

NEW JERSEY



REGISTER

IN THIS ISSUE "INDEX OF PROPOSED RULES"

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The New Jersey Register supplements the New Jersey Administrative Code. To complete your research of the latest State Agency rule changes, see the Rule Adoptions in This Issue, the Rule Adoptions in the August 6 issue, and the Index of Adopted Rules beginning on Page 2180 of that issue.

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules of Practice "Hearings on the Papers" and Motor Vehicle Cases

Proposed Amendment: N.J.A.C. 1:2-3.4

Authorized By: Ronald I. Parker, Acting 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 September 19, 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 adoption of these rules becomes effective upon publication in the Register of a notice of their adoption.

This proposal is known as PRN 1984-453.

The agency proposal follows:

Summary

Under the proposed amendment, if an in-person hearing has been scheduled before the OAL in a surcharge case and

the licensee fails to either appear in person on the date scheduled or submit a certification form and any supporting documentation in lieu thereof within the time specified in the notice of hearing, the ALJ shall decide the case based upon the record before him. N.J.A.C. 1:2-3.4(c) is also being amended to correct a printing error.

Social Impact

The proposed amendment makes uniform the decision-making process for in-person hearings and on-the-papers hearings in those instances where a licensee abandons his or her hearing request by failing to appear at the hearing or respond to the OAL prior to the scheduled hearing date. The proposed amendment mirrors the provisions already set forth in N.J.A.C. 1:2-3.5(b)(2) for handling abandoned surcharge cases scheduled as hearings on the papers.

As the current surcharge hearing process is designed to ensure a speedy, orderly and efficient resolution of these cases, the proposed amendment will further this goal by eliminating the possibility of delay in decision-making through the uncooperativeness of the licensee. At the same time, if the licensee has a legitimate and justifiable reason for not appearing at the hearing or submitting a certification form and accompanying documentation in lieu of a personal appearance, he or she may file any exception to the rendering of a decision by the ALJ with the Director of the Division of Motor Vehicles pursuant to N.J.A.C. 1:1-16.4.

Economic Impact

The proposed amendment should result in a cost saving in the surcharge hearing process by ensuring that decisions are rendered as quickly as possible.

Time and expense will be saved by eliminating the necessity of any further communication with the licensee once he or she fails to appear or otherwise respond to the OAL as directed in the notice of hearing.

Full text of the Motor Vehicle Hearings on the Papers rules may be found at 16 N.J.R. 1712(a).

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

NEW JERSEY REGISTER

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PROPOSALS

CIVIL SERVICE

1:2-3.4 Notice of filing and of hearing; response to notice of in-person hearing

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

(c) In cases dealing with surcharges, the notice for a hearing on the papers [on] or an in-person hearing will be mailed to the licensee by OAL after receiving the case from the Division of Motor Vehicles. The notice for hearing shall constitute both the notice of filing and notice of hearing.

(d) In surcharge cases, the notice scheduling an in-person hearing shall permit the licensee to submit a certification or other written documents prior to the hearing in lieu of making a personal appearance at the hearing. **If the licensee does not appear at the in-person hearing and fails to forward the certification form and any accompanying documents within the time specified in the notice, the judge shall decide the case based upon the licensee's original hearing request plus any documents the OAL has received.**

CIVIL SERVICE

(a)

CIVIL SERVICE COMMISSION

Definitions

Words and Phrases Defined

Proposed Amendment: N.J.A.C. 4:1-2.1

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.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 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, New Jersey 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 1984-415.

The agency proposal follows:

Summary

N.J.A.C. 4:1-2.1, Words and phrases defined, has been reviewed and revised in accordance with the Department of Civil Service's ongoing project to update and clarify Title 4. Currently defined words that are proposed for deletion are words that are defined in the text of the rule or are in common usage. Conversely, state-of-the-art words that are used pri-

marily in personnel functions or those words that may carry a connotation that is different from common usage are proposed as amendments to N.J.A.C. 4:1-2.1. The proposed revisions and amendments allow for general applicability while maintaining accuracy, clarity and brevity. They are not written to stand alone or to be used out of context.

The following words are proposed for deletion from N.J.A.C. 4:1-2.1 since they are defined in the text of the rules:

- Assignment or reassignment;
- Employee Advisory Service;
- Open competitive and promotional lists;
- Permanent position;
- Sick leave;
- Temporary appointment;
- Transfer.

The following words are proposed for deletion from N.J.A.C. 4:1-2.1 as being in common usage or understood in the context of the rule:

- Allocation;
- Classification plan;
- Municipality;
- Occupational grouping;
- Organization unit;
- Performance rating;
- Petition;
- Public Hearing;
- Public Notice.

Definitions for the following words are proposed as amendments to N.J.A.C. 4:1-2.1 to help the user of Title 4 to clearly understand the rules and regulations of the Department of Civil Service:

- Certification;
- Disposition;
- Interim appointment;
- Interim relief;
- Probationary employee;
- Regular appointment date;
- State Service;
- Title.

“Disabled veteran” has not been added or deleted from the section but has been alphabetized.

Social Impact

The proposed amendments to N.J.A.C. 4:1-2.1 update the definitions used in Title 4. They clarify words that are peculiar to government service or personnel functions. The proposal eliminates words that are obsolete, redundant, in common usage or are defined in the text of Title 4. The proposal also adds words that may need defining for ease of use. This proposal should have a positive social impact since it will be an important aid to all users of the Civil Service rule book.

Economic Impact

The proposed amendment to N.J.A.C. 4:1-2.1 is an updating of definitions, carries no policy or procedural changes and has no fiscal implications. The proposal will, therefore, have no economic impact.

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

4:1-2.1 Words and phrases defined

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

CIVIL SERVICE

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["Allocation" means the assignment of a class to a division of the classified service or to the unclassified service.]

"Appointing authority" means a person or group of persons having power of appointment [to,] or removal [from offices, positions or employment].

"Appointment" means the offer and acceptance of [a position on either a permanent or temporary basis] **employment**.

"**Appointment date**" means the recorded date a person was employed.

["Assignment" or "reassignment" means the movement of an employee from one position to another in the same class in the same organization unit. An assignment is either permanent or temporary, as follows:

1. "Permanent," if made for an indeterminate period; or
2. "Temporary," if made for a period not exceeding six months.]

"Base salary" means the employee's rate of pay exclusive of any additional payments or allowances.

"Break-in-service" means a **resignation or removal between periods of employment**: [any interruption in continuous service other than absence on an approved leave].

"**Certification**" means an authorized, ranked list of eligibles to be considered for employment by an appointing authority.

"Class [or class] of positions" means a position or group of positions[,] sufficiently alike in duties, authority and responsibilities to require the same qualifications and having the same [class] title.

"Classification" means the assignment of an individual position to a class in the classification plan.

["Classification plan" means a schedule of class titles, arranged according to series of classes and occupational groupings or any other appropriate order, and a class-specification for each class, which defines and describes representative duties and responsibilities and sets forth the minimum requirements and qualifications essential to the performance of the work of the class, and such other information as may be necessary.]

"Classified service" means all offices and [positions] titles which are in the service of the State, municipality, county, school district or other agency [operating under] **subject to** the provisions of Title 11, Civil Service, New Jersey Statutes Annotated[, except those offices and positions which are included in the unclassified service by law or Civil Service Commission determination].

"Class title." [means a descriptive name that identifies a position or class of positions.] **See definition of "Title" in this section.**

"Commission" means the Civil Service Commission of the State of New Jersey.

"Competitive division" [(or "competitive class")] means a part of the classified service which includes [all positions] titles for which [it is practicable to determine] merit and fitness [of applicants] **are determined** by competitive [procedures] **examinations**.

"Continuous service" means employment without [interruption except for an absence on an approved leave] **break-in-service**.

"Days" means calendar days unless otherwise specified.

"Demotion [or reduction]" means a [lowering] **reduction** in [rank or] scale of compensation **or title**.

"Disabled veteran" means a veteran as defined in this section who also meets the following criteria:

1. A veteran with a record of disability incurred in line of duty; or

2. A veteran [as defined in this Section] who, before the announced closing date for filing applications for a test for a title in the competitive division or before appointment to a title in the noncompetitive or labor divisions, presents evidence that, under the United States Veterans' Administration qualifications, he or she is receiving or is entitled to receive compensation for service-connected disability of 10 percent or more arising out of military or naval service during any of the periods specified by Civil Service rule or law; or

3. The wife of a disabled veteran, the widow of a soldier, sailor or marine who died in service, or the mother of a soldier, sailor or marine who died in service, as qualified by N.J.S.A. 11:27-1 et seq.

"**Disposition**" means the written report of actions taken by the appointing authority regarding a certification.

"Division" means [a part of] the classified service [referred to in the Civil Service Law as] **as divided into** the competitive division, noncompetitive division, labor division, or exempt division.

"**Eligible**" means a person whose name appears on an eligible list.

"Eligible list" means a list of persons who are eligible for [appointment] **employment** or reemployment[,] [and includes]; **the list may be an open competitive [employment] list[s], a promotional [employment] list[s], a regular reemployment list or [and] a special reemployment list[s].**

"Emergency appointment." **See "Emergency appointments" at N.J.A.C. 4:1-14.7.** [means an appointment for the duration of an emergency:]

- [1. In the State service, for a period not to exceed 10 days;
2. In local government services, for a period not to exceed four months.]

"Employee" means a person holding a position in the classified service.]

["Employee Advisory Service" means a unit of State government employing trained counselors to arrange for the referral of State employees (or members of their households) for counseling or other professional services if the employees' job performances are less than satisfactory because of personal or job related problems.]

"Employment list." **See Eligible list in this section.** [means a list of names of persons who have passed an examination for a position assigned to a specific class. Employment lists are:]

- [1. "Open competitive", if resulting from an open competitive examination;
2. "Promotion", if resulting from a promotion examination.]

"Examination" means the process of determining the relative merit and fitness of applicants for [positions] **specific titles**.

"Exempt division" [(or "exempt class")] means a part of the classified service which includes [positions] titles that are so designated. [by statute. Appointees to such positions shall be subject to all the provisions of Civil Service Law except competitive examination procedures for those positions].

"Fine" means a disciplinary measure which requires the payment of money as restitution or the performance of service without pay.

"Immediate family" means father, mother, mother-in-law, father-in-law, grandmother, grandfather, grandchild, spouse, child, foster child, sister or brother of the employee. It shall also include relatives of the employee residing in the employee's household.

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“Interim appointment” means any appointment to a specific position or title which is held by a permanent employee who is on an approved leave of absence.

“Interim relief” means a temporary stay, waiver or modification of an action granted at the discretion of the Civil Service Commission or its President following the institution of a timely appeal.

“Jurisdiction” means any county, municipality, school district or other autonomous political subdivision.

“Labor division” [(or “labor class”)] means a part of the classified service which includes [positions] titles involving mainly manual labor[ing work].

“Layoff” means the separation of a permanent employee from [his position] employment for reasons other than delinquency or misconduct [on his part].

“Local [government] service” means [the] Civil Service offices and positions in [the civil service of] any county, municipality, school district, authority or other [public corporation] autonomous political subdivision operating under the provisions of the Civil Service Law.

“Municipality” means a city, town, township, village, borough or other municipal corporation within the State.]

“Noncompetitive division” [(or “noncompetitive class”)] means a part of the classified service which includes [positions] titles for which it is not practicable to secure [a sufficient number of] eligibles by competitive examination[s] because of the character of the work, the relatively low rate of pay or the place or conditions of employment and for which it is more practicable to determine merit and fitness of applicants by noncompetitive examinations].

“Occupational groupings” means all groupings of classes within the same broad occupational category.]

“Open competitive examination” means [an examination] a test which is open to members of the public who meet [and comply with] the prescribed requirements for admission[, to determine their relative merit and fitness for employment].

“Organization unit” means all or any part of the State government or any local government recognized by the commissioner as a unit for purposes of administration.]

