A conspicuous sign shall also be displayed at the pump or at the island posting the price per gallon (or per gallon and per liter) reduction for cash purchases of fuels. ***At his option, a dealer may also meet the cash/credit price posting requirement with a pump top split sign pursuant to N.J.A.C. 18:19-2.1(c) showing the cash price per gallon on the top half of the sign and the credit price per gallon on the bottom half of the sign having the same background colors (compare (N.J.A.C. 18:19-2.1(c)1ii).* If the dealer elects to offer an island dedicated exclusively to cash sales, the price posted on top of the pumps and the pump meters at the dedicated island shall be the cash purchase price.**

(c)–(e) (No change from proposal.)

(c)

DIVISION OF TAXATION

Sales and Use Tax
Electronic Data Processing Transactions

Adopted Amendment: N.J.A.C. 18:24-25.2

Proposed: September 19, 1983 at 15 N.J.R. 1565(a).
Adopted: December 15, 1983 by John R. Baldwin, Director, Division of Taxation.
Filed: December 19, 1983 as R.1983 d.619, **without change**.

Authority: N.J.S.A. 54:32B-24.

Effective Date: January 17, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): August 12, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

(a)

DIVISION OF TAXATION

Gross Income Tax
Computation of Tax Credit

Adopted Amendment: N.J.A.C. 18:35-1.12

Proposed: September 19, 1983 at 15 N.J.R. 1566(a).
Adopted: December 15, 1983 by John R. Baldwin, Director, Division of Taxation.
Filed: December 19, 1983 as R.1983 d.618, **without change**.

Authority: N.J.S.A. 54A:9-17(a).

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): August 12, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

OTHER AGENCIES

(b)

ATLANTIC COUNTY TRANSPORTATION AUTHORITY

Rules of Operation

Adopted New Rule: N.J.A.C. 19:75

Proposed: November 21, 1983 at 15 N.J.R. 1933(a).
Adopted: December 23, 1983 by Atlantic County Transportation Authority, Ian Jerome, Executive Director.
Filed: January 3, 1984 as R.1984 d.1, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 40:35B-15(h).

Effective Date: January 17, 1984.
Expiration Date pursuant to Executive Order No.66(1978): January 17, 1989.

Summary of Public Comments and Agency Responses:

Full text of public comments and agency responses were submitted to and are on file at the Office of Administrative Law. However, due to last minute publishing technical difficulties the summary of comments and responses could not be reproduced but is on file at the Office of Administrative Law.

Full text of the changes between proposal and adoption follows:

19:75-1.1 Definitions

. . .

"Completed application" means an application for bus parking lot discharge/loading, major variance approval containing all information required by N.J.A.C. ***19:75-4.4(a) or*** 19:75-6.2(b) and declared to be complete by the Authority.

"Impact statement" means a statement included with a bus parking lot approval ***or on-site capacity*** application which includes such facts and analysis necessary to evaluate the benefits and adverse effects of the proposed facility.

. . .

19:75-1.3 Exempt buses

The provisions of this Chapter shall apply to all motorbus charter services, ***motorbus special services***, and motorbus regular route services in Atlantic County except those services operated under "The New Jersey Public Transportation Act of 1979", including, but not limited to, New Jersey Transit buses which operate solely from municipal bus terminals approved by the Authority, and buses operated by the Atlantic City Transportation Company and such other services specifically exempted herefrom by the New Jersey Department of Transportation. A schedule of such exempted motorbus services shall be forwarded to the Authority, which shall thereafter serve such schedules on the police departments of the several municipalities in Atlantic County.

19:75-2.3 Routes of travel to and from casino hotels

(a)–(b) (No change from proposal.)
(c) Playboy:
1. (No change from proposal.)
2. Departure: From the casino or Convention Hall via Pacific Avenue to Arkansas Avenue to the Expressway. *[At such time as Mississippi Avenue shall become a 2-way street, departures shall be by way of Pacific Avenue to Mississippi Avenue to Atlantic Avenue to Arkansas Avenue to the Expressway]*.
(d)–(g) (No change from proposal.)

19:75-4.4 Additional site approval; requests by activity centers to increase or modify on-site bus capacity or discharging or loading areas

(a) (No change from proposal.)
1.–4. (No change from proposal.)
5. A traffic impact statement ***where required by the Authority***
;
6. (No change from proposal.)
(b)–(g) (No change from proposal.)

(c)

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Schedule of Charges
Air Terminals – Minimum Flight Fee; Public Vehicular Parking Fees

Adopted: December 13, 1983 by the Port Authority of New York and New Jersey, Doris E. Landre, Secretary.
Filed: December 20, 1983 as R.1983 d.624, (**Exempt** from **Administrative Procedure Act** as "exempt agency," see N.J.S.A. 52:14B-2a).

Effective Date: January 1, 1984 (Air Terminals – Minimum Flight Fee).

Effective Date: January 14, 1984 (Public Vehicular Parking Fees).

Full text of the adoption follows:

Kennedy International, Newark International and LaGuardia Airports - Revision to Schedule of Charges for Air Terminals - Minimum Flight Fee

RESOLVED, that the Schedule of Charges for the use of the Public Landing Area, Public Passenger Ramp and Apron Area, Public Cargo Ramp and Apron Area and Public Aircraft Parking and Storage Area at LaGuardia Airport, adopted by the Committee, at its meeting on October 5, 1970, as amended; at Kennedy International Airport, adopted by the Committee, at its meeting on January 5, 1950, as amended; and at Newark International Airport, adopted by the Committee, at its meeting on January 5, 1950, as amended; be and the same are hereby amended, effective January 1, 1984, increasing the minimum flight fee thereunder to $25, except that for scheduled commuter air carriers maintaining a schedule of one or more round trips per day, at least five days per week into a single airport, pursuant to a Port Authority permit, the minimum fee would be $20.

Kennedy International, Newark International and LaGuardia Airports - Revision to Schedule of Charges - Public Vehicular Parking Fees

RESOLVED, that the resolution establishing fees for parking vehicles on Public Vehicular Parking Areas at Port Authority Air Terminals, adopted by the Board at its meeting on March 11, 1948, as subsequently amended, be and the same is hereby amended, effective January 14, 1984, as follows:

1. By revising the rates relative to LaGuardia Airport as follows:

All Lots except Premium Metered Areas	$ 2.00 for 1st 2 hrs. or part $ 1.00 per hour or part thereafter to 5 hrs. $ 1.00 per 2 hrs. or part thereafter $13.00 maximum to 24 hrs. $ 1.00 per hr. or part $13.00 maximum each 24 hrs.
Premium Metered Areas	$ .25 per 10 min. (interim rate) $ 1.00 per hour or part thereafter (permanent rate)

2. By revising the rates relative to Kennedy International Airport as follows:

Premium Pan Am Rooftop (Lot No. 6)	$ 2.00 for 1st 2 hrs. or part $ 1.00 per hr. or part thereafter $24.00 maximum to 24 hrs. $ 1.00 per hr. or part thereafter $24.00 maximum each 24 hrs.
Intermediate Central Terminal Area (except Lot No. 6)	$ 2.00 for 1st 2 hrs. or part $ 1.00 per hr. or part thereafter to 5 hrs. $ 1.00 per 2 hrs. or part thereafter $10.00 maximum to 24 hrs. $ 1.00 per 2 hrs. or part thereafter $10.00 maximum each 24 hrs.
Remote Reduced Rate Long Term (Lots Nos. 8&9)	$ 4.00 for 1st 24 hrs. or part $ 1.00 per 6 hrs. or part thereafter $ 4.00 maximum each 24 hrs.

3. By revising the rates relative to Newark International Airport as follows:

Premium Lots ("Hourly" Lots, A, B & C)	$ 1.00 for first half hour or part $ 1.00 to 2 hrs. or part thereafter $ 1.00 per hr. or part thereafter $24.00 maximum to 24 hrs. $ 1.00 per hour or part thereafter $24.00 maximum each 24 hours
Intermediate Lots ("Daily" Lots A, B & C & Lot No. 1)	$ 1.00 for first half hour or part $ 1.00 to 2 hrs. or part thereafter $ 1.00 per hour or part thereafter to 5 hrs. $ 1.00 per 2 hrs. or part thereafter $10.00 maximum to 24 hrs. $ 1.00 per 2 hrs. or part thereafter $10.00 maximum each 24 hrs.
Remote Reduced Rate Long Term Lots (Lots D, E, 2, 3 & 4)	$ 2.00 for 1st 2 hrs. or part $ 1.00 per third hour or part $ 1.00 per 2 hrs. or part thereafter $ 4.00 maximum to 24 hrs. $ 1.00 per 6 hrs. or part thereafter $ 4.00 maximum to 24 hrs.

EMERGENCY ADOPTIONS

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF THE COMMISSIONER

Interim Environmental Cleanup Responsibility Act Regulations

Adopted Emergency New Rule: N.J.A.C. 7:1-3

Emergency Amendment Adopted: December 29, 1983 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): December 30, 1983.
Emergency Amendment Filed: December 30, 1983 as R.1983 d.649.

Authority: Environmental Cleanup Responsibility Act, P.L. 1983, c. 330 (N.J.S.A. 13:1K-6 et seq.).

Emergency Amendment Effective Date: December 30, 1983.
Emergency Adoption Expiration Date: February 28, 1984.
DEP Docket No. 075-83-12.

A public hearing concerning this proposal will be held on February 6, 1984 at 10:00 A.M. at:

Labor Education Center
Rutgers University
Ryders Lane and Clifton Avenue
New Brunswick, NJ 08903

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Joseph N. Schmidt, Jr., Esq.
New Jersey Department of Environmental Protection
Office of Regulatory Services
CN-402
Trenton, NJ 08625

This new rule was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency new rule are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The concurrent proposal is known as PRN 1984-49.

The agency emergency adoption and concurrent proposal follows:

Summary

The Interim Environmental Cleanup Responsibility Act Regulations, N.J.A.C. 7:1-3 ("Regulations"), represent the Department's initial efforts to implement the Environmental Cleanup Responsibility Act, P.L. 1983, c. 330(N.J.S.A. 13:1K-6 et seq.) ("Act" or "ECRA") which becomes effective on December 31, 1983. Please note that the Department promulgates the Regulations as an interim step to allow for immediate utilization of the innovative environmental protection provisions of the Act and to avoid undue disruption and confusion among citizens of the State involved in closing or selling industrial establishments.

As the Department reviews comments upon the Regulations and acquires actual experience administering the Act, the Department plans to propose all amendments deemed necessary by the Department to ensure the proper administration of the Act. Also, the Act requires that the Department promulgate regulations establishing minimum standards for soil, groundwater and surface water quality for the detoxicification of the site of an industrial establishment, including buildings and equipment, and the Act allows the Department to promulgate a fee schedule, as necessary, reflecting the actual costs associated with the review of negative declarations and cleanup plans. The Department envisions a dynamic and adaptable regulatory program that ensures the successful implementation of its responsibilities under the Act.

The Regulations require the owner or operator of an industrial establishment planning to close or sell or transfer operations to notify the Department no more than five days subsequent to public release of its decision to close operations, or within five days of the execution of any agreement of sale or any option to purchase pursuant to N.J.A.C. 7:1-3.7. N.J.A.C. 7:1-3.7(d) sets forth the minimum information required to be included in the initial ECRA notice submission. A preliminary site inspection required by N.J.A.C. 7:1-3.8 shall be scheduled and conducted by the Department of all industrial establishments notifying the Department pursuant to N.J.A.C. 7:1-3.7. The Department's ECRA inspector shall be accompanied by appropriate representatives of the industrial establishment and be given access to all site areas, buildings and records deemed necessary by the Department for the purposes of the Act and the Regulations. The ECRA inspector shall prepare a preliminary inspection report detailing conditions of the site of the industrial establishment and provide guidance to the owner or operator of the industrial establishment concerning ECRA compliance.