“Part-time employee” means an employee whose regular hours of duty are less than the regular and normal workweek for that class or agency.

“Performance rating” (or “Service rating”) means an appraisal or evaluation of an employee’s work performance. Whenever the terms efficiency rating, performance evaluation or merit rating are used, such terms shall be deemed to mean performance rating.]

“Permanent employee” means an employee who has acquired [Civil Service] permanent status [in his position after the satisfactory completion of a working test period].

“Permanent position”. See definition of “Position” in this Section.]

“Permanent status” means the attainment of tenure and rights resulting from regular appointment and successful completion of the working test period.

“Petition” means an appeal in writing for the exercise of authority in the redress of some wrong or the grant of some favor, privilege or license.]

“Position” means [an] specific [office or employment in the classified service, the prescribed] duties and responsibilities [of which require] requiring the full or part-time employment of [a] one person. [A position is either permanent or temporary, as follows:].

1. Permanent:

i. State service - if it is required without interruption for a

period of more than six months or for recurrent periods aggregating more than six months in any 12-month period; or

ii. Local service - if it is required without interruption for a period of more than four months or for recurrent periods aggregating more than four months in any 12-month period;

2. Temporary:

i. State service - if it is required for a period of not more than six months or for recurrent periods aggregating not more than six months in any 12-month period; or

ii. Local service - if it is required for a period of not more than four months or for recurrent periods aggregating not more than four months in any 12-month period.]

“Probationary employee” means an employee who is serving his or her working test period.

“Probationary period”. See definition of working test period in this section.

“Promotion” means an advancement in [rank or] scale of compensation or title.

“Promotional examination” means [an examination] a test open to permanent employees who meet the prescribed requirements for admission. [of a particular class or classes to determine their relative merit and fitness for positions in a higher class].

“Provisional appointment” (PA) means [the appointment to a permanent position] employment pending the [regular] appointment of [an eligible] a person from [a special reemployment, regular reemployment or employment] an eligible list.

“Public hearing” means an opportunity given, after public notice of at least five business days, for a citizen or party in interest to appear and be heard on the matter involved.]

“Public notice” means publication by posting in a prominent place in or near the offices of the Commission and accessible to the public during business hours or by advertising in any newspaper or general circulation in the State or in any section thereof.]

“Reallocation” means the change of a [class] title from one division to another within the classified service, [or to] within the unclassified service or between [from] the unclassified [service to a division of the] and classified services.

“Reclassification” means the change of an individual position from one [class] title to a different title [class in the same division of the classified service].

“Regular appointment” (RA) means the [appointment] employment of an eligible to [occupy] fill a [permanent position subject to a] position leading to permanent status; this appointment is conditioned upon the employee’s successful completion of the working test period.

“Regular appointment date” means the recorded date an employee receives a regular appointment and, except as otherwise provided, begins work.

“Regular reemployment list” means a list of names of persons who had been permanent employees and who resigned in good standing and are entitled to be certified for reemployment.

“Removal” means [separation] termination of a permanent employee from employment for cause.

“Salary range” means a [division of the salary schedule] scale of compensation within established minimum and maximum base salaries [to which classes of positions are assigned, each range consisting of a series of steps with a the minimum and maximum rate].

“[Series of classes] Title series” means [all classes] titles involving the same kind of work [but varying as] and ranked according to level of difficulty and responsibility.

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["Sick leave" means the absence of an employee because of illness, exposure to contagious disease, attendance upon a member of his immediate family who is seriously ill and requires the care or attendance of such employee, or death in his immediate family.]

"Special reemployment list" means a list of names of persons who had been permanent employees but were laid off for reasons [of economy or otherwise and not because of any] **other than** misconduct or delinquency [on their part; or whose office or position has been abolished and who are entitled to be certified for reemployment. These lists shall take precedence over promotion lists for the same organization unit, regular reemployment lists and open competitive employment lists].

"State service" means **Civil Service offices and titles under the employment of the State of New Jersey.**

"Suspension" means temporary separation from employment for cause[, with loss of pay, for a period which cannot exceed six months].

["Temporary appointment" means employment during a period of emergency or in a temporary position.]

"Title" means **a descriptive name that identifies a position or class of positions.**

["Transfer" means the change of an employee from one position to another the same class in another organization unit. Transfers are:

1. Permanent, if made for an indeterminate period; or
2. Temporary, if made for a period not exceeding six months.]

"Unclassified service" means offices and [positions] **titles** not subject to the provisions of the Civil Service Law or Commission rules. [Lists of all unclassified titles shall be maintained for the State and local governments respectively and shall include all offices and positions:]

1. Enumerated in N.J.A.C. 11:4-4 and 11:22-2, or placed in the unclassified service by any other statute; or
2. For which a statute prescribes a fixed term, or provides that the appointee shall serve at the pleasure of the appointing authority; or
3. Which the Commission may so determine to be unclassified pursuant to N.J.S.A. 11:7-11 to 11:7-13 and 11:22-52. The lists shall include the citation authorizing the unclassified status of the office or position.]

"Veteran" means:

(a) **A** [a] person who, before the announced closing date for filing applications for a test for a [position] **title** in the competitive division or before appointment to a [position] **title** in the noncompetitive or labor divisions, presents evidence that he **or she** was:

1. A soldier, sailor, marine, airman, nurse or army field clerk who served in the active United States military or naval service and has been discharged or released therefrom under conditions other than dishonorable, in the several wars, uprisings, insurrections or expeditions enumerated in N.J.S.A. 11:27-1, including the most recent as follows:
 - i. The Mexican punitive expedition between March 14, 1916 and February 7, 1917;
 - ii. The Mexican border patrol, having actually participated in engagements against Mexicans between April 12, 1911 and June 16, 1919;
 - iii. World War I between April 6, 1917 and November 11, 1918;
 - iv. World War II, after September 16, 1940 and ending September 2, 1945, conditioned as follows:
 - (1) Such person must have served at least 90 days of active

service beginning on or before the terminal dates of World War II or the Korean Conflict respectively;

(2) Such minimum 90 day period shall not include any period of assignment for a course of education or training under the Army Specialized Training Program or the Navy College Training Program which was a continuation of his **or her** civilian course, nor shall it include any time spent as a cadet or midshipman at one of the service academies;

(3) Any such person receiving a service incurred injury or disability shall be classed as a veteran whether or not he **or she** has completed the 90 day service.

v. Korean Conflict, after June 23, 1950 and ending July 27, 1953, conditioned as provided in paragraph 4 of this definition;

vi. Vietnam Conflict, [at least 90 days active service] [commencing] after December 31, 1960 **who shall have served at least 90 days active service** [and] **commencing** on or before [the date of termination as proclaimed by the Governor] **August 1, 1974** and conditioned as follows:

(1) Such minimum 90-day period shall not include any period of assignment for a course of education or training under the Army Specialized Training Program or the Navy College Training Program which was a continuation of his **or her** civilian course, nor shall it include any time spent as a cadet or midshipman at one of the service academies;

(2) Any such person receiving a service-incurred injury or disability shall be classed as a veteran whether or not he **or she** has completed the 90 day service; or

2. An honorably discharged soldier, sailor, marine or nurse who served in any army or navy of the United States allies in World War I between July 14, 1914 and November 11, 1918, or World War II between September 1, 1939 and September 2, 1945, and who:

- i. Was inducted into such military service through voluntary enlistment; and
- ii. Was a United States citizen at the time of enlistment; and
- iii. Did not, during or by reason of such service renounce or lose his **or her** United States citizenship.

["Veteran" shall also mean t] (b) The widow of a veteran, as herein defined, until she remarries.

(c) **A disabled veteran. See "Disabled veteran" in this section.**

["Veteran with a record of disability incurred in line of duty" or "Disabled veteran" means:]

[1. A veteran as defined in this Section who, before the announced closing date for filing applications for a test for a position in the competitive division or before appointment to a position in the noncompetitive or labor divisions, presents evidence that, under the United States Veterans' Administrative qualifications, he is receiving or is entitle to receive compensation for service-connected disability of 10 percent or more arising out of military or naval service during any of the periods specified by Civil Service rule or law; or

2. As qualified by N.J.S.A. 11:27-1 et seq., the wife of a disabled veteran, the widow of a soldier, sailor or marine who died in service, or the mother of a soldier, sailor or marine who died in service.]

"Working test period" [or "Probationary period"] means a part of the testing process [which consists of a trial working period] after regular appointment, during which time the work performance and conduct of the appointee is evaluated to determine if [he] **the employee** shall merit permanent status.

- [1. See also N.J.A.C. 4:2-2.1, 4:3-2.1 and 4:3-2.2.]

PROPOSALS

COMMUNITY AFFAIRS

(a)

CIVIL SERVICE COMMISSION

Provisional and Temporary Appointments Emergency Appointments

Proposed New Rule: N.J.A.C. 4:1-14.7

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, 11:11-2, 11:22-14, 11:22-15.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 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, New Jersey 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 1984-450.

The agency proposal follows:

Summary

Proposed N.J.A.C. 4:1-14.7 is a recodification and incorporation of the definition of "emergency appointment" which is currently found in N.J.A.C. 4:1-2.1.

During the review of N.J.A.C. 4:1-2.1 it was determined that the current definition of emergency appointment is actually regulatory rather than definitive and more properly belongs in the body of Civil Service rules, specifically in Subchapter 14, Provisional and Temporary Appointments. Proposed subsection (b), which pertains to local service, reflects current and longstanding practice as currently codified at 4:1-14.3, 14.4 and 14.5. Additionally, in order to include this new rule in Subchapter 14, it is proposed that the heading be amended to include "emergency appointments."

Social Impact

This proposal will have no social impact since it is merely a recodification of an existing rule and reflects longstanding practice.

Economic Impact

This proposal will have no economic impact since it is merely a recodification of an existing rule, reflects longstanding practice and has no fiscal implications.

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

SUBCHAPTER 14. PROVISIONAL, [AND] TEMPORARY AND EMERGENCY APPOINTMENTS

4:1-14.7 Emergency appointments

(a) In State service, an appointing authority may make an emergency appointment in order to prevent an interruption in State business or serious inconvenience to the public. An emergency appointment may not exceed 10 working days.

(b) In local service, an emergency appointment shall be subject to the provisions applicable to temporary appointments under N.J.A.C. 4:1-14.3, 14.4 and 14.5.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Exemptions from Taxation

Proposed Readoption: N.J.A.C. 5:22 Proposed Amendments: N.J.A.C. 5:22-2.1 and 2.2

Authorized By: John P. Renna, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 54:4-3.79 and 3.123.

Interested persons may submit, in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

At the close of the period for comments, the Department of Community Affairs may adopt this proposal, with minor changes not in violation of the rulemaking procedure at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of adoption shall be published in the Register. The readoption of these rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their readoption.

This proposal is known as PRN 1984-452.

The agency proposal follows:

Summary

The Department of Community Affairs proposes to re-adopt the regulations which it has adopted to facilitate the implementation by municipalities of P.L. 1975, c.104, which

COMMUNITY AFFAIRS

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allows tax exemptions and abatements for improvements to one- and two-family houses, and P.L. 1979, c.233, which allows tax exemptions and abatements for improvements to multiple dwellings and for the conversion of non-residential buildings to multiple dwellings. Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on January 1, 1985.

The tax exemption and abatement statutes are available for adoption by any municipality which has one or more neighborhoods or areas which are determined, in accordance with N.J.A.C. 5:22-1.3 (for one- and two-family houses) or 5:22-2.2 (for multiple dwellings), to be in need of rehabilitation. Under P.L. 1974, c.104, the county planning board must make this determination, but P.L. 1979, c.233 contains no such requirement. To date, 119 municipalities have been determined by their county planning boards to have neighborhoods in need of rehabilitation and therefore to be qualified to adopt an ordinance implementing P.L. 1975, c.104.

Aside from promulgating standards and procedures by regulation, the Department of Community Affairs' role in the implementation of these statutes is limited to providing information to municipal officials and other interested persons, for which purpose the Department has available a procedural guide which may be obtained by anyone free of charge by writing to the Administrative Practice Officer at the address given above, and, in the case of P.L. 1975, c.104, of providing municipalities with informational flyers which are required to be distributed with tax bills the first year after an ordinance goes into effect. The Division of Taxation, in its role as the State agency having supervisory authority over municipal tax assessors, has jointly promulgated the regulations proposed for re adoption and amendment. The Division of Taxation has responsibility for the design and distribution of the application forms which must be used by property owners to apply for tax exemptions and abatements and for the forms required to be used by tax assessors for determining eligibility.

Subchapter 1 contains rules applicable to one and two-unit residences as follows:

- 5:22-1.1 defines words and terms;
- 5:22-1.2 outlines how a municipality can appeal a denial by the county planning board of qualified status pursuant to the Act;
- 5:22-1.3 outlines the characteristics of a neighborhood in need of rehabilitation;
- 5:22-1.4 contains supplemental procedural rules for tax assessors;
- 5:22-1.5 specifies the need for a construction permit or certificate of occupancy before an exemption is allowed.

Subchapter 2 contains rules applicable to multiple dwellings as follows:

- 5:22-2.1 defines words and terms;
- 5:22-2.2 outlines the characteristics of a neighborhood in need of rehabilitation;
- 5:22-2.3 contains standards for determining if a building is in need of rehabilitation;
- 5:22-2.4 contains standards on how a building can be converted into a multiple dwelling;
- 5:22-2.5 provides for relocation assistance;
- 5:22-2.6 contains supplemental procedural rules for tax assessors.

The definition of "multiple dwelling" in N.J.A.C. 5:22-2.1 is proposed to be amended because the definition of that term in the Hotel and Multiple Dwelling Law, which the definition in N.J.S.A. 54:4-3.122h. incorporates by reference, has been

amended by legislation. The requirement in N.J.A.C. 5:22-2.2(a)6. that an area designated as "in need of rehabilitation" not have more than 15 percent of the privately-owned land therein under common ownership is proposed for repeal because the previous two paragraphs, which require that the delineated area bear a reasonable relationship to existing neighborhoods or zones and that the boundary not unreasonably include or exclude any particular property, appear to be sufficient safeguards against abuse and favoritism.

Social Impact

Failure to re adopt N.J.A.C. 5:22 would leave municipalities which have adopted ordinances under P.L. 1975, c.104 and/or P.L. 1979, c.233, and municipalities which might wish to do so, without the guidelines and standards which the Legislature considered to be necessary for the proper implementation of those statutes. Municipalities would hesitate to act without this guidance, with consequent confusion to property owners and officials alike.

Economic Impact

Without procedures for implementation and standards for evaluating applications, tax assessors might deny applications for which property owners might otherwise qualify, with resulting expense to property owners for lost exemptions and abatements and to both owners and municipalities for appeal costs.

Full text of the proposed amendments to the re adoption follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

Full text of the rules to be re adopted and to be repealed may be found in the New Jersey Administrative Code at N.J.A.C. 5:22.

5:22-2.1 Definitions

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

.....
 "Multiple Dwelling" means any building or structure of one or more stories, and any land appurtenant thereto, and any portion thereof, in which three or more units of dwelling space are occupied, or intended to be occupied, by three or more persons who live independently of each other. This definition shall not include hotels, motels, motor hotels, guesthouses, properties subject to the Rooming and Boarding House Act of 1979, or [dwelling units of any mutual housing corporation constructed under the Lanham Act (National Defense Housing) on or before June 1, 1941] **any building section containing not more than two dwelling units held under a condominium or cooperative form of ownership, or by a mutual housing corporation, where all the dwelling units in the section are occupied by their owners, if a condominium, or by shareholders in the cooperative or mutual housing corporation, and where such building section has at least two exterior walls unattached to any adjoining building section and is attached to any adjoining building sections exclusively by fire walls having a two-hour fire rating and/or by fire separation walls having a one and one-half hour fire rating, or any building of three stories or less, owned and controlled by a nonprofit corporation organized under any law of this State for the primary purpose to provide for its shareholders or members housing in a retirement community, as defined in the "Retirement Community Full Disclosure Act" (N.J.S.A.**

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45:22A-1 et seq.). "Multiple dwelling" also means and includes any group of ten or more buildings on a single parcel of land or on continuous parcels under common ownership, in each of which two units of dwelling space are occupied or intended to be occupied by two persons or households living independently of each other, and any land appurtenant thereto, and any portion thereof.

5:22-2.2 Areas in need of rehabilitation

(a) Standards for determining if an area is in need of rehabilitation are as follows:

1.-5. (No change.)

[6. No area shall be so delineated that more than 15 percent of the privately-owned land contained therein consists either of a single property or of two or more contiguous properties under common ownership or control.]

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Flood Hazard Area Control

Proposed Amendment: N.J.A.C. 7:13-1.4, 4.7, 5.2, 5.4

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:16A-50 et seq., N.J.S.A. 58:10A-1 et seq. and N.J.S.A. 13:1D-1 et seq.
DEP Docket No. 052-84-07.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

William Whipple, Administrator
Water Supply Administration
Division of Water Resources
CN 029
Trenton, New Jersey 08625

The Department of Environmental Protection 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 1984-461.

The agency proposal follows:

Summary

During the first months of experience with implementation of the new flood hazard area regulations (adopted May 21, 1984 at 16 N.J.R. 1201(a)), the Department has discovered several points which require amendment.

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The first proposed amendment allows the Department to consider variation from the net fill restrictions in N.J.A.C. 7:13-4.7(d) and (e) for Federal, State, county and municipal highways and roads. This will allow such highways and roads to use, under certain conditions, amounts of fill in excess of 20 percent maximum in N.J.A.C. 7:13-4.7(d) and in excess of the zero net-fill maximum for the Central Passaic River Basin in N.J.A.C. 7:13-4.7(e).

N.J.A.C. 7:13-4.7(d) and (e) are also proposed to be amended to clarify that the 20 percent or zero net-fill quantities are to be computed from areas within the flood fringe only, excluding the floodway.

The Department proposes to further amend N.J.A.C. 7:13-4.7 (d) and (e) to provide that the 20 percent or zero net-fill quantities are to be calculated from the natural ground level or the existing ground level, whichever is lower. This insures that, in those rare cases where there has been prior excavation such as to lower the surface below the natural ground level, all fill in such areas will be included in the net-fill calculation.

A new paragraph is proposed to be added to N.J.A.C. 7:13-4.7(d) to make clear that, for projects where fill has been placed pursuant to a permit granted by the Department under the new rules, subdivision of the property will not have the effect of increasing the total amount of fill allowed to be placed in the flood fringe.

A new paragraph is proposed to be added to N.J.A.C. 7:13-4.7(d) and (e) to exclude approved flood control projects from net-fill restrictions.

Finally, the Department proposes to amend N.J.A.C. 7:13-1.4(c), the "grandfather" provision. As adopted, this rule set January 15, 1984 as the date after which the new rules would apply. The result of applying this cut-off date has been to impose additional costs upon certain applicants who filed applications in reliance upon the standards in the old rules, apparently not realizing that the new rules would apply to their projects. The Department believes that some relaxation of the strict standards in the new rules may be acceptable for applications completed before the effective date of the rules. Therefore, this amendment to N.J.A.C. 7:13-1.4(c) establishes standards and procedures to govern the Department's consideration of applications completed between January 15 and May 21, 1984, the effective date of the flood hazard area regulations.

Social Impact

With two exceptions, the proposed amendments enhance the ability of the Department to effectively implement New Jersey's flood control program. Hence, New Jersey's citizens will be more adequately protected from the future ravages of flooding.

As concerns the amendment to N.J.A.C. 7:13-4.7(d) and (e) regarding highways and roads, some adverse flood control impact is foreseeable. However, the public's interest in comprehensive flood control must be balanced against the public's interest in having efficient and adequate transportation routes. This proposal fashions such a balance by allowing variation from the net-fill restrictions in the rules, only after thorough consideration of alternatives and mitigating measures to limit the impact of variation.

Minor impact will also result from the modification of the "grandfather" provision in N.J.A.C. 7:13-1.4(c). Certain projects proposed in applications filed between January 15 and May 21, 1984 may involve fill quantities in excess of the amounts permitted under the new rules.

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Economic Impact

The highway variance provision will result in substantial savings in the cost of highway construction, in situations where construction occurs in flood plains.

The amendment to the "grandfather" rule in N.J.A.C. 7:13-1.4(c) will result in economic benefit for those applicants who would otherwise be unable to develop their properties as they have proposed.

The remaining amendments serve to preclude interpretations of the net fill restrictions which might allow greater amounts of fill to be used than envisioned by the Department in the adoption of the rules on May 21, 1984.

Environmental Impact

The highway variance amendment and the "grandfather" rule amendment will result in greater amounts of fill being placed in affected flood plains than would occur under the present rules. Such fill will displace area which would otherwise be available to handle flood waters. Though the actual amounts of fill potentially involved are small, in relationship to the amounts of fill which will be legally placed in the floodplain on a Statewide basis, they will contribute to the magnitude of future flooding.

Full text of the proposal follows (additions shown in bold-face **thus**; deletions shown in brackets [thus]).

7:13-1.4 Applicability

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

(c) These rules will be effective upon promulgation, except that the following projects will be processed in accordance with prior existing procedures and standards:

1.-2. (No change.)

(d) **Applications submitted and accepted as complete between January 15, 1984 and May 21, 1984 may be acted upon or reconsidered in accordance with the following criteria, even though they may have been withdrawn by the applicant or denied in accordance with these regulations:**

1. **If the application fails to comply with the regulations in effect prior to May 21, 1984 without plan modification, it will be denied.**

2. **If the application meets all provisions of the rules in this subchapter, it will be approved.**

3. **If the application can be adjusted with minor modification to meet all provisions of the rules in this subchapter, it will be so modified.**

4. **If the application requires major modification in order to meet all provisions of the rules in this subchapter, the Department will negotiate an adjustment with the applicant, designed to meet the provisions of the rules in this subchapter, as far as the Department determines to be practicable, with consideration given to the time and expense which has been expended by the applicant in preparing plans to meet the requirements of the previous regulations.**

5. **Stream encroachment permits granted under provisions of this paragraph will not be granted an extension of time, unless hardship can be shown.**

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

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

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

7:13-4.7 Regulated uses

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

(d) Requirements for fill under regulated uses:

1. [Within the flood fringe area of delineated streams or within the 100-year flood plain but outside of encroachment

lines of non-delineated streams, the volume of net fill and structures to be placed on an applicant's site shall be limited to occupying 20 percent of the total volume between the natural or existing ground surface, which ever is lower, within that area of the applicant's property and the level of the flood hazard design elevation along delineated streams or the 100-year storm elevation along non-delineated streams.] **The volume of net fill and structures to be placed on an applicant's property shall be limited to occupying 20 percent of the total volume of net-fill which:**

i. **Is from within the flood fringe area of delineated streams or within the 100-year flood plain, but outside of encroachment lines, of non-delineated streams; and**

ii. **Which is also from between the natural or existing ground surface, which ever is lower, and the level of the flood hazard design elevation along delineated streams or the 100-year storm elevation along non-delineated streams.**

2.-5. (No change.)

6. **When a stream encroachment permit has been granted allowing the placement of fill, under the provisions of this subchapter, any subsequent subdivision of the property shall not have the effect of increasing the total amount of fill allowed to be placed upon the property covered by the previous permit. Additional fill may be placed on the newly divided property only to the extent that the total amount of fill allowed under these rules for the original defined property has not been exceeded.**

7. **A variance from the requirements of this subsection may be granted by the Department, on a case-by-case basis, for Federal, State, county or municipal highway or road construction projects, pursuant to N.J.A.C. 7:13-5.4(b).**

8. **The requirements of this subsection are not applicable to flood control projects approved as flood control projects by the Department.**

9. **Where dikes, levees, floodwalls or other structures, not approved as flood control projects, impede the entry of flood waters into an enclosed space, the enclosed space shall be considered as solid fill for the purposes of this subsection.**

(e) Additional requirements for fill in the Central Passaic Basin:

1.-2. (No change.)