Pursuant to N.J.A.C. 7:1-3.9, the owner or operator of an industrial establishment shall submit, and after written Departmental approval, implement prior to submission of their negative declaration or cleanup plan a detailed soil, groundwater and surface water sampling plan for the site of the industrial establishment reflecting known historical and current uses of the site. N.J.A.C. 7:1-3.7(d) sets forth the requirements of a detailed sampling plan for the purposes of the Regulations.

N.J.A.C. 7:1-3.10(a) requires that the owner or operator of an industrial establishment planning to close operations shall, upon closing operations or 60 days subsequent to public release of its decision to close or transfer operations, whichever is later, submit to the Department for approval either a negative declaration prepared pursuant to N.J.A.C. 7:1-3.11 or a cleanup plan prepared pursuant to N.J.A.C. 7:1-3.12. N.J.A.C.7:1-3.10(b) requires that the owner or operator of an industrial establishment planning to sell or transfer operations shall within 60 days prior to transfer of title submit to the Department for approval either a negative declaration prepared pursuant to N.J.A.C. 7:1-3.11 or a cleanup plan prepared pursuant to N.J.A.C. 7:1-3.12. The owner or operator of an

industrial establishment shall obtain a surety bond or other financial security approved by the Department guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the cleanup plan pursuant to N.J.A.C. 7:1-3.13. Industrial establishments subject to N.J.A.C.7:1-3.10(a) would be required to submit this bond or security with the cleanup plan, subject to a revision of the amount thereof upon written approval by the Department of the cleanup plan; industrial establishments subject to N.J.A.C. 7:1-3.10(b) would be required to submit this bond or security upon approval of the cleanup plan. N.J.A.C. 7:1-3.11 establishes the criteria for negative declarations and N.J.A.C. 7:1-3.12 establishes the criteria for cleanup plans that must be complied with the owner or operator of industrial establishments as appropriate.

N.J.A.C. 7:1-3.14 establishes a procedure that allows the Department to approve, conditionally approve or deny deferral of cleanup plan implementation if the industrial establishment would be subject to substantially the same use. Please note that the Department's authority to defer implementation of the cleanup plan shall not be construed to limit, restrict or prohibit the Department from directing site cleanup nor limit the liabilities of past owners or operators under any statute, rule or regulation.

N.J.A.C. 7:1-3.15 provides that until adoption of minimum standards required pursuant to Section 5(a) of the Act, the Department shall review, and approve or disapprove negative declarations and cleanup plans on a case-by-case basis for soil, groundwater and surface water quality necessary for the detoxification of the site of an industrial establishment, including buildings and equipment, to ensure that the potential for harm to public health and safety is minimized to the maximum extent practicable, taking into consideration the locations of the site and surrounding ambient conditions.

N.J.A.C. 7:1-3.17 establishes special ECRA compliance provisions for the owners or operators of industrial establishments initiating the sale or closure of operations before the December 31, 1983 effective date of the Act. N.J.A.C. 7:1-3.20 provides procedures for amending the Regulations to exempt sub-groups within the definition of industrial establishment as a class from the requirements of the Regulations and the Act upon a determination that their type of industrial establishment does not pose a risk to public health and safety.

The Act establishes several options to deal with violations of the Act and the Regulations outlined at N.J.A.C. 7:1-3.16, including voiding the sale or transfer of an industrial establishment by the transferee and the Department, strict liability without regard to fault for all cleanup and removal costs and indirect damages resulting from any failure to implement a cleanup plan, penalties of $25,000 for each day a violation continues and personal liability for any penalties levied by any officer or management official who knowingly directs or authorizes the violation of any provision of the Act or the Regulations. Please note that nothing in the Act or the Regulations shall be construed to limit, restrict or prohibit the Department from directing immediate site cleanup under any other statute, rule or regulation. In addition, given that Department approvals of negative declarations and cleanup plans pursuant to the Regulations will be based upon existing information and standards, N.J.A.C. 7:1-3.21(a) expressly reserves the right of the Department to require remedial actions for subsequent closing, terminations or transferring of operations of industrial establishments covered by the Act.

Social Impact

The Regulations provide a major positive social impact by requiring adequate preparation and implementation of acceptable cleanup procedures as a precondition to the closure or sale of industrial establishments in New Jersey. Thus, the Regulations constitute an important and innovative Departmental tool to further minimize the exposure of the citizens, property and natural resources of the State to the inherent dangers of handling, storage and disposal of hazardous substances and wastes.

Economic Impact

The Regulations will require owners or operators of industrial establishments to prepare and submit information and to finance implementation of detailed sampling plans and cleanup plans, including obtaining a surety bond or other financial security for the cleanup, as required by the Department. Potential delays during the Department's initial implementation efforts under the Act may cause additional costs during real estate transactions. However, the Legislature and the Department believe that the owner or operator of industrial establishments should properly incur these expenses as a precondition to the closure or sale of operations rather than the citizens and taxpayers of New Jersey at some later date.

Environmental Impact

The Department firmly believes that the Regulations shall have a major positive environmental impact for the citizens, property and natural resources of New Jersey. The Regulations provide the Department with an important new remedial tool to significantly reduce the occurance of future abandoned contaminated site problems throughout the State.

Full text of the emergency adoption and concurrent proposal follows:

SUBCHAPTER 3. INTERIM ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT REGULATIONS

7:1-3.1 Scope and authority

This subchapter shall constitute interim rules governing implementation of the Environmental Cleanup Responsibility Act, P.L. 1983, c. 330 (N.J.S.A.13:1K-6 et seq.) by the Department of Environmental Protection. This subchapter establishes the procedures to be followed by industrial establishments to insure adequate preparation and implementation of acceptable cleanup procedures as a precondition of any closure or sale or transfer of any industrial establishment in accordance with the Act. The provisions of any law, rule or regulation to the contrary notwithstanding, the transferring of an industrial establishment is contingent on the implementation of the provisions of this subchapter and the Act.

7:1-3.2 Construction

(a) This subchapter shall be liberally construed to allow the Department to implement its statutory functions pursuant to the Environmental Cleanup Responsibility Act, P.L. 1983, c.330 (N.J.S.A. 13:1K-6 et seq.).

(b) This subchapter may be amended, repealed or rescinded from time to time in conformance with the Administrative Procedure Act, N.J.S.A 52:14B-1 et seq., as amended and supplemented, and the Office of Administrative Law's Rules for Agency Rulemaking, N.J.A.C. 1:30.

7:1-3.3 Definitions

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

"Act" or "ECRA" means the Environmental Cleanup Responsibility Act, P.L. 1983, c. 330 (N.J.S.A. 13:1K-6 et seq.).

"Authorized officer or management official" means for the purposes of the Act and this subchapter a duly authorized principal executive officer of at least the level of vice president for a corporation; a general partner for a partnership; the proprietor for a sole proprietorship; and by either a duly authorized principal executive or ranking elected official for a municipality, county or other public agency.

"Cleanup plan" means a plan for the cleanup of industrial establishments, approved by the Department pursuant to this subchapter, which shall include a description of the location, types and quantities of any and all hazardous substances and wastes that

may remain on the premises and those hazardous substances and wastes to be removed; a description of the types and location of storage vessels, surface impoundments, or secured landfills containing hazardous substances and wastes; recommendations regarding the most practicable method of cleanup; and a cost estimate of the cleanup plan. The Department, upon a finding that the evaluation of a site for cleanup purposes necessitates additional information, may require graphic and narrative descriptions of geographic and hydrogeologic characteristics of the industrial establishment and evaluation of all residual soil, groundwater, and surface water contamination as set forth in this subchapter.

"Closing, terminating or transferring operations" (see N.J.A.C. 7:1-3.17).

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

"Hazardous substances" means those elements and compounds, including petroleum products, which are defined as such by the Department, after public hearing, including, but not limited to, the "List of Hazardous Substances" set forth in Appendix A of N.J.A.C. 7:1E, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the Environmental Protection Agency pursuant to Section 311 of the "Federal Water Pollution Control Act Amendments of 1972" (33 U.S.C. §1321) and the list of toxic pollutants designated by Congress or the Environmental Protection agency pursuant to Section 307 of that Act (33 U.S.C. §1317); except that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of the Act and this subchapter.

"Hazardous waste" means any amount of any waste substances required to be reported to the New Jersey Department of Environmental Protection on the special waste manifest pursuant to N.J.A.C. 7:26-7.4, designated as hazardous waste pursuant to N.J.A.C. 7:26-8, or as otherwise provided by law.

"Industrial establishment" means any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or wastes on-site, above or below ground, having a Standard Industrial Classification number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard Industrial Classification manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States.

"Negative declaration" means a written declaration submitted and substantiated by an industrial establishment in accordance with this subchapter and approved by the Department, that there has been no discharge of hazardous substances or wastes on the site, or that any such discharge has been cleaned up in accordance with procedures approved by the Department, and there remain no hazardous substances or wastes at the site of the industrial estblishment.

7:1-3.4 Applicability

(a) This subchapter applies to all industrial establishments in the State of New Jersey except as set forth in (b) below.

(b) This subchapter shall not apply in the following cases and the facilities listed below shall not be considered industrial establishments for the purpose of this subchapter:

1. Those portions of facilities currently subject to operational closure or post-closure maintenance requirements pursuant to:

i. The "Solid Waste Management Act", N.J.S.A. 13:1E-1 et seq., or

ii. The "Major Hazardous Waste Facilities Siting Act," N.J.S.A. 13:1E-29 et seq., or

iii. The "Solid Waste Disposal Act," 42 U.S.C. §6901 et seq.

2. Any establishment engaged in the production or distribution of agricultural commodities.

3. Sub-groups or classes of operations within those sub-groups within the Standard Industrial Classification major group numbers within 22-39 inclusive, 46-49 inclusive, 51 or 76 that have been exempted by the Department pursuant to Section 3(f) of the Act and N.J.A.C. 7:1-3.20.

7:1-3.5 Program information

Unless otherwise specified, any questions, advice, requests for meetings or conferences needed by industrial establishments concerning the requirements of this subchapter shall be addressed to the ECRA Office, Division of Waste Management, New Jersey Department of Environmental Protection, CN-028, Trenton, New Jersey 08625.

7:1-3.6 Severability

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

7:1-3.7 Initial ECRA notice requirements

(a) The owner or operator of an industrial establishment planning to close or sell or transfer operations shall comply with the initial ECRA notice requirements of this section.

(b) The owner or operator of an industrial establishment planning to close operations shall provide the Department written notice of its decision to close operations no more than five days subsequent to public release of its decision to close operations.

(c) The owner or operator of an industrial establishment planning to sell or transfer operations shall provide the Department written notice within five days of the execution of any agreement of sale or any option to purchase.