3. **A variance from the requirements of this subsection may be granted by the Department, on a case-by-case basis, for Federal, State, county or municipal highway or road construction projects, pursuant to N.J.A.C. 7:13-5.4(b).**

4. **The requirements of this subsection are not applicable to flood control projects approved as flood control projects by the Department.**

5. **Where dikes, levees, floodwalls or other structures, not approved as flood control projects, impede the entry of flood waters into an enclosed space, the enclosed space shall be considered as solid fill for the purposes of this subsection.**

(f)-(k) (No change.)

7:13-5.2 Project of Special Concern, defined

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

(e) **Projects for construction of Federal, State, county or municipal highways or roads, where a variance is requested under N.J.A.C. 7:13-4.7(d)7 or (e)3, shall be considered projects of Special Concern.**

7:13-5.4 Permits for Projects of Special Concern

(a) (No change.)

(b) **Variations requested for Federal, State, county or municipal highway or road projects under N.J.A.C. 7:13-4.7(d)7**

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or (e)3 may be granted by the Department upon its making the following findings:

1. The applicant has complied with the notice requirements of N.J.A.C. 7:13-2.2 or 7:13-5.3(b), as appropriate; and
2. A public meeting has been held by the applicant at which the interested public was informed of the scope and reasons(s) for the variance; and
3. Compliance with the net-fill requirements in N.J.A.C. 7:13-4.7(d) and (e) is impractical or will be unreasonably expensive, as determined by the Department; and
4. The applicant has shown that no reasonable alternative exists for lessening the degree of noncompliance with N.J.A.C. 7:13-4.7(d) and (e).
5. In the case of municipal road or street projects, the project must be associated with the through-street or through-road, rather than a purely local improvement.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

**Fish and Game Council
1984-85 Game Code**

Proposed Amendment: N.J.A.C. 7:25-5.29

Authorized By: Fish and Game Council, Anthony Di-Giovanni, Chairman.
 Authority: N.J.S.A. 13:1B-30 et seq. and N.J.S.A. 23:1-1 et seq.
 DEP Docket No. 053-84-07.

A public hearing concerning this proposal will be held on September 11, 1984 at 2:00 P.M. at:
 Division of Fish, Game and Wildlife
 363 Pennington Avenue
 Trenton, N.J.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:
 Frederick A. Carlson, Acting Chief
 Bureau of Wildlife Management
 Division of Fish, Game and Wildlife
 Department of Environmental Protection
 CN 400
 Trenton, New Jersey 08625

The Fish and Game Council 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 1984-458.

The agency proposal follows:

Summary

The proposed amendment to the 1984-85 Game Code will provide permit quotas for the hunting of deer in zones 31, 34

and 44 during the shotgun either-sex deer season. This proposal will provide permit quotas of 90 for zone 31, 117 for zone 34, and 42 for zone 44 with an anticipated harvest of 9, 48 and 10 deer respectively. The total number of permits available on a Statewide basis will be increased from 24,168 to 24,417.

Social Impact

The modifications to the hunting permit quotas for the three zones will provide the Division a means to more effectively meet its goal of maintaining a healthy and viable deer population at a level compatible with other land uses, particularly agricultural uses, while providing recreational opportunity for New Jersey's citizens. Both agriculturists and sportsmen in zones 31, 34 and 44 will benefit from this proposed amendment.

Economic Impact

The Department cannot foresee any specific economic impact, beneficial or detrimental, arising from the proposed amendment other than helping to minimize the negative impact of deer on valuable agricultural crops.

Environmental Impact

The allocation of deer permits for the three zones will provide for the proper management of the associated deer population and protection of deer habitat.

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

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

(a)-(j) (No change.)

(k) Deer management zone map (on file at the Office of Administrative Law).

**1984 SHOTGUN DEER SEASON PERMIT QUOTAS
EITHER SEX**

Deer Mgt. Zone No.	Anticipated Deer Harvest	Permit Quota	Portions of Counties Involved
	1984	1984	
1	149	931	Sussex
2†	258	860	Sussex
3	38	380	Sussex, Passaic, Bergen
4	111	585	Sussex, Warren
5†	1025	2770	Sussex, Warren
6†	201	1150	Sussex, Morris, Passaic, Essex
7†	365	986	Warren, Hunterdon
8†	1076	2624	Warren, Hunterdon, Morris, Somerset
9†	304	950	Morris, Somerset
10	608	1737	Warren, Hunterdon
11	348	1122	Hunterdon
12†	676	1502	Mercer, Hunterdon, Somerset
13‡	197	657	Morris, Somerset
14‡	461	1537	Mercer, Somerset, Middlesex, Burlington
15	107	713	Mercer, Monmouth, Middlesex
16†	63	630	Ocean, Monmouth
17	118	407	Ocean, Monmouth, Burlington
18	38	292	Ocean
19	31	172	Camden, Burlington
20	33	275	Burlington
21	17	131	Burlington, Ocean
22	15	136	Burlington, Ocean

† indicates two day zones (December 12 and 13, 1984)

‡ indicates three day zones (December 12, 13 and 14, 1984) with provision for second deer tag.

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Deer Mgt. Zone No.	Anticipated Deer Harvest	Permit Quota	Portions of Counties Involved
	1984	1984	
23	15	125	Burlington, Camden, Atlantic
24	9	64	Burlington, Ocean
25	27	142	Gloucester, Camden, Atlantic, Salem
26	32	128	Atlantic
27	74	296	Salem, Cumberland
28	21	117	Salem, Cumberland, Gloucester
29	202	594	Salem, Cumberland
30	18	72	Cumberland
31	[0] 9	[0] 90	Cumberland
32	0	0	Cumberland
33	30	167	Cape May, Atlantic
34	[0] 48	[0] 117	Cape May, Cumberland
35	53	212	Gloucester, Salem
41†	541	751	Mercer, Hunterdon
42	10	67	Atlantic
43	0	0	Cumberland
44	[0] 10	[0] 42	Cumberland
45	0	0	Cumberland, Atlantic, Cape May
46	21	75	Atlantic
47	12	48	Atlantic, Cumberland, Gloucester
48	35	218	Burlington
49	0	0	Burlington, Camden, Gloucester
50†	57	285	Middlesex, Monmouth
51†	52	260	Monmouth, Ocean
Total	[7,448] 7,515	[24,168] 24,417	

† indicates three day zones (December 12, 13 and 14, 1984) with provision for second deer tag.

(l)-(n) (No change.)

HEALTH

(a)

THE COMMISSIONER

**Certificate of Need: Cardiac Facilities
Cardiac Surgical Centers**

**Proposed Amendment: N.J.A.C. 8:33E-2.1,
2.2, 2.3, 2.4, 2.5, 2.10, 2.12, 2.13 thru
8:33E-2.14**

Authorized By: Allen N. Koplin, M.D., Acting Commissioner of the Department of Health, (with approval of Health Care Administration Board).
Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

John A. Calabria, Coordinator
New Jersey Department of Health
Health Planning Services
Room 403, CN 360
Trenton, New Jersey 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 1984-454.

The agency proposal follows:

Summary

Cardiac surgical rules apply to the provision of open heart cardiac surgical services in settings that also include the provision of invasive and non-invasive cardiac diagnostic services. A companion subchapter, identified at N.J.A.C. 8:33E-1, establishes rules for the provision of invasive cardiac diagnostic services where cardiac surgery is not offered.

The current rules require periodic updating based upon the review and recommendations of the Commissioner's Cardiac Advisory Committee (CCAC). The full text of the rule including the proposed amendments were reviewed and approved by the Statewide Health Coordinating Council (SHCC) in the Department of Health.

This proposal recommends the retention of Department of Health policy, standards and criteria, as reflected in the existing rules, with the following proposed changes:

1. Amendments to N.J.A.C. 8:33E-2.3 cardiac surgical center personnel requirements, that provides for a cardiovascular nurse specialist (CNS) to be included in cardiac surgical center personnel with a ratio of one CNS for every one hundred open heart procedures performed in a cardiac surgery center.
2. Amendment to N.J.A.C. 8:33E-2.3(a)1v. That more accurately identifies the bypass pump "technician" as a pump "perfusionist."
3. Amendments to N.J.A.C. 8:33E-2.3(b) that broadens the postoperative facility requirements beyond the first full 24 hours of a cardiac surgical patient's recovery period.
4. Addition of a subparagraph (N.J.A.C. 8:33E-2.5(e)) previously referenced at N.J.A.C. 8:33E-2.13 for consistency and clarity purposes that allows the Commissioner's cardiac advisory committee to review applications for new facilities and make recommendations to the Statewide Health Coordinating Council (SHCC) and the Commissioner of Health.
5. Amendment to N.J.A.C. 8:33E-2.4(a)2 providing further clarification concerning postoperative recovery facilities and nursing coverage ratios.
6. Amendments to N.J.A.C. 8:33E-2.2(a)1 and 2 that increases the minimum annual utilization level from 200 to 250 open heart patients and clarifies that these minimum levels apply to each operating room that is used for open heart surgery.
7. Amendment to N.J.A.C. 8:33E-2.2(a)3 which provides for possible loss of licensure or denial of reimbursement for this service in the event that minimum utilization levels are not consistently achieved.

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

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central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs. . . ."

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

A Department of Health analysis of the State's existing cardiac surgery programs from 1979-1983 has shown a dramatic increase in the number of programs that meet minimum State utilization standards as referenced at N.J.A.C. 8:33E-2.2(a). During 1979 and 1980, three out of the nine existing adult cardiac surgical centers met the minimum State utilization requirements (200 open heart patients). During 1983, a total of six out of nine existing adult cardiac surgical centers met the minimum State utilization requirement. In addition, all three of the adult cardiac surgical centers currently not in compliance with minimum State utilization requirements have exhibited increasing utilization trends over the past three years (1981-1983).

Since the proposed amendments do not change Department of Health policy, as reflected in the existing rules, the changes are not expected to have any negative impact on services currently operating within the State that meet minimum requirements contained in this subchapter.

The rules, however, are important for quality and cost reasons. Not only do they minimize risks to patients, but, in their absence, the unrestricted addition of cardiac surgical programs would likely drive utilization levels down still further, adding enormously and unnecessarily to the costs of providing these services in a manner which may threaten the solvency of some facilities and services.

Economic Impact

The proposed amendments will continue to allow on a limited basis additional competition in the provision of cardiac care. It proposes to do so, however, only in health service areas where all existing cardiac surgical centers satisfy minimum standards and criteria contained in this subchapter (N.J.A.C. 8:33E-2.1 thru 8:33E-2.14).

This approach is important since the cost of providing cardiac surgical services is largely determined by the spreading of fixed costs over the number of cases performed. A cardiac surgical center lacking sufficient patient volumes represents a less than efficient use of a costly resource.

In the absence of these rules the growth of new cardiac surgical services would be unrestricted. To allow this to occur would be to encourage a reduction in the utilization of existing cardiac surgical centers, offending quality of care considerations and promoting significant cost inefficiencies in the provision of this important service.

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

8:33E-2.1 [Introduction] Scope

(a) The purpose of this subchapter is to establish standards and general criteria for the planning of a regional cardiac surgical center and for the preparation of an application for a

certificate of need for such a facility. A regional approach to the provision of cardiac services is necessary to provide safe, complete patient care, efficiently and effectively, at the lowest cost to the consumer.

(b) A regional cardiac surgical center is defined as a medical facility which specializes in most aspects of cardiac service, including at a minimum, cardiovascular surgical services as well as diagnostic services.

(c) In the regional cardiac surgical center, the primary diagnostic services are provided by a cardiac catheterization and coronary angiographic laboratory and a non-invasive laboratory. A cardiac catheterization/coronary angiographic laboratory is one which provides a service devoted to achieving physiological and angiographic studies of optimal quality.