(d) The written notice required pursuant to (b) and (c) above shall include, but may not be limited to, the following information:

1. Name, current ownership and location of the industrial establishment, including lot and block number, municipality and county;

2. A scaled site map identifying all areas where hazardous substances or wastes have been or currently are generated, manufactured, refined, transported, treated, stored, handled or disposed, above or below ground;

3. A detailed description of the current operations and process at the industrial establishment, with particular emphasis on areas of the process stream where hazardous substances and wastes are generated, manufactured, refined, transported, treated, stored, handled or disposed on site, above and below ground;

4. A description of the types and locations of storage vessels, surface impoundments, secured landfills, or other types of storage facilities containing hazardous substances or wastes;

5. The names, current addresses, and descriptions of all previous known operators at the site prior to the current owner or operator;

6. A complete inventory of hazardous substances and wastes, including description and location of all hazardous substances or wastes generated, manufactured, refined, transported, treated, stored, handled or disposed on site, above and below ground, and a description of the location, types and quantities of hazardous substances and wastes that will remain on site;

7. A detailed description and location on a scaled map of any known spill or discharge of hazardous substances or wastes that occurred during the historical operation of the site and a detailed description of any remedial actions undertaken to handle any spill or discharge of hazardous substances or wastes;

8. A detailed soil, groundwater and surface water sampling plan, including, but not limited to, any graphic and narrative descriptions of geographic and hydrogeologic characteristics of the industrial establishment and any evaluation of all residual soil, groundwater and surface water contamination, and including, but not limited to, the following:

i. A scaled site map indicating areas where soil, groundwater and surface water will be sampled;

ii. The methodology to be utilized to obtain soil, groundwater and surface water samples, including for example, depth and location

of soil borings, procedures for installing groundwater monitoring well and other sampling methodology details;
iii. The types of analyses to be performed on the soil, groundwater and surface water samples;
iv. The name of the laboratory hired to perform the analyses of soil, groundwater and surface water;
v. The Quality Assurance/Quality Control Plan developed for the detailed sampling plan; and
vi. The provisions made to provide the Department with split samples of all soil, groundwater and surface water samples.
9. A detailed description of the procedures to be used to decontaminate and/or decommission equipment and buildings involved with the generation, manufacture refining, transportation, treatment, storage, handling, or disposal of hazardous waste or substances including the name and location of the ultimate disposal facility.
10. A list of all Federal and State environmental permits applied for and received throughout the history of ownership of the site, including:
i. Application date;
ii. Date of approval or denial;
iii. Reason for denial, if applicable;
iv. Permit expiration date; and
v. Permit identification number.
11. A list of all Departmental or other governmental enforcement actions for violation of any applicable Federal, State or local environmental laws or regulations throughout the history of ownership of the site, including:
i. Type of enforcement action;
ii. Date of enforcement action;
iii. Description of enforcement action; and
iv. Final resolution of enforcement action.
12. Date of public release of the closure decision and a copy of the appropriate public announcement, if applicable;
13. Date of execution of the agreement of sale or option to purchase, the name and address of the other parties to the transfer, and a copy of the agreement of sale or option to purchase, if applicable;
14. Actual date for closure of operations or transfer of title, as applicable;
15. Name, address and telephone number of an authorized agent of the industrial establishment who shall be designated to work with the Department concerning the owner or operator's responsibilities under the Act and this subchapter;
16. Copies of all soil, groundwater and surface water sampling results conducted at the site of the industrial establishment during the history of ownership by the owner or operator, including a detailed description of the location, methodology, analyses, laboratory and other factors involved in preparation of the sampling results; and
17. Other information requested in writing by the Department.
(e) All initial ECRA notice submissions pursuant to this section should be addressed to:

ECRA Office
Division of Waste Management
New Jersey Department of Environmental Protection
CN-028
Trenton, New Jersey 08625
Attention: Initial ECRA Notice Submission

7:1-3.8 Preliminary inspection
(a) The Department shall schedule and conduct a preliminary site inspection of all industrial establishments notifying the Department pursuant to N.J.A.C. 7:1-3.7.
(b) The Department's representative shall be accompanied by appropriate technical, scientific and engineering representatives of the industrial establishment and have access to all site areas, buildings and records deemed necessary by the Department for the purposes of the Act and this subchapter.
(c) The Department shall issue a preliminary inspection report detailing conditions on the site of the industrial establishment and provide guidance to the owner or operator of the industrial establishment concerning ECRA compliance.
1. The Department shall not be bound by any representations, oral or written, given at or concerning the preliminary inspection.
(d) The Department shall be permitted to conduct any additional inspections as deemed necessary by the Department for the purpose of the Act and this subchapter.
(e) The owner or operator of the industrial establishment shall provide the Department with access to all site areas, buildings, and records upon reasonable notice for any additional inspections as deemed necessary by the Department for the purposes of the Act and this subchapter.
(f) The Department shall conduct a review of the records of the United States Environmental Protection Agency, the Department, the appropriate county and the appropriate municipality pertaining to the relevant industrial establishment to further supplement their information concerning the relevant industrial establishment.

7:1-3.9 Implementation of soil, groundwater and surface water sampling plan
(a) The Department will advise the owner or operator of the industrial establishment concerning the adequacy of the detailed soil, groundwater and surface water sampling plan submitted pursuant to N.J.A.C. 7:1-3.7.
(b) The owner or operator of the industrial establishment shall, after written Departmental approval, implement prior to submission of their negative declaration or cleanup plan pursuant to this subchapter the detailed soil, groundwater and surface water sampling plan for the site of the industrial establishment reflecting the known historical and current uses of the site. The Department will be available to advise the owner or operator of the industrial establishment concerning such plan.
(c) Upon receipt and review of a negative declaration or cleanup plan the Department, after evaluating the site, may require that additional sampling information be prepared and submitted to the Department prior to approval or disapproval of a negative declaration or cleanup plan.

7:1-3.10 Required submission of cleanup plan or negative declaration
(a) The owner or operator of an industrial establishment planning to close operations shall, upon closing operations or 60 days subsequent to public release of its decision to close or transfer operations, whichever is later, submit to the Department for approval either of the following:
1. A negative declaration prepared pursuant to N.J.A.C. 7:1-3.11, or
2. A copy of a cleanup plan prepared pursuant to N.J.A.C. 7:1-3.12.
3. A surety bond or other financial security guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the cleanup plan pursuant to N.J.A.C. 7:1-3.13.
(b) The owner or operator of an industrial establishment planning to sell or transfer operations shall within 60 days prior to transfer of title submit to the Department for approval either of the following:
1. A negative declaration prepared pursuant to N.J.A.C. 7:1-3.11, or
2. A copy of the cleanup attached to the contract or agreement of sale or any option to purchase which may be entered into with respect to the transfer of operations prepared pursuant to N.J.A.C. 7:1-3.12.
i. In the event that any sale or transfer agreements or options have been executed prior to the submission of the cleanup plan to the Department, the cleanup plan shall be transmitted, by certified mail, prior to transfer of operations, to all parties to any transaction concerning the transfer of operations, including purchasers, bankruptcy trustees, mortgagees, sureties and financers.

(c) Upon written approval by the Department of the cleanup plan the surety bond or other financial security submitted pursuant to (a)3 above maybe increased to reflect revised cost estimates, as necessary.

(d) Upon written approval by the Department of the cleanup plan required by (b)2 above, the owner or operator of an industrial establishment shall obtain a surety bond or other financial security approved by the Department guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the approved cleanup plan pursuant to N.J.A.C. 7:1-3.13.

(e) The cleanup plans and site detoxification required pursuant to (b)2 above shall be implemented by the owner or operator of the industrial establishment except that the purchaser, transferee, mortgagee or other party to the transfer may assume cleanup plan implementation responsibility upon the Department's prior written approval of any appropriate agreement executed between the parties.

1. The surety bond or other financial security required pursuant to (d) above and N.J.A.C. 7:1-3.13 shall in all cases remain the responsibility of the owner or operator of the industrial establishment and shall not be assumed by the purchaser, transferee, mortgagee or other parties to the transfer.

7:1-3.11 Criteria for negative declarations

(a) A negative declaration shall be a written affidavit duly notorized and signed by an authorized officer or management official of the industrial establishment stating that there has been no discharge of hazardous substances or waste on the site or that any such discharge has been cleaned up in accordance with procedures approved by the Department, and there remains no hazardous substances or wastes at the site of the industrial establishment above a level found acceptable by the Department based upon its reivew of the data submitted.

(b) A negative declaration shall include the following information to substantiate the written affidavit required in (a) above:

1. Description of cleanup actions taken at the site, including but not limited to, any revisions to the approved decontamination/ decommissioning plan, activities involving the removal of contaminated substances, completed manifest forms and ultimate disposal site utilized;

2. The sampling results from the detailed soil, groundwater and surface water sampling plan prepared by the owner or operator of the industrial establishment, pursuant to N.J.A.C. 7:1-3.7; and

3. Other information requested in writing by the Department.

(c) The Department shall within 45 days of submission of a negative declaration from the owner or operator of the industrial establishment approve or disapprove a negative declaration after evaluation of the negative declaration, other information submitted, inspection reports and existing Departmental records as follows:

1. Issue written approval of the negative declaration based upon the information provided; or

2. Inform the industrial establishment by certified or registered mail that the negative declaration shall not be approved by the Department and that a cleanup plan pursuant to N.J.A.C. 7:1-3.12 must be submitted to the Department for approval within 60 days of notification of the Department's decision pursuant to this subsection.

7:1-3.12 Criteria for cleanup plan

(a) A cleanup plan shall be prepared and submitted by an authorized officer or management official of the industrial establishment to the Department for written approval including the following information:

1. The sampling results from the detailed soil, groundwater and surface water sampling plan prepared by the owners or operators of the industrial establishment and approved by the Department, pursuant to N.J.A.C. 7:1-3.9.

2. Preparation of a detailed, recommended cleanup plan for the most practicable method of cleanup for the site of the industrial establishment, including time schedules for implementation and itemized cost estimates for each item of the cleanup plan; and

3. The Department, upon a finding that the evaluation of a site for cleanup purposes necessitates additional information, shall notify the owner or operator of the industrial establishment by certified mail of any additional information required and the due date for that submission.

(b) The Department shall evaluate the cleanup plan, other information submitted, inspection reports and existing Departmental records prior to approval or disapproval of a cleanup plan.

1. Upon disapproval of the cleanup plan by the Department, the owner or operator of the industrial establishment shall be informed of the cleanup plan's deficiency and be advised by certified mail of the changes required to insure the Department's written approval of a revised cleanup plan.

2. Appropriate meetings and conferences between a representative of the industrial establishment and the Department may be scheduled as necessary.

3. The industrial establishment shall continue to prepare and submit revised cleanup plans satisfying the deficiencies noted by the Department until the Department issues a written approval of a cleanup plan.

4. An industrial establishment filing a cleanup plan shall not be in compliance with the Act or this subchapter until receiving written Department approval of a cleanup plan, including time schedules for cleanup plan implementation.

(c) Upon written approval of a cleanup plan by the Department, the owner or operator of the industrial establishment shall obtain a surety bond or other financial security approved by the Department guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the cleanup plan as set forth in N.J.A.C. 7:1-3.13.

(d) Upon written approval of the cleanup plan and the surety bond or other financial security pursuant to (c) above, the owner or operator of the industrial establishment shall begin implementation of the cleanup plan according to the time schedule for implementation therein, unless implementation of the cleanup plan has been deferred pursuant to N.J.A.C. 7:1-3.14 or the industrial establishment obtains the prior written approval of the Department of any appropriate written agreement allowing another party to implement the cleanup plan pursuant to N.J.A.C. 7:1-3.10(d).

(e) The Department shall conduct a final inspection of the site of the industrial establishment to insure compliance with the cleanup plan.

1. The owner or operator of the industrial establishment shall correct any deficiences noted by the Department concerning the implementation of the requirements of the cleanup plan during the final inspection.

2. The Department, upon satisfactory completion thereof, shall notify in writing the owner or operator of the industrial establishment that the cleanup plan has been fully implemented.

7:1-3.13 Financial requirements for cleanup plans

(a) Upon approval of the cleanup plan by the Department, the owner or operator of the industrial establishment shall obtain a surety bond or other financial security in an amount equal to the cost estimate approved by the Department for the cleanup plan as set forth in (b), (c) and (d) below.

(b) Surety bond guaranteeing payment into a cleanup plan trust fund requirements include the following:

1. An owner or operator of an industrial establishment may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and by having the bond delivered to the Department by certified mail after the Department's cleanup plan approval. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in the most recent version of Circular 570 issued by the U.S. Department of the Treasury which is published

annually on July 1 in the Federal Register and specifically be approved in writing by the Department.

2. The wording of the surety bond shall be similar to the wording in the "Wording of Instruments" guidelines available on request from the Department.

3. The owner or operator of an industrial establishment who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund by the time the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited directly into the standby trust fund.

4. The bond shall guarantee that the owner or operator of an industrial establishment will:

i. Fund the standby trust fund in an amount equal to the penal sum of the bond prior to the expected date of beginning implementation of the cleanup plan, or

ii. Provide alternative financial assurance as specified in this section within 15 days after receipt by the Department of a notice of cancellation of the bond from the surety.