(d) At a minimum the non-invasive laboratory should include the following facilities:

1. ECG and VCG instruments;
2. Exercise stress testing;
3. Phono/pulse tracing[ECHO]echo equipment;
4. Holter type monitoring.

5. Nuclear cardiology

(e) Before heart surgery is performed, every patient must undergo diagnosis through a recognized diagnostic service, except in an extreme emergency as in the case of open wounds to the heart.

(f) The cardiovascular surgical services include open heart, closed heart and coronary artery surgery as well as surgery of the great vessels **and also cardiac assist devices such as the intra-aortic balloon pump**. The facilities, personnel and equipment required by this regulation for open heart surgery are minimal for all cardiovascular surgical procedures. For the purpose of this regulation open heart surgery is herein defined as a procedure which uses a heart-lung by-pass machine to perform the functions of circulation during surgery.

8:33E-2.2 Utilization of cardiac surgical centers

(a) **The following shall apply to cardiovascular surgical units [rules are]:**

1. An applicant for a certificate of need as a regional cardiac surgical center must provide written documentation that the center will perform 75 surgical procedures in the first year and [200] **250** by the end of the third year **for each operating room utilized for open heart surgery procedures**.

2. **The regional cardiac surgical center shall continue to** [The regional cardiac surgical center shall] perform at least [200] **250** open heart surgical procedures per year **per operating room** to insure the competency of the surgical services team and to provide for efficient and economical operation.

3. **Failure to achieve an average minimum utilization level, as defined in 1 and 2 above, during 36 consecutive months for cardiac surgery programs obtaining Certificate of Need approval after December, 1984 and during 24 consecutive months for cardiac surgery programs in existence prior to December, 1984, may result in a recommendation for denial of reimbursement for the service by the department to the Hospital Rate-setting Commission and/or the loss of license for the service.**

[3.] 4. Each cardiac surgical center should establish a minimum case load per physician and team in order to ensure a consistent level of proficiency within the surgical program. The Commissioner's Cardiac Advisory Committee (CCAC) has recommended that a minimum of [35] **50** cases per year is adequate to maintain the professional skills of a cardiac surgeon and team. It is recommended that cardiac surgeons and teams not performing this minimum caseload should work

under the direct supervision of a physician who has achieved this minimum volume **consistently**.

(b) **The following shall apply to cardiac** diagnostic services [rules are]:

1. Utilization standards for the diagnostic services are based on the number of patients upon whom invasive cardiac diagnostic procedures are performed. The minimum acceptable number of adult cardiac catheterization patients per laboratory is [200] **250** per year in a laboratory which is shared with other specialized radiographic procedures, while the number for a fully dedicated laboratory is [400] **500** per year in order to maintain the efficiency and the skills of the catheterization team. Of this number, 150 must be coronary arteriographic patients **in a shared laboratory**.

i. **The optimal utilization level for a laboratory dedicated to cardiac catheterization/coronary angiographic examinations is 500 adult patients per year, including 400 coronary arteriographic patients, in order to maximize quality of care and minimize unit cost per examination (250 adult patients per year is to be considered optimal utilization for a shared laboratory). All diagnostic facilities will be evaluated in light of this optimal level by the CCAC.**

ii. **Each cardiac diagnostic facility should establish a minimum number of procedures for each physician with laboratory privileges in order to maintain a consistent level of proficiency within the laboratory. The CCAC recommends that each physician should perform a minimum of 50 cases each year or be under the supervision of a physician who has performed this minimum number of cases.**

2. If a pediatric surgical program is being considered, the minimum acceptable number of pediatric cardiac catheterization patients per laboratory is 150 per year.

3. The laboratory must be prepared to perform pre and postoperative examinations on a scheduled basis and emergency examinations at all times.

4. As a planning guideline the accepted ratio of examinations to cardiac operations shall be [three to four] **at least two** examinations to one operation.

8:33E-2.3 Cardiac surgery center personnel

(a) **The following shall apply to cardiovascular surgical units** [rules are]:

1. Cardiac surgery is most successful when performed by a smoothly functioning team. Based on [200] **250** open heart procedures the basic team of the regional cardiac surgical center **for each operation** will consist of the following permanently assigned staff:

i. One physician in charge, board-certified by the American Board of Thoracic **and Cardiovascular** Surgery as a cardiovascular surgeon who directs the team or the surgical unit;

(1) Exceptions for incumbent directors to this requirement for board certification may be granted by the Commissioner upon application by an institution providing proper documentation as to the physician's qualifications;

ii. One assistant to the physician in charge who will be a board eligible cardiovascular surgeon **(a third assistant may be a Thoracic Surgical Resident or fellow);**

iii. One anesthesiologist, certified by the American Board of Anesthesiology, and assisted by one other qualified person, that is, resident or nurse **anesthetist** or board-certified anesthesiologist. "Qualified" implies special training and experience with cardiac surgical problems in addition to normal certification;

iv. There will be at least [four] three trained operating room technicians or trained nurses in each operating room.

One of the [four] three must be a registered nurse;

v. Two [pump technicians] **perfusionists** will be available, **for each operation**, one of whom will be certified and one qualified.

vi. **Cardiovascular nurse specialists (one for every 100 open heart procedures) may be used to supplement the cardiovascular surgical team.**

2. The operating cardiac surgeon **in conjunction with the attending** cardiologist is responsible for overseeing and integrating all details of pre-operative evaluation and preparation of the operation procedures and of postoperative care.

(b) The intensive care cardiac recovery room **(or Surgical Critical Care Unit, SCCU)**, is the area where cardiac patients are held for postoperative care. At a minimum patient coverage in this area shall be on a one specially trained cardiac nurse to one patient basis for the first 24 hours after surgery or [as long as the critical period exist] **in accordance with the diagnosis**. During this period, the operating surgeon and team or qualified alternate shall be on call. **After a full 24 hours following the operative day, and in accordance with patient diagnosis, nursing coverage may be reduced to a maximum of three patients to two nurses during the second and third days following the operative day.**

(c) [Rules concerning] **The following shall apply to cardiac** diagnostic facilities [are]:

1. Each diagnostic facility shall be minimally staffed by the following full-time personnel:

i. One physician;

ii. One nurse;

iii. Three technicians.

2. While the following functions shall be performed within each facility, more than one function may be executed by a single individual appropriately cross-trained to perform the required functions:

i. Laboratory director (physician in charge): The chief diagnostician within the unit, certified in cardiology by the Sub-Specialty Board of Pediatric Cardiology of the American Board of Pediatrics or the Cardiovascular Sub-Specialty Board of the American Board of Internal Medicine. In addition to board certification the director must have broad experience and training in cardiac diagnostic procedures.

(1) Exceptions for incumbent directors to this requirement for board certification may be granted by the Commissioner upon application by an institution providing proper documentation as to the physician's qualifications;

ii. Associate physician: Assigned to assist the laboratory director. One of these physicians will be trained in cardiovascular catheterization;

iii. Registered nurse: To assist with administration of medications and the preparation and observation of the patient. The nurse should have Intensive Care Cardiac Unit (ICCU) experience, and must have knowledge of cardiovascular medications and experience with catheterization;

iv. Cardiac catheterization technician: To handle blood samples and assist in the performance tests. The technicians will help in the maintenance of equipment and supplies and should be trained to aid in patient observation and acute cardiac care;

v. Monitoring and recording technician: Responsible for constant monitoring of physiologic data, including the electrocardiogram and recording this information. This job can best be handled by a second cardiac catheterization technician or radiologic technician;

vi. Radiologic technician: Skilled in conventional radiography and has special training and skills in angiographic tech-

niques. This technician must be competent in magnification radiography, subtraction photography, cine recording, television presentations and the use of video tape and be responsible for the care and maintenance of all radiologic equipment;

vii. Electronic and radiological repair technician: Highly trained and available for consultations regarding the operation and maintenance of all radiographic and physiologic measuring and recording instruments in the laboratory. This person must be immediately available to carry out repairs in the event of equipment failures during the course of the procedure.

3. One physician shall be present in the room during all catheterization and angiographic procedures.

(d) Outlined in [subsection] (c) [of this section,] **above** are only the special personnel required by a cardiac center established within an existing hospital. Appropriate supporting staff or personnel shall be available in existing departments within the hospital.

8:33E-2.4 Use of inpatient facilities

(a) In a center performing [200] **250** open heart surgical procedures annually the following inpatient facilities are required:

1. Because of the nature of care to be provided, cardiac surgical patients shall be grouped at the intermediate or acute care level for proper observation and treatment. During the preoperative stage when diagnostic work-ups are to be performed, four beds in a general medical/surgical unit shall be available for patients having an average length of stay of three to four days.

2. An **intermediate** intensive care/cardiac care unit will be available for post operative care. It will include three or four beds for patients having an average length of stay of three to four **additional days following discharge from the SCCU or surgical recovery room. These beds may be located in a cardiovascular step-down unit with telemetry monitoring but reduced nursing coverage with a maximum ratio of four patients to one nurse in accordance with patient diagnosis.** Suitably equipped beds will be available for the rest of the patient's stay. At a minimum the intensive care/cardiac care unit will have the following capabilities:

- i. Facilities for hemodynamic ECG monitoring;
- ii. **Temporary** pacemaker insertion;
- iii. C.P.R. equipment;
- iv. Arrhythmia detection equipment;
- v. Resuscitative equipment.
- vi. **Cardiovascular support devices (intra-aortic balloon pump, etc.)**

8:33E-2.5 Commissioner's cardiac advisory committee (CCAC)

(a) A cardiac advisory committee [will be] **has been** established under the authority of the Commissioner of Health to review on a regular basis the performance of all cardiac institutions.

(b) In addition to practicing specialists, the cardiac advisory committee will [have] **be comprised of** representatives from third-party payors, **a consumer member who is involved in the New Jersey health planning process** and the administration of institutions providing the service.

(c) Mortality rate, utilization and medical practices of each regional cardiac surgical center will be reviewed regularly by the CCAC to insure quality control and accurate data reporting.

(d) To the greatest degree possible other inspection programs of cardiac services will be integrated with those of the advisory committee to minimize the number of official visits to those services.

(e) The CCAC will review certificate of need applications for new cardiac surgical centers and make recommendations to the SHCC and Commissioner of Health.

8:33E-2.6 Referral

(a) Each applicant for a certificate of need as a regional cardiac center must agree to send out a mailing to all appropriate institutions and physicians stating that the services of the center are available. Following certificate of need approval, the center will provide written documentation that this mailing has occurred.

(b) Each applicant must provide written documentation in the form of an institutional policy statement that the center will accept referrals from physicians not ordinarily having access to the applicant's facilities.

(c) Each center will have written transfer agreements to receive appropriate patients from the "free standing" cardiac diagnostic facilities in its service area or health services area, whichever is larger.

8:33E-2.7 Population base

An applicant for designation as a regional cardiac surgical center must document need in its service area. At a minimum, the regional service area for an adult surgical program must include a population of one million adjusted for accessibility. For a regional pediatric cardiac surgical center, a population base of three million, adjusted for accessibility, must be documented. The applicability of these minimum population bases to the specific New Jersey cardiac services environment should be closely scrutinized by the CCAC based on the utilization of cardiac surgical resources reported to the department on a quarterly basis.

8:33E-2.8 Long-range planning

The applicant must show evidence that the proposed certificate of need request is consistent with the hospital's approved long-range plan, submitted to the department under the requirements of N.J.A.C. 8:31-16.1, and with the health systems plan and annual implementation plan of the health systems area in which the applicant is located.

8:33E-2.9 Documentation of purchase and operational cost

The applicant will provide full written documentation of the projected implementation and operational costs of the proposed regional center. This documentation will include direct and indirect costs, that is, construction, equipment, supplies, personnel, maintenance, overhead costs, as well as projected costs of remodeling or renovation necessary to accommodate the center. Projections of anticipated revenues must be supplied for at least the first three years.

8:33E-2.10 Statistical data required

The center will maintain and provide basic statistical data on its operations and report that data to the Department of Health on a quarterly basis and on a standardized form prepared by the department. Copies of the full text of the required quarterly reporting form may be obtained upon written request to the New Jersey State Department of Health, Health Data Services, [Room 501, P.O. Box 1540], **Room 405, CN 360** Trenton, New Jersey 08625.

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8:33E-2.11 Certification on nondiscriminatory practices

Each applicant must provide written certification of compliance with all Federal and State laws in regard to nondiscriminatory practices to the effect that no patient shall be refused treatment on the basis of race, religion, sex, age or ability to pay.

8:33E-2.12 Peer review

(a) Quality control is essential for the consistent high level of performance required of any cardiac surgical service. As one means of quality control, appropriate mechanisms for peer review shall be described in each certificate of need for a regional cardiac surgical center, which shall include, but is not limited to the following:

1. Overall case selection for study (for example, rate of normal studies, rate of surgical referral);
2. Laboratory and physician performance (for example, case volume, mortality and complication rates per physician);
3. Quality of studies (for example, number of incomplete studies, diagnostic adequacy of films, number of restudies performed elsewhere),

(b) In all cases, criteria selection should be based on sound medical practice and consistency with the literature. Cardiac surgical centers with marginal utilization (10 percent above or below minimum utilization standards) will be reviewed by the local Professional Standards Review Organization and the CCAC to assure appropriate case selection has occurred.

8:33E-2.13 New facilities

(a) All certificate of need applications for new adult or pediatric cardiac surgical centers must meet the minimum standards and criteria contained [herein] in this subchapter [and be reviewed by the Commissioner's Cardiac Advisory Committee and the Statewide Health Coordinating Council].

(b) Certificate of need applications for new cardiac surgical centers will not be approved in health service areas that include cardiac surgical centers that are not in full compliance with the minimum utilization requirements contained herein.

8:33E-2.14 Review

This subchapter will be reviewed and evaluated within three years by the CCAC [Commissioner's Cardiac Advisory Committee].

(a)

THE COMMISSIONER

Certificate of Need: Reviews of Long-Term Care Facilities and Services Policy Manual

Proposed Amendment: N.J.A.C. 8:33H-2.1, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6

Authorized By: Allen N. Koplin, M.D., Acting Commissioner of the Department of Health, (with approval of the Health Care Administration Board).
Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

John A. Calabria, Coordinator
New Jersey Department of Health
Health Planning Services
Room 403, CN 360
Trenton, New Jersey 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 1984-455.

The agency proposal follows:

Summary

The current rules require periodic updating based upon the need to address current activities in the expanding long-term field. The body of existing rules have been in effect since September 1980, with the following substantive amendments concerning Medicaid utilization criteria adopted in May 1982; exemption from certain review requirements for long-term care beds in continuing care or life care communities adopted in July 1983; and a new long-term care bed need methodology adopted in September 1983. The full text of the rules including the proposed amendments were reviewed and approved by the Statewide Health Coordinating Council (SHCC).

This proposal recommends the retention of Department of Health policy, standards, and guidelines, as reflected in the existing rules, with the following proposed substantive changes:

1. Amendments to N.J.A.C. 8:33H-2.1 which reflect the addition of several new definitions to this subchapter.
2. Amendments to N.J.A.C. 8:33H-3.1 and 3.3 which reflect the addition of new criteria for determining the need for medical day care facilities.
3. Addition of a subparagraph at N.J.A.C. 8:33H-3.3(a)4. which creates a standard for giving preference to Certificate of Need applicants for long-term care beds who propose the inclusion of appropriate alternatives.
4. Amendments to N.J.A.C. 8:33H-3.3(a)5. (previously referenced as N.J.A.C. 8:33H-3.3(a)4.) which clarifies the intent and requirements of the existing direct Medicaid admissions utilization criteria. In addition, these requirements have been extended, through the addition of subparagraphs to Certificate of Need approved changes in cost and scope (N.J.A.C. 8:33H-3.3(a)5.v.) and transfers of ownership (N.J.A.C. 8:33H-3.3(a)5.vi.), as well as to include higher projected percentages of Medicaid patient occupancy as a condition of approval (N.J.A.C. 8:33H-3.3(a)5.viii.); non-compliance with requirements will result in appropriate licensure action, such as the imposition of admission restrictions (N.J.A.C. 8:33H-3.3(a)5.ix.).
5. Amendments to N.J.A.C. 8:33H-3.3(a)6. (previously referenced as N.J.A.C. 8:33H-3.3(a)5.) concerning continuing care or life care communities, which increase the required minimum number or residential units and eliminate the exemption from the Certificate of Need full review process. In addition, amendments to N.J.A.C. 8:33H-3.3(a)6.i. increase the required ratio of residential units to long-term care beds and require evidence of residential financing. The addition of subparagraph N.J.A.C. 8:33H-3.3(a)6.vi. extends the life care documentation requirements and N.J.A.C. 8:33H-3.3(a)6.vii.

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requires prior or simultaneous construction of the residential units and accordingly restricts licensure of the long-term care bed capacity.

6. Amendments to N.J.A.C. 8:33H-3.4 add subparagraph (N.J.A.C. 8:33H-3.4(a)1.) which mandates non-approval of Certificate of Need requests from applicants with existing major violations of licensure standards.

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, hospitals and health care services, and health facility cost containment programs. . . ."

The New Jersey State Health Plan recognizes that the provision of long-term care for the frail elderly is fast emerging as a problem that may pose the greatest challenge to health and social policy, both on a state and national level, now and in the years ahead. The reasons for this problem are primarily two-fold: changing demographic patterns and the current patterns of financing and providing long-term care. The major problems associated with long-term care service delivery in New Jersey are seen as the inadequate development of and access to non-institutional options for geriatric patients, combined with inadequate access to long-term care facilities by Medicaid populations, including persons waiting in the community and those discharged from inpatient psychiatric facilities pending placement. These problems are closely interrelated, in that a primary cause of inappropriate long-term care facility placement is the lack of community-based alternatives and, in turn, the inappropriate utilization of such costly existing resources results in a shortage of long-term care beds for those most in need of such care, as well as reduced resources for financing alternatives. In view of the increasing recognition that many elderly neither need nor prefer nursing home care, institutional placement should be considered a last resort rather than the care of first choice.

The demographic shift which has resulted in the aged becoming an increasingly larger proportion of the population, combined with improved medical procedures which have increased general life expectancy but placed this population at greater risk to debilitating chronic conditions, has increased the need for various long-term care services. However, a growing barrage of criticism in recent years has been directed toward the issue that long-term care for the elderly is overly dependent upon the nursing home or long-term care facility. This almost exclusive emphasis on the provision of institutional services organized along a medical model of care is felt to be inappropriate since it imposes a medical solution on a variety of social problems, particularly the lack of sheltered housing options and community support services. It also has been suggested that efforts toward promoting health services for the aged in this regard have been counter-productive. Lives have been prolonged but little has been done to improve the quality of life, in that too often the prolonged life has led to increased dependence and institutionalization. A "ware-

house approach" often has been developed to handle the problems of geriatric health care.

The needs of an aging society and the lack of balance in the chronic care system are such that long-term care will have to be a dominant theme of national health and social policy through the balance of this century. Likewise, a major goal of public policy in New Jersey for this decade and beyond must be the provision and financing of an adequate array of long-term care services. These services must range from non-institutional community/social services to full-time institutional medical/nursing services in long-term care facilities. The basic framework or structure of these services must emphasize an integrated, coordinated, and comprehensive system responsive to the enormous variety and frequent instability of impairments and functional deficits of the frail elderly; the delivery of services within the least restrictive environment and emphasizing maximum freedom for the individual; a renewed reliance on the family and community in the provision of care; concern for the cost-effectiveness of service provision and realistic cost-containment measures; and, most importantly, quality.

The Long-Term Care Policy Manual represents a concrete step toward the development of an improved long-term care system in New Jersey, its intent being the implementation of system goals through the planning and Certificate of Need review processes. The proposed amendments serve to strengthen the existing rules to address appropriate areas of concern. In particular, they impose restrictions on the current unlimited growth in medical day care facilities, whereby nearly 2,500 spaces in 83 facilities have been approved since 1979, with 21 facilities presently licensed and operating. In addition, the utilization requirements for direct Medicaid patient admissions have been expanded to meet a continuing need; the documentation required for life care community exemptions have been made more stringent to ensure equity for all long-term care facility applicants; and the emphasis on quality of care as demonstrated by licensure history has been strengthened.

Since the proposed amendments do not change Department of Health policy, as reflected in the existing rules, the changes are not expected to have any negative impact on long-term care facilities and services currently operating within the State.

Economic Impact

The New Jersey State Health Plan recognizes the provision of long-term care services, particularly institutional long-term care, as an important factor contributing to the rapidly escalating costs of health care. The highly unbalanced and almost exclusive emphasis on the provision of institutional services organized along a medical model of care have sent costs climbing. Traditional long-term care resources appear to have reached capacity and the existing system's high costs almost preclude expansion in its current form. A continued orientation toward more costly health services and settings capable of caring for relatively few, at the expense of social and supportive services and housing resources for the increasing larger population at risk, predicts serious financial and social consequences. This is in the fact of a relatively stable portion of the population capable of producing the goods, services, and attendant tax revenues necessary to support government assistance for the growing numbers dependent because of age or disability. Public and private spending on long-term care, which doubled nationally between 1975 and 1980, is expected

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to double again between 1980 and 1985 without any expansion of policies or programs. Public expenditures for nursing home care alone, which were \$800 million in 1965, are expected to reach \$9.5 billion in 1984.

Financing for these services must assure economic accessibility and should include an appropriate mix of private and public dollars. The inexorable demographics of the aging process will require that significant amounts of money be spent in the next several decades for long-term care. This will be true even if no changes are made in current programs. In this context, it should be noted that only about five percent of the over 65 population resides, at any given time, in long-term care facilities. Based on the projected demographics and current program trends, over the next 20 years, New Jersey can expect to spend at least \$600 million (in 1980 dollars) for capital investments and an average of \$1.5 billion per year (in 1980 dollars) for program operations. The issue is how to spend the money to achieve the far greater humanity and cost-efficiency possible under an adequate, balanced long-term care system that will serve more people better at a lower unit cost.

Despite the increased commitment of resources to meet a rising demand for services, dissatisfaction obviously exists regarding the structure and orientation of the delivery system. A major problem underlying much of the State's continued efforts in regard to the issues of availability and accessibility is the long-term care bed supply, primarily in connection with the Medicaid program. A chronic shortage of beds or, perhaps better stated, a chronic excess demand apparently exists for Medicaid-subsidized nursing home patients, who already comprise the major portion of the State's total number of patients in long-term care facilities.

The proposed amendments seek to promote the orderly development of adequate and effective long-term care services within cost restraints, while at the same time ensure their availability and accessibility to the Medicaid sector through the expansion of minimum Medicaid utilization criteria.

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

SUBCHAPTER 2. DEFINITIONS

8:33H-2.1 Definitions

In this chapter [the] **certain** terms ["Standards", "Guidelines", and "Community Concept"] have specific meaning, as follows:

"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.

"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.

"Community concept" means an integrated, coordinated, and comprehensive system of care which includes the assistance and support of family, friends, and social institutions. It recognizes that there is a continuum of care needed that provides access to services at the appropriate level and time, insuring that inpatient care does not become the care of first choice unless it is clearly medically necessary; and that long-term care institutions are places where people live.

"**Frail elderly**" means those persons age 65 years and over who are chronically ill or disabled in some manner and re-

quire assistance in personal care and/or who require some form of health care services for the treatment of disease, pain, injury, deformity or physical condition(s).