5. The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6. The penal sum of the bond shall be in an amount at least equal to the amount of the cost estimate approved by the Department for the cleanup plan;

7. The bond shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the Department.

8. The surety bond no longer satisfies the requirements of this section subsequent to the receipt by the Department of a notice of cancellation of the surety bond. Upon receipt of such notice the Department will issue a compliance order unless the owner or operator has demonstrated alternative financial assurance as specified in this section. In the event the owner or operator does not correct the violation by demonstrating such alternative financial assurance within 30 days after issuance of the compliance order, the Department may direct the surety to place the penal sum of the bond in the standby trust fund.

9. The owner or operator may cancel the bond if the Department has given prior written consent based on receipt of evidence of alternative financial assurance as specified in this section.

10. The Department will notify the surety when the owner or operator funds the standby trust fund in the amount guaranteed by the surety bond or if the owner or operator provides alternative financial assurance as specified in this section.

(c) Surety bond guaranteeing performance of cleanup requirements include the following:

1. An owner or operator of an industrial establishment may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and by having the bond delivered to the Department by certified mail after the Department's cleanup plan approval. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in the most recent version of Circular 570 issued by the U.S. Department of Treasury and specifically be approved in writing by the Department.

2. The wording of the surety bond shall be similar to the wording in the "Wording of Instruments" guidelines available on request from the Department.

3. The owner or operator of an industrial establishment who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund by the time the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited directly into the standby trust fund.

4. The bond shall guarantee that the owner or operator of an industrial establishment will:

i. Perform final cleanup in accordance with the cleanup plan;

ii. Provide alternative financial assurance as specified in this section within 15 days after receipt by the Department of a notice of cancellation of the bond from the surety.

5. The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6. The penal sum of the bond shall be in an amount at least equal to the amount of the cost estimate approved by the Department for the cleanup plan.

7. The bond shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the Department.

8. Following a determination that the owner or operator has failed to perform final cleanup in accordance with the cleanup plan and other permit requirements when required to do so under the terms of the bond, the surety will perform final cleanup in accordance with the cleanup plan. As an alternative, the surety may deposit the amount of the penal sum into the standby trust fund.

9. The surety bond no longer satisfies the requirements of this paragraph subsequent to the receipt by the Department of a notice of cancellation of the surety bond. Upon receipt of such notice the Department will issue a compliance order unless the owner or operator has demonstrated alternative financial assurance as specified in this section. In the event the owner or operator does not correct the violation by demonstrating such alternate financial assurance within 30 days after issuance of the compliance order, the Department may direct the surety to place the penal sum of the bond in the standby trust fund.

10. The owner or operator may cancel the bond if the Department has given prior written consent based on receipt of evidence of alternative financial assurance as specified in this section.

11. The Department will notify the surety if the owner or operator provides alternative financial assurance as specified in this section.

12. The surety will not be liable for deficiencies in the performance of cleanup by the owner or operator after the owner or operator has been notified by the Department that the owner or operator is no longer required by this section to maintain financial assurance for cleanup of the facility.

(d) Letter of credit guaranteeing payment into a cleanup plan trust fund requirements include the following:

1. An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and by having it delivered to the Department by certified mail after the Department's cleanup plan approval. The letter of credit shall be effective before the initial implementation of the cleanup plan. The issuing institution shall be a bank or other financial institution which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

2. The wording of the letter of credit shall be similar to the wording in the "Wording of Instruments" guidelines available on request from the Department.

3. An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund by the time the letter of credit is obtained. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited promptly and directly by the issuing institution into the standby trust fund.

4. The letter of credit shall be irrevocable and issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the issuing institution decides not to extend the letter of credit beyond the then current expiration date it shall, at least 90 days before that date, notify both the owner or operator and the Department by certified mail of that decision. The 90-day period will begin on the date of receipt by the Department as shown on the signed return receipt.

5. The letter of credit shall be issued for an amount equal to the cost estimate approved by the Department for the cleanup plan.

6. Whenever the cleanup plan cost estimate increases to an amount greater than the amount of the credit the owner or operator shall within 60 days of the increase, cause the amount of the credit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this section to cover

the increase. Whenever the adjusted cleanup cost estimate decreases during the operating life of the facility, the letter of credit may be reduced to the amount of the new estimate following written approval by the Department. Notice of an increase or decrease in the amount of the credit shall be sent to the Department by certified mail within 60 days of the change.

7. Following a determination that the owner or operator has failed, when required to do so, to perform cleanup in accordance with the cleanup plan or other permit requirements, the Department may draw on the letter of credit.

8. The letter of credit no longer satisfies the requirements of this paragraph subsequent to the receipt by the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the then current expiration date. Upon receipt of such notice, the Department will issue a compliance order unless the owner or operator has demonstrated financial assurance as specified in this section. In the event the owner or operator does not correct the violation by demonstrating such alternative financial assurance within 30 days of issuance of the compliance order, the Department may draw on the letter of credit.

9. The Department will return the original letter of credit to the issuing institution for termination when:

i. The owner or operator substitutes alternative financial assurance for cleanup plan as specified in this section, or

ii. The Department notifies the owner or operator, in accordance with N.J.A.C. 7:1-3.12(e)2, that the owner or operator is no longer required by this section to maintain financial assurance for cleanup of the industrial establishment.

(e) The owner or operator of an industrial establishment may propose, in writing to the Department, other self-bonding measures to provide the financial security required by this section to guarantee implementation of the cleanup plan.

1. If the Department does not approve in writing the other self-bonding measure proposed by the owner or operator of the industrial establishment, then the owner or operator shall comply with either (b), (c)or (d) above.

7:1-3.14 Deferral of implementation of cleanup plan

(a) If the premises of the industrial establishment would be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer the owner or operator of the industrial establishment may apply in writing to the Department for approval to defer implementation of an approved cleanup plan until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes, terminates or transfers operations.

(b) The owner or operator of the industrial establishment applying for a deferral pursuant to (a) above shall prepare a written certification duly notarized and signed by an authorized officer or management official of the industrial establishment stating that the industrial establishment shall be subject to substantially the same use by the other party to the transfer, detailing the proposed operations of that party, and attaching the written certification to the initial notice required pursuant to N.J.A.C. 7:1-3.7.

(c) The Department shall, within 60 days of receiving the initial notice required pursuant to N.J.A.C. 7:1-3.7 and the written certification required pursuant to (b) above, either approve, conditionally approve or deny the written certification submitted by the owner or operator of the industrial establishment.

1. Upon the Department's approval or conditional approval of the written certification, the implementation of an approved cleanup plan and site detoxification shall be deferred until the use of the industrial establishment changes or until the other party to the transfer closes, terminates or transfers operations, subject to any Departmental conditions.

2. Upon the Department's denial of the written certification, the owner or operator of the industrial establishment shall engage in the immediate implementation of an approved cleanup plan and site detoxification pursuant to the provisions of this subchapter and the Act.

3. The Department shall only approve the deferral of cleanup plan implementation after conducting a case-by-case review during which the owner or operator proves to the satisfaction of the Department that the deferral of cleanup plan implementation poses no threat of potential harm to the public health and safety of the citizens, property and natural resources of New Jersey, taking into consideration the location of the site and the surrounding ambient conditions.

4. The Department's authority to defer implementation of the cleanup plan set forth in this section shall not be construed to limit, restrict or prohibit the Department from directing site cleanup nor limit the liabilities of past owners or operators under any other statute, rule or regulation, but shall be solely applicable to the obligations of the owner or operator of the industrial establishment pursuant to this subchapter and the Act.

7:1-3.15 Standards for detoxification of industrial establishments

(a) Until adoption of the minimum standards required pursuant to Section 5(a) of the Act, the Department shall review, approve or disapprove negative declarations and cleanup plans on a case-by-case basis for soil, groundwater and surface water quality necessary for the detoxification of the site of an industrial establishment, including buildings and equipment, to ensure that the potential for harm to public health and safety is minimized to the maximum extent practicable, taking into consideration the location of the site and surrounding ambient conditions.

7:1-3.16 Violations and penalty provisions; voiding sales of industrial establishments

(a) Failure of the transferor of an industrial establishment to comply with any of the provisions of the Act or this subchapter shall be grounds for voiding the sale or transfer of an industrial establishment or any real property utilized in connection therewith by the transferee.

1. Transferee shall further be entitled to recover damages from the transferor due to the voiding the sale pursuant to (a) above.

2. Failure to comply with any provisions of the Act or this subchapter shall render the owner or operator of an industrial establishment strictly liable, without regard to fault, for all cleanup and removal costs and indirect damages resulting from the failure to implement any cleanup plan necessary.

(b) Failure of an industrial establishment to submit a negative declaration or cleanup plan pursuant to this subchapter shall be grounds for voiding the sale or transfer of the industrial establishment or any real property utilized in connection therewith by the Department.

(c) Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of the Act or this subchapter shall be liable to a penalty of not more than $25,000 for each offense.

1. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense.

2. Penalties shall be collected in a civil action by a summary proceeding under the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et. seq.

(d) Any officer or management official who knowingly directs or authorizes the violations of any provisions of the Act or this subchapter shall be personally liable for any penalties established pursuant to (c) above.

7:1-3.17 Effective date of act; Special provisions for industrial establishments initiating sale or transfer or closure of operations before to December 31, 1983

(a) The Department interprets Section 11 of the Act to mean that the Act becomes fully effective on December 31, 1983.

(b) Any owner or operator of an industrial establishment planning to close, terminate or transfer operations or sell or transfer title of an industrial establishment on or after December 31, 1983 shall be subject to all the provisions of the Act and this subchapter.

(c) The owner or operator of an industrial establishment that initiated the closure or transfer of title prior to December 31, 1983 but will not complete the closure operations or transfer of title until on or after December 31, 1983 shall be subject to all the provisions of the Act and this subchapter provided that the following exceptions to N.J.A.C. 7:1-3.7 and 3.8 shall apply:

1. Initial notice of the closure or transfer of title of these industrial establishments may be submitted to the Department five days from December 31, 1983 or until January 5, 1984.
2. Negative declarations or cleanup plans, as appropriate, may be submitted to the Department for approval 60 days from December 31, 1983 or until March 1, 1984.
3. All other applicable provisions of this subchapter not conflicting with (c) 1 and 2 above shall apply to any industrial establishment under the circumstances described in this section.

7:1-3.18 Closing, terminating or transferring operations of an industrial establishment

(a) For the purposes of this subchapter, the closing, terminating or transferring operations of an industrial establishment shall mean:

1. The cessation of all operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes;
2. Any temporary cessation for a period of not less than two years;
3. Any other transaction or proceeding through which an industrial establishment becomes non-operational for health or safety reasons;
4. Any change in ownership, except for corporate reorganization not substantially affecting the ownership of the industrial establishment, including but not limited to:
   i. Sale of stock in the form of a statutory merger or consolidation;
   ii. Sale of the controlling share of the assets;
   iii. Conveyance of the real property;
   iv. Dissolution of corporate identity;
   v. Financial reorganization; and
   vi. Initiation of bankruptcy proceedings.

7:1-3.19 Bankruptcy provision

(a) No obligations imposed by the Act or this subchapter shall constitute a lien or claim which may be limited or discharged in a bankruptcy proceeding.

(b) All obligations imposed by the Act or this subchapter shall constitute continuing regulatory obligations imposed by the State of New Jersey for the purposes of 11 U.S.C. 362(b)(4).

7:1-3.20 Procedure for exemptions of sub-groups within SIC codes from definition of industrial establishment

(a) Sub-groups or classes of operations within Standard Industrial Classification (SIC) major group numbers within 22-39 inclusive, 46-49 inclusive, 51 or 76 may petition the Department in writing for an exemption as a class from the requirements of the Act and this subchapter due to their determination that the operations of their type of industrial establishment do not pose a risk to public health and safety.