"**Medicaid-eligible patients**" means those patients who have received prior determination of medical and financial eligibility for Medicaid coverage in a long-term care facility and are directly admitted on such reimbursement from a hospital or community-based residence. This definition also includes those individuals who qualify medically and financially for such care but do not apply for Medicaid and are essentially medically indigent. This does not apply to those patients who are initially admitted to a long-term care facility on private payment, either under a 'private pay contract' prior to acceptance on Medicaid reimbursement or under the requirement to 'spend down' their assets to Medicaid financial eligibility levels; such patients are not considered direct Medicaid admissions for purposes of fulfilling such utilization requirements.

"**Medicare to Medicaid patients**" means those patients who have been directly admitted from a hospital to a long-term care facility on Medicare reimbursement and will be directly transferred to Medicaid reimbursement upon expiration of Medicare coverage.

8:33H-3.1 Size of facilities

(a) (No change.)

(b) Guidelines are as follows:

1. (No change.)

2. Guideline I-02, maximum size, residential health care facilities: The recommended maximum size of any residential health care facility is [100] **240** beds. This guideline may be exceeded in situations where existing facilities currently exceed [100] **240** beds.

3. **Guideline I-03, maximum size, medical day care facilities: The recommended maximum size of any medical day care facility is 50 slots/spaces or a daily maximum occupancy of 50 patients.**

8:33-3.2 Cost effectiveness

(a) Standards are as follows:

1. (No change.)

2. Standard II-02, instituting services without prior Certificate of Need approval: All those long-term care, residential health care **or medical day care** facilities that do not apply for a Certificate of Need and that institute new beds, services, equipment, et cetera, for which Certificate of Need approval must be obtained, shall be called unlawful and the facility shall be asked to remove such beds, services, or equipment. No costs for unlawful actions shall be included in rates established for reimbursement to the facility. See "Guidelines and Criteria for Submission of Applications for Certificate of Need", New Jersey State Department of Health.

3. Standard II-03, cooperative arrangements: Each long-term care, residential health care **or medical day care** facility must be responsive to the medical, economic, and social necessities of coordinating its programs and services with other providers in its service area to avoid unnecessary duplication of services, equipment, and personnel. Where a facility initiates a new program or service or expands an existing one, it shall support its application for a Certificate of Need by providing written documentation of existing working relationship or of plans to develop working relationships with other providers in the area. In demonstrating present and proposed working relationship within the service area, the facility, as

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necessary and appropriate, shall consider the following entities:

- i.-xii. (No change.)
- (b) (No change.)

8:33H-3.3 Expansion and new construction

(a) Standards are as follows:

1. Standard III-01, occupancy rates. The desired occupancy rates (based on licensed beds) for inpatient facilities shall be:

- i.-ii. (No change.)

iii. The desired occupancy rates (based on licensed capacity) for outpatient facilities shall be 75 percent for medical day care.

2. Standard III-02, need for beds/services:

i. The need for long-term [and residential health] care beds shall be governed by the formula and methodology described in [the State Medical Facilities Plan and the State Health Plan adopted pursuant to Public Law 96-79. Exceptions to the formula and methodology can be made] **N.J.A.C. 8:33H-3.10**. In determining the need for residential health care beds, [in that] emphasis shall be placed on the [“Health Commissioner’s Advisory Committee on Boarding Homes” report of February 23, 1978] “**State Nursing Home Task Force**” report of July 21, 1983 and on local Health Systems Agency findings of need.

ii. The need for medical day care facilities shall be addressed as a separate service, regardless of whether free-standing or facility-based. Basic criteria by which to determine need will include such factors as the number and capacity of both licensed operating and Certificate of Need approved medical day care facilities in the appropriate county/service area; the occupancy rate of the licensed operating facilities; the new facility’s proposed Medicaid utilization; and whether the facility proposes to serve a specific population, such as Alzheimer’s disease or cerebral palsy patients. Only those medical day care facilities which are needed in certain unserved or underserved areas or which are needed to serve a specific population will be approved.

3. Standard III-03, addition of beds. Long-term care and residential health care facilities seeking certificate of Need approval to add beds to an existing facility or to construct a new facility will be required to submit all of the following with the application:

- i.-iii. (No change.)

iv. Documentation that the request will enhance the development of a system of long-term care services in the proposed service area through the provision, either on-site or through contractual agreements, of a continuum of both inpatient and outpatient services. Thus, the applicant must submit copies of referral arrangements with area hospitals, rehabilitation services, home health care agencies, **long-term care facilities**, residential health care facilities, **medical day care facilities**, congregate housing, and others, if such services are available and appropriate.

- v. (No change.)

vi. Documentation of a prior record of providing a high quality of care, if the application is for bed addition or an applicant for a new facility has any history of ownership or management of long-term or residential health care facilities. Repeated violations of significant licensure standards, **as determined by the Department**, or other indicia of poor quality, shall, except in exceptional circumstances, require [denial] **non-approval** of any application.

4. Standard III-04, alternatives to long-term care beds: Preference will be given to those Certificate of Need applicants for long-term care beds who propose the inclusion of institutional (residential health care, congregate housing, for example) and non-institutional alternatives to inpatient long-term care beds. Applicants are instructed to consult with the Department’s health planning staff in regard to alternatives appropriate to their projects, as well as the long-term care sections of the State Health Plan, prior to submission of an application.

[4.] 5. Standard III[04] 05, utilization of new and/or additional beds by Medicare to Medicaid and Medicaid-eligible recipients. Long-term care facilities seeking Certificate of Need approval to add beds to an existing facility or to construct a new facility will be required to comply with the following utilization criteria:

i. New long-term care facility construction.

(1) Minimum of 35 percent of total long-term care bed complement **must [to] be [available for] occupied** by direct admission [of] Medicare to Medicaid and Medicaid-eligible patients **no later than one year from license issuance**.

(2) Facility must continue to maintain direct Medicare to Medicaid and Medicaid-eligible admissions to a **minimum of 35 percent of its total long-term care bed complement [over a 12 month period of time] thereafter**.

(3) Facility must reflect this requirement for preferential direct Medicare to Medicaid and Medicaid-eligible admissions as part of its written admission policies, as well as its Medicaid provider agreement.

ii. Bed addition to an existing long-term care facility over 60 beds after expansion and which currently has Medicare to Medicaid and Medicaid-eligible patients occupying 35 percent or more of its total licensed capacity.

(1) Minimum of 35 percent of new **long-term care** beds must be [available for] **occupied by** direct admission [of] Medicare to Medicaid and Medicaid-eligible patients **no later than one year from license issuance**.

(2) Facility must continue to maintain direct Medicare to Medicaid and Medicaid-eligible admissions to a **minimum of 35 percent of its total long-term care bed complement thereafter**.

(3) Facility must reflect this requirement for preferential direct Medicare to Medicaid and Medicaid-eligible admissions as part of its amended written admissions policies, as well as in its amended Medicaid provider agreement.

iii. Bed addition to an existing long-term care facility over 60 beds after expansion and which currently has Medicare to Medicaid and Medicaid-eligible patients occupying less than 35 percent of its total licensed capacity.

(1) Minimum of 35 percent of total long-term care bed complement after expansion must be [available for] **occupied by** direct admission [of] Medicare to Medicaid and Medicaid-eligible patients **no later than one year from license issuance and must be maintained thereafter**.

(2) Facility must reflect this requirement for preferential direct Medicare to Medicaid and Medicaid-eligible admissions as part of its amended written admissions policies, as well as in its amended Medicaid provider agreement.

iv. Bed addition to an existing long-term care facility which remains at 60 beds or less after expansion.

(1) Minimum of 35 percent of new beds must be [available for] **occupied by** direct admission [of] Medicare to Medicaid and Medicaid-eligible patients **no later than one year from license issuance**.

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(2) Over a 12-month period of time, a "reasonable" percentage of the facility's total long-term care bed complement must be [available for] **occupied by direct Medicare to Medicaid and Medicaid-eligible admissions.** This "reasonable" percentage will be determined annually by agreement between the facility and the Department.

v. A long-term care facility which receives Certificate of Need approval for a change in cost or scope will be required to comply with the utilization percentages outlined in N.J.A.C. 8:33H-3.3(q)5.

vi. A long-term care facility acquired through a Certificate of Need approved transfer of ownership, and which was originally subject to these utilization requirements, will be required to maintain compliance with the utilization percentages outlined in N.J.A.C. 8:33H-3.3(q)5).

[v.] vii. Any applicant for or recipient of a Certificate of Need for a new or expanded long-term care facility, for a respective change in cost or scope involving additional beds or for a transfer of ownership, who can produce documentation that the previously outlined percentages will cause a financial hardship can request a review of the financial feasibility of those percentages, which may result in a finding by the Department that a lower percentage is required for financial feasibility.

viii. If a higher projected percentage of Medicaid patient occupancy, inclusive of the previously outlined utilization percentage, is a factor in the approval of a Certificate of Need for a new or expanded long-term care facility, that percentage will be included as a condition of approval; the facility will be required to attain that level by the end of one year from license issuance and maintain that average on an annual basis thereafter.

ix. Non-compliance with these requirements will result in appropriate licensure action by the Department, such as the imposition of admission restrictions to achieve the required utilization.

[5.] 6. Standard III-[05] 06, continuing care or life care communities/facilities. Such communities/facilities are defined as those that combine independent living accommodations for the elderly with social and health care services, including nursing and medical care, through an agreement to provide continuing care for the term of a contract, most frequently for the duration of a resident's life, in return for an entrance fee or periodic payments or both. Those communities/facilities seeking Certificate of Need approval to construct an on-site long-term care facility, which meet the above definition and contain a minimum of [200] **300** residential units, may apply for exemption from the long-term care bed need, utilization criteria, and batching cycle requirements. [and instead be included in the Certificate of Need administrative review process.] **Such projects will be included in the Certificate of Need full review process; however, the process may be expedited with the concurrence of the local Health Systems Agency. Applicants shall apply for the above exemptions by submitting all of the following required documentation with the application:**

i. The ratio of residential units to long-term care beds is not less than [3.3:1.] **5:1, based upon initial schematic drawings, as well as the subsequent submission of construction plans as requested by the Department. In addition, the applicant will provide evidence to the Department of Health that financing has been approved for the residential housing which specifies the number of residential units approved for financing before the Department will review any plans for the long-term care facility.**

ii. Within five years of occupancy of the first residential unit, at least 70 percent of the occupants of the long-term care facility will be drawn exclusively from the sponsoring continuing care community. **The remaining 30 percent must include a reasonable number of Medicaid-eligible persons.**

iii.-v. (No change.)

vi. **The nature of the contract or agreement to provide continuing care, including the health care services to be offered; term or duration of the contract; projected charges, including entrance fees and/or periodic monthly payments; and residents' rights, with the recognition that this information will be provided to residents in standard contract language.**

vii. **The long-term care facility will be constructed subsequent to or simultaneous with the residential units. The applicant will accept this requirement as a condition of approval based upon recognition that the Certificate of Need for the long-term care facility is contingent upon construction of the minimum required number of residential units, and that if these units are not constructed the Certificate of Need is null and void. In addition, the licensed long-term care bed capacity will reflect the minimum number of completed residential units.**

(b) Guidelines are as follows:

1. Guideline III-01, local ownership: To implement Standard III-03, (a) 3iv. and v. above, the Department encourages local ownership and/or local management of inpatient long-term care facilities and services within the State.

2. Guideline III-02, exception to Standard III-03, addition of beds: If an applicant cannot submit the documentation required in Standard III-03, (a) 3ii. above, for long-term care beds, new or additional beds may still be approved if [the applicant can demonstrate to the local Health Systems Agency and the State Department of Health that other services (residential health care, medical day care, congregate housing, for example) being proposed in the same application will provide a defined community, a portion of which will normally be expected to require inpatient long-term care beds.] **the request is for no more than 10 beds or a hospital requests the exchange of acute care beds for long-term care beds on a one for one basis.**

8:33H-3.4 Licensure and physical plant

(a) Standards are as follows:

1. **Standard IV-01, licensure violations: No Certificate of Need applications will be approved from applicants with existing major violations of licensure standards, as determined by the Department of Health. The only exception will be in the case of applications submitted exclusively for the purpose of correcting recognized major licensure deficiencies.**

[1.] 2. Standard IV-[01] 02, Certificate of Need requirements for modernization, renovation or new construction:

i.-ii. (No change.)