(b) Industrial establishments set forth in (a) above shall submit all appropriate documentation, evidence and other proofs that they deem justify exemption as a class from the Act and this subchapter.

(c) The Department on its own initiative may also establish a record based on experience or other appropriate research justifying an exemption of sub-group or class of operations as noted in (a) above.

(d) Upon a finding that a sub-group or class of operations noted in (a) above do not pose a risk to the public health and safety, the Department may amend (e) below pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., to exempt said sub-group or class of operations from consideration as an industrial establishment for the purposes of the Act and this subchapter.

(e) The following sub-groups or classes of operations within those sub-groups described in (a) above shall not be considered industrial establishments for the purposes of the Act and this subchapter:

(Reserved)

7:1-3.21 Additional Departmental remedial actions

(a) Approvals by the Department of negative declarations and cleanup plans pursuant to this subchapter shall be based upon all information provided to the Department and existing information and standards, as applicable; provided however, that nothing herein shall be construed to limit, restrict or prohibit the Department from imposing requirements or remedial actions for subsequent closing, terminating or transferring operations of an industrial establishment pursuant to the Act.

(b) Nothing in the Act or this subchapter shall be construed to limit, restrict, or prohibit the Department from directing immediate site cleanup under any other statute, rule or regulation.

(a)

DIVISION OF WASTE MANAGEMENT

Discharges of Petroleum and Other Hazardous Substances: List of Hazardous Substances

Adopted Emergency Amendment and Concurrent Proposal: List of Hazardous Substances, N.J.A.C. 7:1E-Appendix A, Part V

Emergency Amendment Adopted: January 3, 1984, by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Gubernatorial Approval (See N.J.S.A. 52:14B-4(c)): January 4, 1984.
Emergency Amendment Filed: January 5, 1984 as R.1984 d.8.
Authority: N.J.S.A. 13:1D-9, and specifically, N.J.S.A. 58:10-23.11t.
Emergency Amendment Effective Date: January 5, 1984.
Emergency Amendment Expiration Date: March 5, 1984.
DEP Docket No. 076-83-12.

A **public hearing** concerning this proposed amendment will be held at the following times and locations:

February 15, 1984
10:00 A.M. until the closing of testimony
New Jersey State Library
185 West State Street
First Floor Meeting Room
Trenton, New Jersey

February 16, 1984
4:00 to 6:00 P.M. and 7:00 to closing of testimony
Montclair Municipal Building
Council Chambers, First Floor
205 Claremont Avenue
Montclair, New Jersey

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before February 17, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Scott B. Dubin
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, NJ 08625

This amendment is adopted on an emergency basis and becomes

effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

Copies of this notice will be distributed to persons including local and county elected officials for political subdivisions including the County of Essex; the townships of Glen Ridge Borough, Montclair, and West Orange in the County of Essex; persons residing on or conducting business at properties in Glen Ridge, Montclair and West Orange which are the subject of the Department's investigation; and operators of major facilities subject to taxation under the Spill Compensation and Control Act.

The concurrent proposal is known as PRN 1984-52.

The agency emergency amendment and concurrent proposal follows:

Summary

The Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. prohibits the discharge of hazardous substances which are not discharged pursuant to and in compliance with conditions of a Federal or State permit. N.J.S.A. 58:10-23.11(c). The Act provides that when any hazardous substance is discharged, the Department, may, in its discretion remove or arrange for the removal of such discharge or may direct the discharger to take such action. N.J.S.A. 58:10-23.11(f).

The Act further authorizes the Department, subject to the approval of the Administrator of the New Jersey Spill Compensation Fund, to remove or arrange for the removal of hazardous substances which have not been discharged, if such substance is not satisfactorily stored or contained and said substance possesses characteristics including radioactivity. N.J.S.A. 58:10-23.11(f)(b)(2)(c).

The Act further authorizes the Department to define the term "hazardous substances" after public hearing. N.J.S.A. 58:10-23.11(b)(k). The Department, by this emergency amendment and concurrent proposal, hereby further defines the term "hazardous substances" to include the following elements: radium, its precursors uranium and thorium and their decay products, and its decay products, including radon and its progeny.

The removal of these radioactive elements or compounds may be subject to approval of the United States Nuclear Regulatory Commission and other Federal agencies pursuant to Atomic Energy Act of 1946, 42 U.S.C. 2011 et seq.

Radon is a naturally occurring radioactive gas usually found in low concentrations. It is colorless, odorless, and chemically inert. It is soluble in water and, therefore, capable of being discharged into waters of the State in violation of the Spill Compensation and Control Act. Radon is the immediate product of the radioactive decay of the element radium. Radon undergoes a series of transformations, emitting alpha, beta, and gamma radiation. The radioactive elements that result from the decay of radon are called "radon progeny", or sometimes, "radon daughters".

The Department has recently undertaken the investigation, sampling and analysis of soil and air samples at presently occupied residential and commercial property located in Glen Ridge, Montclair, and West Orange. On the basis of this investigation, the Department has reached the preliminary conclusion that certain of these properties are subject to levels of radon in excess of the occupational standards permitted for radiation workers as established by the State and Federal governments. Levels of radon at some of these locations in these communities have been shown to be significantly higher than background levels throughout New Jersey. Such elevated levels pose a threat to human health. Residential exposure subjects persons to health risks during a considerable portion of the day. Epidemiological investigations have determined a relationship between exposure to high levels of radon and lung cancer.

In December 1983, Governor Kean declared a state of emergency and authorized and directed the Commissioner of the Department of Environmental Protection to "take such emergency measures as he may determine to be necessary in order to fully and adequately protect the health, safety and welfare of the citizens of this State, from any actual or potential threat or danger which may exist as a result of the presence of radium, radon or other radioactive decay products" present in Glen Ridge and Montclair. (Executive Order No. 56).

This emergency amendment and concurrent proposal would add radium, its precursors uranium and thorium and their decay products, and its decay products, including radon and its progeny, to the list of hazardous substances in N.J.A.C. 7:1E. The amendment would enable the Department to invoke the Spill Compensation and Control Act, to remove, arrange for removal of, or take other measures to reduce public exposure to the above substances in Glen Ridge, Montclair, West Orange and elsewhere in the State.

Based on the foregoing and pursuant to N.J.S.A. 52:14B-4(c) and N.J.A.C. 1:30-4.4, concerning adoption of emergency rules, the Commissioner of the Department of Environmental Protection attests to the facts set forth herein and finds that an imminent peril to the public health, safety or welfare exists which requires adoption of the amendment as an emergency amendment.

State law permits the Department of Environmental Protection to adopt the emergency amendment without prior notice or hearing if the Governor concurs in writing that an imminent peril exists.

Social Impact

This emergency amendment and concurrent proposal would enable the Department to invoke the Spill Compensation and Control Act to remove, arrange for the removal of, or take other measures to reduce exposure to radium, its precursors uranium and thorium and their decay products, and its decay products, including radon and its progeny, in Glen Ridge, Montclair and West Orange and elsewhere in the State. The removal of these substances will decrease the incidence of alpha, beta and gamma radiation to residents in the State and thereby mitigate a significant threat to public health.

Economic Impact

The Spill Compensation and Control Act, ("Act") authorizes the State to levy a tax on hazardous substances. N.J.S.A. 58:10-23.11(h). The monies generated by this tax are credited to the New Jersey Spill Compensation Fund to carry out its responsibilities under the Act. N.J.S.A. 58:10-23.11(i).

The additions to the list of hazardous substances adopted herein would enable the Department to invoke the Act, to remove, arrange for the removal of, or take other measures to reduce exposure to such additional substances from waters of the State or from lands from which such substances might flow or drain onto waters of the State. The New Jersey Spill Compensation Fund would provide monies to pay for the Department's costs incurred in undertaking such remedial action pursuant to the Act. This emergency amendment and concurrent proposal would increase the number of hazardous substances subject to taxation under the Act.

Environmental Impact

This amendment and concurrent proposal would enable the Department to invoke the Spill Compensation and Control Act to remove, arrange for the removal of, or take other measures to reduce public exposure to radium, its precursors uranium and thorium and their decay products, and its decay products, including radon and its progeny, in Glen Ridge, Montclair, West Orange and elsewhere in the State.

Full text of the emergency amendment and concurrent proposal follows (additions indicated in boldface **thus**).

N.J.A.C. 7:1E - Appendix A List of Hazardous Substances

Part I - IV No change.

Part V. Other Substances
Adiponitrile
Ammonium hypophosphite
Ammnonium nitrate
Ammonium persulfate
Hydorxylamine
Radium and its decay products, including radon and its progeny
Sodium Sulfide
Stannous flouride
Thorium and its decay products
Uranium and its decay products
Uranium peroxide
Uranyl sulfate

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Ambient Air Quality Standards State Implementation Plan (SIP) for Attainment and Maintenance of National Ambient Air Quality Standards for Lead

Authorized By: Robert E. Hughey, Commissioner
Department of Environmental Protection.
Authority: N.J.S.A. 13:1D-5, -7, -9, and 26:2C-1 et seq.

A public hearing concerning the proposed SIP will be held at the following time and location:

February 22, 1984
10:00 A.M. until the close of testimony
New Jersey State Library
185 West State Street
First Floor Meeting Room
Trenton, NJ

The Department is seeking testimony from the public on the objective of the plan, the way in which the plan was developed, the effects of the proposed measures, and recommendations for their implementation.

Interested persons may testify and submit in writing, data, views or arguments relevant to the proposal SIP on or before February 28, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

John C. Elston
Bureau of Air Pollution Control
Department of Environmental Protection
CN 027
Trenton, NJ 08625
(609)292-6710

Copies of this notice and the SIP, including appendices, are being deposited and will be available for inspection during normal office hours until February 28, 1984 at:

New Jersey Bureau of Air Pollution Control, Main Office,
Room 1109,
Labor and Industry Building,
Trenton, NJ 08625

New Jersey State Library, 185 West State Street,
Trenton, NJ 08625

New Jersey Bureau of Air Pollution Control,
Metropolitan Field Office,
1259 Rt. 46, Parsippany— Troy Hills,
NJ 07054

New Jersey Bureau of Air Pollution Control
Central Field Office,
65 Prospect Street, Trenton, NJ 08628

New Jersey Bureau of Air Pollution Control,
Newark Field Office,
1100 Raymond Boulevard, Room 510,
Newark, NJ 07102

New Jersey Bureau of Air Pollution Control,
Southern Field Office,
100 Larwin Road, Cherry Hill, NJ 08034

COUNTY LIBRARIES

County	Municipality
Burlington	Mount Holly
Camden	Echelon Urban Complex, Voorhees
Cape May	Cape May Court House
Cumberland	Bridgeton
Monmouth	Freehold
Morris	Whippany
Ocean	Toms River
Somerset	Somerville
Sussex	Newton

PUBLIC LIBRARIES

Bloomfield, Cherry Hill, East Brunswick, East Orange, Elizabeth, Hackensack, Jersey City, Linden, New Brunswick, Newark, Paterson, Phillipsburg, Plainfield, Ridgewood, Trenton, Wayne, Woodbridge, and Woodbury.

Summary

The federal Clean Air Act, 42 U.S.C. 7401 et seq., requires that each state, after reasonable notice and public hearings, adopt and submit to the United States Environmental Protection Agency (USEPA) a plan, known as a State Implementation Plan (SIP), which provides for the implementation, maintenance and enforcement of national ambient air quality standards in each air quality control region (or portion thereof) within such state.

Current monitoring shows the State of New Jersey to be in attainment of the national ambient air quality standards for lead. The Department has modeled air quality in the vicinities of the following industrial facilities. These models indicate there could potentially be a problem in their vicinities and the SIP commits the Department to monitor to determine if a problem exists. If a problem is determined to exist, control measures will be developed.

Asarco, Inc., Newark;
Delco Remy, Division of General Motors Corporation, New Brunswick;
E.I. du Pont de Nemours & Co., Inc., Deepwater;
National Smelting of New Jersey, Pedricktown; and
United States Metals Refining Company, subsidiary of AMAX, Inc., Carteret

Extensive sampling in New Jersey shows that there have been significant decreases in the concentration of airborne lead in recent years. These decreases have been concurrent with a decrease in the use of leaded gasoline, the predominant source of atmospheric lead. Federal rules requiring automobiles with catalytic converters to use unleaded gasoline have been effective in reducing exposure to atmospheric lead.

Lead emission levels are expected to rise substantially with the growth of incineration of waste products during the 1980's. Use of state-of-the-art particulate emission controls should keep ambient lead concentrations with the standards.

The SIP describes how air pollution control regulations would contribute to the reduction of lead emissions from industrial sources. The SIP sets forth a schedule of amendments to Department regulations concerning air pollution control. The amendments would insure that new and existing sources of lead do not cause violations of the national ambient air quality standards for lead. Adoption of the SIP would commit the Department to establish a State ambient air quality standard for lead. Such adoption would also commit the Department to lowering the emissions threshold at which a source owner or operator would be required to analyze the effects of lead emission increases on ambient air quality.

On October 5, 1978, the USEPA adopted primary (health-based) and secondary (welfare-based) national ambient air quality standards for lead. Notice of the adoption was published in the Federal Register (43 Fed. Reg. 46246, Oct. 5, 1978) and codified in the Code of Federal Regulations (40 C.F.R. 50.12). The USEPA promulgated regulations concerning SIPs for the attainment of the national ambient air quality standards for lead. The regulations had called for such attainment by October 1982. The regulations were published at 43 Fed. Reg. 46264 (Oct. 5, 1978) and codified in 40 C.F.R. 51.80-88. The USEPA subsequently revised the schedule for the approval of SIPs for lead for those states which had not submitted such plans (48 Fed. Reg. 36250, Aug. 10, 1983).

The USEPA policy regarding attainment dates is to follow the literal interpretation of Section 110 (a)(2)(A) of the Clean Air Act. (42 U.S.C. 7410 (a)(2)(A), see 48 Fed. Reg. 48978, Oct. 21, 1982). The Clean Air Act requires that the USEPA approve a SIP if it contains certain measures and provides for the attainment of the primary standard as expeditiously as practicable, but in no case later than three years from the date of approval of the plan. In the case of a plan implementing a national secondary ambient air quality plan, it should specify a reasonable time at which such secondary standard will be attained. 42 U.S.C. 7410 (a)(2)(A).

The SIP proposed by this notice demonstrates that the State will attain the national ambient air quality standard for lead by January 1, 1986.

Pursuant to USEPA regulations, for a SIP to be approved by USEPA, it must contain a demonstration that the national ambient air quality standards for lead will be attained and maintained in the vicinity of all major sources of lead, and in any area with lead concentrations in excess of the standards measured since January 1, 1974 (40 C.F.R. 51.80). USEPA regulations further require that an approvable SIP include emission data, air quality data, modeling of major sources and of areas with measured violations of the standards, and a description of administrative procedures and enforcement methods (40 C.F.R. 51.80).

On October 6, 1983, New Jersey submitted a draft SIP to USEPA, Region II. The SIP proposed by this notice contains minor revisions to the October 6 draft. As required by the USEPA regulations, the proposed SIP demonstrates attainment and maintenance of the national ambient air quality standards for lead in all areas with lead concentrations in excess of the standards measured since January 1, 1974 (40 C.F.R. 51.80).

Modeling of the five industrial facilities listed above is reported in the proposed SIP. At this time, the attainment status of areas in the vicinities of these facilities has not been determined. Supplemental modeling is now being conducted to determine their status. The Department expects that the results of this supplemental modeling will be made available at the time of publication of this notice.

The SIP contains a schedule for the proposal and adoption of amendments to the following Department regulations: N.J.A.C. 7:27-8. (concerning permits and certificates); N.J.A.C. 7:27-13 (concerning Ambient Air Quality Standards); N.J.A.C. 7:27-18 (concerning Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality in Non-Attainment Areas (Emission Offset Rule)); and possible amendments to N.J.A.C. 7:27-6 (concerning Control and Prohibition of Particles from Manufacturing Processes).

Social Impact

Implementation of the SIP would insure attainment of minimum health-based standards for ambient lead. The SIP would result in a reduction in the amount of lead reaching the human body.

Economic Impact

The SIP would commit the State to take measures including the adoption of amendments to certain Department regulations as described above. Such regulations would have a potential economic impact on sources that emit significant quanties of lead (25 or more tons per year of elemental lead) and/or specific manufacturing and processing facilities emitting five or more tons per year of elemental lead including: primary and secondary lead smelters, primary copper smelters, lead gasoline additive plants, and lead acid storage battery manufacturing plants.

Environmental Impact

The SIP provides for the implementation, maintenance and enforcement of national ambient air standards for lead in the State. The SIP would commit the State to take measures including the adoption of amendments to certain Department regualtions as described above. The regulations would require use of air pollution control equipment representing state-of-the-art particulate emission controls to keep ambient lead concentration with ambient air quality standards.

The State may adopt the SIP without further notice. The SIP becomes effective and enforceable under the federal Clean Air Act upon approval by the Administrator of the USEPA.

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

Take notice that, pursuant to authority at N.J.S.A. 44:7-6 and 44:10-3, George J. Albanese, Commissioner of Human Services, intends to update Appendix C of N.J.A.C. 10:81.

The current edition of Appendix C contains a listing of forms used by the Department's Division of Public Welfare relevant to the Aid to Families with Dependent Children program. However, since initial issuance of the Appendix, new forms have come into existence while others have been revised or obsoleted. The revised, updated listing will therefore accurately reflect the forms presently referred to in N.J.A.C. 10:81.

This Notice is published as a matter of public information.

Appendix C
FORMS
Related to Income Maintenance

*PA-1J	Application and Affidavit for AFDC, MA, CPP, RRP, CHEP and Food Stamps
PA-2	Resource Referral
PA-2D	Summary Report
PA-3A	Worksheet and Authorization for Public Assistance
PA-3B	Evaluation of Capacity of Legally Responsible Relatives to Support
PA-3C	CSP Referral Form and Case Record
PA-5	Examining Physician's Report
PA-5A	Report of Eye Examination
PA-6	Medical-Social Information Report
PA-6A	Interim Medical-Social Report

PA-7	Report of Findings by Psychiatric Diagnostic Group
PA-8	Record of Action: Medical Eligibility Factor
PA-10D	Agreement to Repay
PA-11	Mortuary Affidavit (and Petition for Payment)
PA-11B	Cemetary Affidavit and Petition for Payment
PA-12	Referral by State Mental Institution to Public Assistance Agency
PA-14	Referral for Services
*PA-15	Notification Form
PA-17B	Notice to State Correctional Institution (AFDC Case)
PA-17C	Notice of County Welfare Board Action on Aid to Families with Dependent Children Cases
PA-22	Employment Criteria For AFDC-F Families
PA-24	Verification of Unemployment/Disability Insurance
PA-30	Authorization for Reimbursement of Initial SSI Payment
PA-30A	Agreement to Repay Assistance from Initial SSI Payment
PA-31	Explanation of Repayment Procedures Concerning SSI Payments
PA-33	Investigation Initiation Sheet
PA-34	Investigation Disposition Sheet
*PA-45	Warning and Waiver of Rights
*PA-46	Requirement to Cooperate and Right to Claim Good Cause for Refusal to Cooperate in Child Support Enforcement
*PA-47	Second Notice to Client - Right to Claim Good Cause for Refusal to Cooperate in Child Support Enforcement
PA-48	Summary of Good Cause Claims
PA-52	IRP Medical Payment Worksheet and Authorization
PA-54	Refugee Program Interagency Referral
PA-59A	Request for Voluntary Restricted Payment
PA-59B	Request to Discontinue Voluntary Restricted Payment
PA-60	Certification of Return from Foster Care
PA-60A	CWA Action in Response to Certification of Return from Foster Care
PA-192	Aid to Families with Dependent Children (pamphlet)
*PA-196	Fair Hearings in the Aid to Families with Dependent Children (AFDC) Program (pamphlet)
*PA-197	Your Rights and Responsibilities in the AFDC Program (pamphlet)
PA-401	WIN Case Review Document
PA-450A	Parent Locator Service Request Form
PA-450B	Parent Locator Service Source Response Form
PA-644	Report of Assistance Payments
PA-655	Cases for Medical Review Team Re-evaluation Due During the Month of————.
PA-850	Acknowledgement of Fair Hearing Request and Status of Continuing Benefits
PA-925	VIMS Resource Report
CODES 105 Ax and Bx	Initial System Input Documents
CODES 105A and B	System Input Documents
CSP-109	Application for IRS Collection of Child Support
CSP-110	Authorization to Discontinue Transmission of Support Payments to County Welfare Agency
DR-1	ES/WIN De-registration/Inter-Agency Referral
DYFS 7-39	Letter of Notification-WIN Program
DYFS 7-40	Child Care Action Notice
ED-6	Request and Authorization for Records Disposal
*EP-1	Home Energy Assistance Application
...	Home Energy Assistance Addendum
FD-74	Application for Payment of Unpaid Medical Bills (DMAHS)
MA-5-95	WIN Registration Record
MA-5-97	WIN Status Change Notice
MAP 1	Medicaid Status File Transaction
NJES-1	Information Report/Food Stamp Program
NJES-1A	Interagency Information Report
NJES-511	N.J. Division of Employment Services Self-Registration Application
R-1	WIN Registration/Inter-Agency Referral
SS-5	Application for a Social Security Number Card
SSA-1610	Public Assistance Agency Information Request
SSA-8125	SSI Notice of Interim Assistance Reimbursement Eligibility and Accountability Report
WD-1A	A Statement Concerning Obligations of Vendors Under the Civil Rights Act of 1964
WD-1B	A Statement Concerning Obligations of Personnel of Public Welfare Agencies Under the Civil Rights Act of 1964
WEGRR	WIN Employment and Grant Reduction Record

*Available in English and Spanish

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Bulk Commodities Application

Public Notice

Take notice that Clifford W. Snedeker, Director, Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E.11, hereby lists the names and addresses of applicants who have filed an application for a common carrier's Certificate of Public Convenience and Necessity and/or a contract carrier permit to engage in the business of transporting bulk commodities in intrastate commerce.

CONTRACT CARRIER (NON-GRANDFATHER)

J.P. Harrison and Son, Inc.
7 Brunswick Place
Point Pleasant, NJ 08742

R & B Tiger, Inc.
RR 3 Box 327 A
Califon, NJ 07830

F. Matlock, Inc.
5851 Kesslerville Road
Nazareth, Pa. 18064

C& C Fisher, Inc.
99 Park Avenue
Washington, NJ 07882

John's Contract Hauling, Inc.
4 Hillcrest Avenue
Bridgeton, NJ 08302

George Wunder Corp.
RR 4 Box 156
Califon, NJ 07830

Angelo R. Rizzi Sr. Inc.
Box 295 RD 2
Sewell, NJ 08080

Joseph A. Barthel, Inc.
12 Main Street PO Box 192
Branchville, NJ 07826

Protests in writing and verified under oath may be presented by interested parties to the Director of Motor Vehicles within 20 days following the publication date of an application.

TREASURY-GENERAL

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Architect/Engineer Selection

Notice of Assignments

The following assignments have been made:

DCB No.	PROJECT	A/E	CCE
E031-02	Study to Evaluate Heating Duct Water Infiltration-Bergen County Regional Day School for Multiply Handicapped Paramus, NJ	Paulus, Sokolowski & Sartor	$3,200.00 Study
H705	Roof Coping Replacement Irwin Hall Library Jersey City State College, Jersey City, NJ	Kruger, Kruger & Albenberg	$25,600.00
M538	Life Safety Improvements & Replacement of Transformers–Service Bldg. Johnstone Developmental Center Bordentown, NJ	Malloy & Duffe AIA	$43,000.00
S158	Comprehensive Architectural Study of 38 Inspection Stations 21 Counties–N.J. Div. of Motor Vehicles	Armstrong, Jordan & Pease	$100,000.00 Study
M541	Replacement & Relocation of Street Lighting–Woodbridge Development Center Woodbridge, NJ	Wagner Assoc., Inc.	$25,000.00
S902	Installation of Insulated Window Panels Motor Vehicle Inspection Stations Eatontown, Lodi Rahway, Trenton, Wayne	Leslie M. Dennis	$31,000.00
M533	Renovations to Cottages R/East & O and Hospital Bldg. Marlboro Psychiatric Hospital	George J. Williams & Assoc.	$425,000.00

Competitive Proposals

George J. Williams & Assoc.	8.75%
Brown & Hale	13.80%
Eugene F. O'Connor	18.97%

M512	Phase I Cultural Resources Survey Arnytown Veterans Cemetary Burlington–Monmouth Counties	Historic Sites Research	$3,725.00 Study

Competitive Proposals

Historic Sites Research	$3,724.48
Alan Mounier	$6,055.00

H698	Vinyl Window Cladding Green, Bliss, & Kendall Halls & Library Trenton State College, Trenton NJ	Richard M. Horowitz, A.I.A.	$150,000.00

Competitive Proposals

Richard M. Horowitz, A.I.A.	7.46%
Matthew L. Rue, A.I.A.	7.89%
Eugene F. O'Connor, A.I.A.	12.28%

A453	Investigation of Reported Vibrations–Richard J. Hughes Justice Complex, Trenton, NJ	Dean Yi-Yuan Yu	$5,000.00 Services
P422	Renovations to Bathhouse, Bass River State Park New Gretna, NJ	Lamney & Georgio	$90,000.00
P423	Renovations to Water Supply System, High Point State Park	Langan Engineering	$50,000.00
E128	Repair/Replacement of Roof Bldg 14, Lower School Marie H. Katzenbach School for the Deaf W. Trenton, NJ	Eugene F. O'Connor, A.I.A.	$80,000.00
A451	Alterations Commissioner's Office, Health & Agriculture Bldg. Trenton, NJ	Matthew L. Rue A.I.A.	$37,000.00

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Architect/Engineer Selection New Project

Applications (DBC Form 48B) for the project described below were due in DBC no later than 5:00 P.M., January 13, 1984, submitted to the attention of Ron Wengerd, Secretary of the A/E Selection Board. Submissions received after this time and date will not be considered. If not currently prequalified by DBC, applicants must have submitted a completed DBC form 48A by the closing date of January 6, 1984.

DBC No. Project Title and Location
S159 Headquarters Master Plan
New Jersey State Police
West Trenton, NJ

DBC is seeking to engage the services of an architectural firm to provide information, plans, drawings, and statements necessary to forecast and locate facilities on undeveloped acreage at the referenced location. The plan shall include the following: (A) locations for proposed parking lots, lighting, drainage, range, warehouse, and new office space, including S.F. projections, cost estimates and justifications: (B) occupancy study for use-levels of all buildings, proposed and existing, including life safety and long range maintenance statements; and (c) proposals concerning ingress and egress, vehicle circulation, and traffic and pedestrian safety measures.

Only architectural firms with a DBC rating of at least $5,000,000 and relevant experience will be considered. Applicants must list all pertinent consultants on the 48B submittal. At least one firm of a joint venture must have a DBC rating of $5,000,000 or more.

(b)

DIVISION OF BUILDING AND CONSTRUCTION

Architect/Engineer Selection Board Meetings

In accordance with Chaper 231, Laws of 1975, known as the "Open Public Meetings Act", this office announces the Architect/ Engineer Selection Board meeting schedule for 1984. Each Wednesday at 9:00 A.M. except July 4,1984, the meetings will convene at the following location:

Conference Room No. 1 (8th Floor)
Taxation Building
50 Barrack Street
Trenton, N.J.

TREASURY-TAXATION

(c)

DIVISION OF TAXATION

Average Wholesale Price of Cigarettes Cigarette Surtax Rate

Public Notice

For the purpose of complying with the requirements of Chapter 40, P.L. 1982, Sec. 4 (N.J.S.A. 54:40A-8.2), John R. Baldwin, Director of the Division of Taxation, hereby gives notice that, based upon the best available current data, the average wholesale price of cigarettes in this State during the succeeding six months commencing January 1, 1984 is $0.4286 for each 10 cigarettes or fraction thereof.

Therefore, the cigarette surtax due for such six months, pursuant to Sec. 301 of P.L. 1948, c.65 (C.54:40A-8), as amended, shall remain at $0.03 for each 10 cigarettes or fraction thereof.

INDEX OF PROPOSED RULES

The *Index of Proposed Rules* contains rules which have been proposed in the New Jersey Register between January 17, 1983, and January 3, 1984, and which have not been adopted and filed by December 29, 1983. **The index does not contain rules proposed in this Register and listed in the Table of Rules in This Issue. These proposals will appear in the next Index of Proposed Rules.**

A proposed rule listed in this index may be adopted no later than one year from the date the proposal was originally published in the Register. Failure to timely adopt the proposed rule requires the proposing agency to re-submit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) as implemented by the Rules for Agency Rulemaking of the Office of Administrative Law (N.J.A.C. 1:30).

The *Index of Proposed Rules* appears in the second issue of each month, complementing the *Index of Adopted Rules* which appears in the first Register of each month. Together, these indices make available for a subscriber to the Code and Register all legally effective rules, and enable the subscriber to keep track of all State agency rulemaking activity from the initial proposal through final promulgation.

The proposed rules are listed below in order of their Code citation. Accompanying the Code citation for each proposal is a brief description of its contents, the date of its publication in the Register, and its Register citation.

The full text of the proposed rule will generally appear in the Register. If the full text of the proposed rule was not printed in the Register, it is available for a fee from:

Administrative Filings
CN 301
Trenton, New Jersey 08625

N.J.A.C. CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW–TITLE 1			
1:1-1.3	Reaching the merits	9-6-83	15 N.J.R. 1398(a)
1:6A-5.2	Special Education hearings: record keeping	9-6-83	15 N.J.R. 1402(a)
AGRICULTURE–TITLE 2			
2:5-3	Poultry embargo (with Emergency Adoption)	12-5-83	15 N.J.R. 2048(a)
2:5-4	Area quarantine for avian influenza (with Emergency Adoption)	12-19-83	15 N.J.R. 2176(a)
2:69-1.11	Commercial values for fertilizers and conditioners	5-2-83	15 N.J.R. 658(a)
2:76-1	Agriculture retention and development	12-19-83	15 N.J.R. 2086(a)
BANKING–TITLE 3			
3:1-13.1	Public hearing: insurance tie-in prohibition by lenders	8-1-83	15 N.J.R. 1207(a)
3:1-10	Readopt Restrictions on Real Property Transactions	1-3-84	16 N.J.R. 2(a)
3:6-2.1	Readopt Approved Depositaries for Security Funds Investments	12-5-83	15 N.J.R. 1974(a)
3:11-5	Bank investments and domestic operating subsidiaries	11-7-83	15 N.J.R. 1787(a)
3:11-8.1	Savings banks investment securities	12-19-83	15 N.J.R. 2087(a)
3:19-2.1	Repeal maximum interest rate on home repair contracts	11-7-83	15 N.J.R. 1788(a)
3:22-1	Repeal maximum finance rate on insurance premiums	10-17-83	15 N.J.R. 1707(a)
CIVIL SERVICE–TITLE 4			
4:1-7.6	Title reevaluation requests and appeals (State)	8-15-83	15 N.J.R. 1290(b)
4:1-14.6	Interim appointments	12-5-83	15 N.J.R. 1975(a)
4:1-18.9, 18.10	Flexitime and operation hours (State)	3-21-83	15 N.J.R. 373(a)
4:1-18.11	Alternative workweek programs (State)	3-21-83	15 N.J.R. 374(a)
4:2-14.1	Interim appointments	12-5-83	15 N.J.R. 1975(a)
4:3-8.2	Repeal county welfare board promotion rules	11-7-83	15 N.J.R. 1788(b)
4:3-14.2	Interim appointments	12-5-83	15 N.J.R. 1975(a)
COMMUNITY AFFAIRS–TITLE 5			
5:23-4.5A, 4.18, 4.21	UCC: Private onsite inspection and plan review agencies	1-3-84	16 N.J.R. 3(a)
5:23-4.26	Construction boards of appeal	12-19-83	15 N.J.R. 2088(a)
5:23-6.2, 6.3, 6.5	UCC: Solar facilities tax exemption	12-5-83	15 N.J.R. 1977(a)
5:30-10.1, 10.2	Local finance: municipal port authorities	8-15-83	15 N.J.R. 1304(a)
5:37-11.6	Municipal and county employees deferred compensation programs: annual audit	9-6-83	15 N.J.R. 1408(b)
5:80-2	Private investment in HFA-financed housing	8-1-83	15 N.J.R. 1208(a)
EDUCATION–TITLE 6			
6:2-1.1–1.20	Appeals to the State Board	12-5-83	15 N.J.R. 1977(b)
6:20-3.1	Determining tuition rates (public schools)	12-19-83	15 N.J.R. 2089(a)
6:28	Special Education rules	12-5-83	15 N.J.R. 1981(a)
6:28-11	Programs for preschool handicapped children	4-4-83	15 N.J.R. 556(a)
6:39-1.1–1.4	Statewide testing program	6-20-83	15 N.J.R. 979(b)

N.J.A.C. CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
ENVIRONMENTAL PROTECTION–TITLE 7			
7:7	Coastal Permit Program rules	12-19-83	15 N.J.R. 2090(a)
7:7A	Repeal	12-19-83	15 N.J.R. 2090(a)
7:7D	Repeal	12-19-83	15 N.J.R. 2090(a)
7:11-2.10–2.13	Sale of water from D/R Canal and Spruce Run/Round Valley	8-15-83	15 N.J.R. 1311(a)
7:12-1.3	Shellfish growing water condemnations	12-19-83	15 N.J.R. 2103(a)
7:13	Flood hazard area rules	12-19-83	15 N.J.R. 2104(a)
7:13-1.11(c)30	Delineated floodways for Delaware Bay tributaries	9-19-83	15 N.J.R. 1541(a)
7:13-1.11(d)	Floodway delineation in Roseland, Essex County	8-15-83	15 N.J.R. 1313(a)
7:13-1.11(d)	Floodway delineation along Third River in Clifton	9-6-83	15 N.J.R. 1412(a)
7:13-1.11(d)	Floodway delineation along Rockaway Creek, Hunterdon County	1-3-84	16 N.J.R. 5(a)
7:13-1.11(d)42	Delineated floodways for Green Brook and Bound Brook	9-19-83	15 N.J.R. 1540(a)
7:14-4.4	NJPDES: local control over dischargers	7-5-83	15 N.J.R. 1059(b)
7:14A-1.9, 10.1, 10.5, 13.1, 13.2, 13.5–13.8	NJPDES: local control over dischargers	7-5-83	15 N.J.R. 1059(b)
7:14A-4.4, 4.7, 6.1, 6.2, 6.15	Hazardous waste land disposal	12-5-83	15 N.J.R. 1997(a)
7:14A-14	NJPDES: oil and grease effluent limitations	8-15-83	15 N.J.R. 1313(b)
7:15	Water quality management planning and implementation process	5-16-83	15 N.J.R. 765(b)
7:20A-1.3, 2.2, 2.7–2.11, 2.19, 2.21, 2.22	Water diverson for agriculture and horticulture	12-19-83	15 N.J.R. 2122(a)
7:25-15.1	Relay of hard clams (with Emergency Adoption)	11-21-83	15 N.J.R. 1959(a)
7:26-1.1–1.4	Readopt certain solid and hazardous waste rules	12-5-83	15 N.J.R. 2017(a)
7:26-1.4, 10.6, 10.8, 11.3, 12.2	Hazardous waste land disposal	12-5-83	15 N.J.R. 1997(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow	9-6-83	15 N.J.R. 1417(a)
7:26-8.14	Delist leather tanning and TiO_2 wastestreams	11-7-83	15 N.J.R. 1816(a)
7:26-8.15(f)	Delist Indomethacin as hazardous waste	11-7-83	15 N.J.R. 1817(a)
7:26-15.5, 15.7	Recycling Grants and Loans	1-3-84	16 N.J.R. 6(a)
7:28-42	Radio frequency radiation	1-3-84	16 N.J.R. 7(a)
7:30-3.2, 4.2, 4.4	Pesticide Control Code: dealers and dealer businesses	12-5-83	15 N.J.R. 2017(b)
HEALTH–TITLE 8			
8:21-2.31–2.33	Repeal (see 8:21-13)	8-15-83	15 N.J.R. 1318(a)
8:21-13	Wholesale food establishments	8-15-83	15 N.J.R. 1318(a)
8:21A-2.45	Retention period for radioactive drug samples	11-7-83	15 N.J.R. 1818(a)
8:31A-7	Readopt SHARE Rate Review Guidelines	9-19-83	15 N.J.R. 1542(a)
8:31A-8.1	Hospital reporting: readopt medical discharge abstract rule	10-17-83	15 N.J.R. 1708(a)
8:71	Generic drug list changes (see 15 N.J.R. 1100(c))	2-7-83	15 N.J.R. 126(b)
8:71	Generic drug list additions (see 15 N.J.R. 691(b), 1100(a), 16 N.J.R. 141(b))	2-7-83	15 N.J.R. 127(a)
8:71	Additions to generic drug list (see 15 N.J.R. 846(a), 16 N.J.R. 142(a))	6-6-83	15 N.J.R. 846(a)
8:71	Generic drug list additions (see 16 N.J.R. 142(b))	11-7-83	15 N.J.R. 1819(a)
HIGHER EDUCATION–TITLE 9			
9:1	Colleges and universities: licensing and degree program approval	9-6-83	15 N.J.R. 1418(a)
9:2-3.8	Layoff notice at State Colleges	5-2-83	15 N.J.R. 663(a)
9:4-3.7, 8	County colleges contract rules	11-21-83	15 N.J.R. 1916(a)
9:4-5.7	Layoff notification at county colleges	7-5-83	15 N.J.R. 1070(b)
9:7-3.1	Tuition Aid Grants: 1984- 85 Award Table	1-3-84	16 N.J.R. 9(a)
9:12-1.11	Educational Opportuntiy Fund: Minimum academic progress	2-22-83	15 N.J.R. 207(a)
9:14-1.3, 1.4	Aid to independent colleges and universities	1-3-84	16 N.J.R. 10(a)
HUMAN SERVICES–TITLE 10			
10:6	Administrative hearings and reviews	10-17-83	15 N.J.R. 1725(a)
10:49-1.3, 1.4	Personal care services: Administration Manual, Home Health Services, Independent Clinic manuals	10-17-83	15 N.J.R. 1726(a)
10:49-1.4	Proposal withdrawal: Personal care services	3-21-83	15 N.J.R. 420(b)
10:52-1	Readopt with amendments: Manual for Hospital Services (Coverage)	12-19-83	15 N.J.R. 2125(a)
10:54-1	Readopt with amendments: Manual for Physicians (General Provisions)	12-19-83	15 N.J.R. 2129(a)
10:60-1.1–1.3, -2, 3.4	Person care services: Home Health Services Manual	10-17-83	15 N.J.R. 1726(a)
10:63-1.4	Long Term Care: services requiring consultations or referrals	9-19-83	15 N.J.R. 1543(a)
10:63-1.6	Long-term care: authorization process	11-21-83	15 N.J.R. 1917(a)
10:66-1.5, 1.6, 3.3	Personal care services: Independent Clinic Manual	10-17-83	15 N.J.R. 1726(a)

N.J.A.C. CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
10:66-1.6, 3.3	Proposal withdrawal: Personal care services	3-21-83	15 N.J.R. 420(b)
10:81-3.34	PAM: Temporary absence of children from home	12-19-83	15 N.J.R. 2134(a)
10:81-7.18	PAM: lost or stolen assistance checks	11-7-83	15 N.J.R. 1820(b)
10:82-4.10, 4.12	ASH: income from rentals	12-5-83	15 N.J.R. 2019(a)
10:85-3.1	GAM: Household size	2-22-83	15 N.J.R. 212(a)
10:85-3.1	GAM: determination of household size	10-3-83	15 N.J.R. 1629(a)
10:85-5.3	GAM: DRG rates for outpatient services	5-2-83	15 N.J.R. 666(a)
10:85-9	GAM: Readopt legally responsible relatives rules	12-5-83	15 N.J.R. 2019(b)
10:87	Readopt Food Stamp Program rules	12-19-83	15 N.J.R. 2134(b)
10:87-2.10, 2.19, 2.21, 3.2, 3.8, 4.2, 5.1, 5.4, 5.9, 6.22, 7.6, 7.8, 9.2, 9.3, 9.8–9.14	Food Stamp Program revisions	11-7-83	15 N.J.R. 1821(a)
10:87-12.5	Food stamp allotment proration	11-21-83	15 N.J.R. 1918(a)
10:90-4.8	AFDC: Recovery of overpayments and correction of underpayments	7-18-83	15 N.J.R. 1162(a)
10:97	Vending Facility Program for Blind	12-5-83	15 N.J.R. 2020(a)
10:100-1.23	SSI payment levels recodified as 10:100–App.A (with Emergency Adoption)	7-18-83	15 N.J.R. 1188(a)
10:100-3	Readopt Special Payments Handbook rules	12-5-83	15 N.J.R. 2025(a)
10:123-1	Repeal (see 10:5)	2-22-83	15 N.J.R. 208(a)
10:125	Repeal (see 10:5)	2-22-83	15 N.J.R. 208(a)
10:126	Repeal (see 10:5)	2-22-83	15 N.J.R. 208(a)
10:128	Residential Child Care rules	1-3-84	16 N.J.R. 10(b)
10:133	Aversive conditioning of autistic patients	9-6-83	15 N.J.R. 1432(a)
10:141	Charity rcing days for developmentally disabled	11-7-83	15 N.J.R. 1826(a)
INSURANCE–TITLE 11			
11:3-6.1–6.4	Automobile insurance identification cards	3-7-83	15 N.J.R. 315(a)
11:3-13	Options for collision and comprehensive coverages (with Emergency Adoption)	11-21-83	15 N.J.R. 1961(a)
11:3-14	Auto insurance: personal injury protection options	12-19-83	15 N.J.R. 2139(a)
11:3-15	Auto insurance policies: buyer's guide and written notice	12-19-83	15 N.J.R. 2142(a)
11:5-1.25	Correction: Sale of interstate properties	12-5-83	15 N.J.R. 2026(a)
11:10	Dental plan organizations	3-21-83	15 N.J.R. 423(a)
11:10-2	Employees' dental benefit plans: alternate coverage	8-15-83	15 N.J.R. 1350(a)
11:14	Auto body repair facilities	1-3-84	16 N.J.R. 25(a)
LABOR–TITLE 12			
12:17-5.1	Claim for partial unemployment benefits	9-6-83	15 N.J.R. 1435(b)
LAW AND PUBLIC SAFETY–TITLE 13			
13:2-23	Readopt ABC rules for licensee conduct	1-3-84	16 N.J.R. 29(a)
13:2-24.12	ABC: marketing and advertising	11-21-83	15 N.J.R. 1921(a)
13:2-27.2	ABC: sale of out-of-state deposit containers	1-3-84	16 N.J.R. 31(a)
13:19-1	Motor vehicle license suspensions: prehearing conferences	12-19-83	15 N.J.R. 2143(a)
13:19-12	Motor vehicle insurance surcharge	12-5-83	15 N.J.R. 2027(a)
13:20-2.3	Commercial motor vehicles: maximum width computation	9-19-83	15 N.J.R. 1559(a)
13:20-7.4	Motor vehicle inspection: repeal odd-even system (with Emergency Adoption)	8-1-83	15 N.J.R. 1261(a)
13:20-31	Motor Vehicles: readopt Alcohol Countermeasures rules	11-21-83	15 N.J.R. 1923(a)
13:20-33.1, 33.2, 33.50, 33.51	Licensed motor vehicle reinspection centers (with Emergency Adoption)	11-21-83	15 N.J.R. 1963(a)
13:21-7	Special driver permits; test for hearing impaired	11-7-83	15 N.J.R. 1831(a)
13:21-8.24	Driver license suspension for failure to notify of address change	12-5-83	15 N.J.R. 2029(a)
13:21-21	Used motor vehicles: temporary transit permits	8-1-83	15 N.J.R. 1233(a)
13:33-1.3, 1.4 1.29, 1.36	Ophthalmic dispensers and technicians	11-7-83	15 N.J.R. 1832(a)
13:35-2.4(k)	Chiropractic school accreditation	4-4-83	15 N.J.R. 503(a)
13:35-6.8	Prescribing, administering or dispensing laetrile	12-5-83	15 N.J.R. 2029(b)
13:35-6.10	Advertising by medical board licensees	1-3-84	16 N.J.R. 32(a)
13:37-2–6, 9, 10, 11	Board of Nursing: licensure by examination and endorsement; foreign nurses; nursing procedures	11-7-83	15 N.J.R. 1850(a)
13:40-5.1	Preparation of land surveys	11-7-83	15 N.J.R. 1834(a)
13:44-1.1, 1.2	Veterinary examiners: approval of schools; licensure examination	7-18-83	15 N.J.R. 1175(a)
13:45A-20	Resale of tickets of admission to places of entertainment	9-6-83	15 N.J.R. 1445(a)
13:45A-21	Sale of Kosher food	11-21-83	15 N.J.R. 1924(a)

N.J.A.C. CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
13:45B-4	Temporary help service firms	2-22-83	15 N.J.R. 233(a)
13:46-5.1	Boxer licensure and medical examinations	5-16-83	15 N.J.R. 786(a)
13:47A-12	Limited registration for securities broker-dealers and agents	12-19-83	15 N.J.R. 2146(a)
13:47B	Readopt General Weighing and Measuring Devices rules	11-21-83	15 N.J.R. 1925(a)
13:47C-1.1, 3.6	Industry standards for treated lumber	11-7-83	15 N.J.R. 1835(a)
13:49-1–8	Death Investigations rules: extension of comment period	10-3-83	15 N.J.R. 1672(a)
13:70-3.5, 3.6	Thoroughbred rules: racing associations	11-21-83	15 N.J.R. 1928(a)
13:70-6.53	Thoroughbred rules: New Jersey stallions	12-19-83	15 N.J.R. 2147(a)
13:71-6.25–6.30	Harness racing: association rules	11-21-83	15 N.J.R. 1928(b)
PUBLIC UTILITIES–TITLE 14			
14:3-7.3, 7.5	Customer accounts: deposits for service	8-15-83	15 N.J.R. 1355(a)
14:3-7.11A	Uniform budgeting plan for residential customers	8-1-83	15 N.J.R. 1235(a)
14:18-1.2, 3.9	CATV: credit for service outages	9-6-83	15 N.J.R. 1447(a)
ENERGY–TITLE 14A			
14A:4-1.3, 2.1, 2.2, 2.3	Solar systems: qualifications for property tax deduction	1-3-84	16 N.J.R. 34(a)
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N.J.A.C. CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)

The following rules were proposed in the New Jersey Register, but have not been timely adopted and therefore have expired pursuant to N.J.A.C. 1:30-4.2(c).

7:36-5.2	Green acres additional funding	12-20-82	14 N.J.R. 1436(a)
10:87-3.23	FSP: student eligibility	1-3-83	15 N.J.R. 12(a)
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