8:33H-3.5 Conversion

(a) Standards are as follows:

1. (No change.)

2. Standard V-02, Certificate of Need requirements for conversion of residential health care facilities to long-term care. Applications for Certificates of Need to convert entire or distinct parts of residential health care facilities to long-term care shall be given consideration by the Department of Health provided that:

i.-iv. (No change.)

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v. The conversion will not substantially impair the State's ability to implement the ["Health Commissioner's Advisory Committee on Boarding Homes" report of February 23, 1978; and] "State Nursing Home Task Force" report of July 21, 1983; and

vi. (No change.)

8:33H-3.6 Location of facilities

(a) Guidelines are as follows:

1.-5. (No change.)

6. Guideline VI-06, safety: Long-term care, [and] residential health care, and medical day care facilities should be located so as to reduce the risks of physical harm resulting from physical environmental factors upon patients, staff, or visitors entering or leaving the facility.

7. Guideline VI-07, zoning and land use approvals: Long-term care [and] residential health care, and medical day care facilities should not seek formal zoning or land use approval prior to receiving an approved Certificate of Need. While there may be some cases when circumstances promote quick and inexpensive approvals from government agencies for land use prior to Certificate of Need approval, facilities generally should not enter into costly land use approval procedures until a Certificate of Need is approved.

(a)

THE COMMISSIONER

Certificate of Need: Megavoltage Radiation Oncology Services

Proposed New Rules: N.J.A.C. 8:33I-1.1, 1.2, 1.3

Proposed Amendments: N.J.A.C. 8:33I-1.4 and 1.5

Proposed Repeal: N.J.A.C. 8:33I-1.1

Authorized By: Allen N. Koplin, M.D., Acting Commissioner of the Department of Health, (with approval of the Health Care Administration Board).

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

Interested persons may submit in writing data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

At the close of the period for comments, the Department of Health 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 1984-456.

The agency proposal follows:

Summary

The current rules require periodic updating based upon the review and recommendations of the Commissioner's Ad Hoc Technical Advisory Committee on Megavoltage Oncology Services. The existing rules have been in effect since October 1977 without substantive changes and no longer reflect state-of-the-art megavoltage oncology treatment practices and equipment usage. The proposal identifies rules which the Department of Health intends to apply to both planning and certificate of need review activities, for the provision of megavoltage oncology services in the State of New Jersey. The entire rules has been reviewed by the Commissioner's Ad Hoc Technical Advisory Committee and by the Statewide Health Coordinating Council (SHCC).

The proposed amendments prohibit the establishment of new megavoltage programs and encourage the development of multiple multi-equipment megavoltage sites wherever justified on the basis of the standards and criteria contained in this subchapter. Such multi-unit sites would be capable of providing a greater range of clinical opportunities for oncologic patients in a cost-effective manner. This approach offers opportunities for both improved quality of care and cost-effective delivery of care, not realizable through the further proliferation of single unit departments. The Foreword of this proposed amendment replaces in its entirety the Foreword previously adopted on November 2, 1981.

Social Impact

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

The New Jersey State Health Plan recognizes the underutilization of inpatient beds, specialty services, and expensive equipment as an important factor contributing to the rapidly escalating costs of health care. Regionalization of specialty services and equipment, such as the delivery of megavoltage oncology services, is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered, by improving the security of hospitals offering these expensive services, and by containing the rising costs of health care services.

An analysis of existing megavoltage oncology programs operating throughout the State suggests that a significant number of these programs are operating considerably below capacity. This underutilization continues to exist despite the trend in recent years of increasing numbers of patients being treated with megavoltage radiation equipment in the State. According to the Department of Health's most recent analysis of existing megavoltage services, the Statewide inventory of megavoltage therapy equipment operated at approximately 68 percent of treatment capacity in 1983.

Economic Impact

There are currently 31 hospital-based megavoltage programs in the State operating a total of 44 megavoltage units. Four additional megavoltage units have been approved in existing programs together with an additional four units that have been approved for placement in new megavoltage programs that are expected to be operational in the near future. Also included in the State's megavoltage equipment inventory are a total of 12 megavoltage units located in private physician offices. Capital costs associated with the purchase of the hospital-based equipment (52 units) amounts to approximately \$37 million. Recurring operational costs for hospital based megavoltage equipment is estimated at approximately \$20 million annually (at current prices). These figures do not reflect the capital and operating costs associated with the 12 privately owned megavoltage units in the State.

The proposed amendments will have little effect on existing megavoltage programs since they will continue to be approved for the replacement or addition of megavoltage units where they comply with the proposed standards and criteria contained in this subchapter. However, megavoltage programs that consistently fail to achieve minimum utilization requirements may result in a recommendation to deny reimbursement for the service by the Department to the Hospital Rate-Setting Commission and/or the loss of licensure for the service.

In the absence of these rules the Department can expect the proliferation of single unit megavoltage programs that can only serve to reduce the overall cost-effectiveness of the State's existing megavoltage resources. The unrestricted addition of these new programs would aggravate an already under-utilized Statewide health care system and would inhibit the achievement of a greater range of clinical opportunities for oncologic patients made available through the advancement of multiple multi-unit programs statewide.

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

CHAPTER 33I

SUBCHAPTER 1. STANDARDS AND CRITERIA FOR THE PLANNING AND CERTIFICATION OF NEED FOR MEGAVOLTAGE RADIATION ONCOLOGY UNITS IN HEALTH CARE FACILITIES

FOREWORD

Radiation oncology involves the use of ionizing radiation in the treatment of neoplastic disease. The basis for such treatment is the apparent difference in responsiveness to radiation by cancerous and non-cancerous cells. (Cancer cells are more susceptible, for the most part, to the damaging effects of such radiation). Application of this radiation can be directed at either curative or palliative intent. Not all forms of cancer, however, are effectively treated by radiation. In many cases surgery or chemotherapy are deemed more appropriate. Each of these three cancer treatments can be employed either individually or collectively depending on the type and extent of the disease and the intent of the treatment.

Only a relatively small portion of the general population requires radiotherapy treatment at any one time. This, combined with the fact that radiotherapy treatment departments require multi-disciplinary involvement and elaborate equip-

ment, space, technical personnel and specialized support facilities in order to provide optimal care, make radiotherapy an appropriate subject for regionalization. All of these facilities must be carefully planned on a regional basis to ensure that all patients receive the maximum opportunity for cure or palliation of their cancer. Such planning is not only proper but necessary if quality care is to be provided without unnecessary duplication of costly installations.

Historically in New Jersey, the development of megavoltage radiotherapy services has not been adequately sensitive to the regional nature of this type of service. As a result, there are a considerable number of hospital megavoltage programs and units that are either in operation (31 programs with 44 units), are approved for operation (three programs with four units), or are approved for additional units at existing programs (4 units). A total of 34 hospital programs with 52 units are either operational or are approved for operation to date. Added to this megavoltage inventory are an additional 11 megavoltage programs in private offices operating a total of 12 units.

Current trends in radiation oncology treatment often require the use of several different beam energies in an effort to achieve optimal irradiation dosage to the target region while minimizing potentially harmful dosage to neighboring healthy tissue. The depth and characteristics of penetration of the radiation beam, in tissue, depend on its energy and type.

In view of these trends and wherever justifiable in terms of appropriate program utilization and compliance with all other standards and criteria established in this subchapter, the Department will be guided by an overall commitment to the promotion of multiple multi-equipment sites Statewide. Such a commitment will encourage megavoltage treatment settings that are capable of providing oncologic patients with a greater range of clinical opportunities and would offer a more cost-effective alternative to a further proliferation of single unit megavoltage programs.

In its encouragement of multiple unit megavoltage programs, when justified by the program's utilization, case-mix and "track record", the Department proposes that such multi-equipment sites include at least one intermediate or medium/high range megavoltage unit as defined in this subchapter.

Similarly, single unit megavoltage programs unable to satisfy the utilization, case-mix and "track record" criteria contained in this subchapter over a thirty-six month period will result in a recommendation to deny reimbursement for the service by the Department to the Hospital Rate-Setting commission and/or the loss of licensure for the service.

Given the more than ample supply of existing programs and given the fact that many of the existing programs are not meeting the minimum requirements for efficient operation outlined in this subchapter, it is the position of the Department and its Statewide Health Coordinating Council (SHCC) that there is no need for any additional programs in the State and that future certificates of need for new megavoltage programs shall be recommended for denial. Any further proliferation of new programs will aggravate the capacity of existing programs to operate efficiently and will result in raising the cost of delivering the service to the health consuming public.

Only those applicants that are operating at acceptable utilization levels and are meeting each of the other standards and criteria delineated within this subchapter will be granted certificate of need approval for additional or replacement megavoltage equipment.

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[8:331-1.1 Utilization standards]

[Each applicant for an additional or replacement megavoltage therapy unit must show evidence of a minimal proposed volume of 300 patients per year or 6,200 patient visits per year for each additional or replacement megavoltage unit.

1. For purposes of this regulation, a megavoltage unit refers to an individual piece of radiotherapy equipment. A megavoltage program, on the other hand, refers to an entire therapy department or facility which may house a single or multiple units.]

8:331-1.1 Definitions

For purposes of this subchapter, the following definitions shall apply:

“Megavoltage unit” refers to an individual piece of radiotherapy equipment (generating beam energies in excess of 1,000 kilovolts).

“Megavoltage program” refers to an entire therapy department or facility which may house single or multiple megavoltage units.

Energy levels of megavoltage units shall be defined as follows:

1. Low energy—4 to 6 MV X-ray energy (exclusive of electron energy capability and inclusive of cobalt 60 units with skin to source distance of greater than 80 cm.)
2. Medium/high energy—greater than 6 MV X-ray or MeV electron energy to 20 MV X-ray or MeV electron energy;
3. Higher energy—energies in excess of 20 MV.

8:331-1.2 Utilization of megavoltage units and programs

(a) Single unit megavoltage programs shall be subject to the following:

1. Minimum annual utilization for megavoltage unit replacement in single unit megavoltage programs is 300 total patients or 6,200 patient visits. Consideration of minimum utilization standard compliance will take into account the output of Cobalt 60 devices and the age of the equipment.

2. Failure to achieve an average minimum utilization as defined in 1. above during 36 consecutive months following the effective date of this subchapter may result in a recommendation for denial of reimbursement for the service by the Department to the Hospital Rate-Setting Commission and/or the loss of licensure for the service.

i. Megavoltage units with medium/high energy capability or some combination thereof (commonly referred to as dual energy units) will not be approved for single unit megavoltage programs.

ii. Single unit megavoltage program equipment will not exceed the 6 MV energy level.

(b) Multiple unit megavoltage programs shall be subject to the following:

1. Applicants for a second megavoltage unit at an existing megavoltage program must meet a minimum acceptable annual utilization level (on its existing unit) of 10,500 actual patient visits or 600 actual patients.

2. Multiple unit megavoltage programs must have medium/high energy equipment capability (as defined at N.J.A.C. 8:331-1.1) and have on-site simulation capability.

3. Dual energy megavoltage units will be considered for second units in multiple unit megavoltage programs that meet the utilization requirements identified at N.J.A.C. 8:331-1.1.

4. Applicants for a third megavoltage unit at an existing multiple unit megavoltage program must meet a minimum acceptable annual utilization level (on its existing two units) of 16,000 actual patient visits or 900 actual patients.

8:331-1.3 New megavoltage programs

No applications for new megavoltage programs will be accepted for processing by the Department pending annual review of these rules by the Ad Hoc Technical Advisory Committee (see N.J.A.C. 8:331-1.5 (a)(10)).

[8:331-1.2] **8:331-1.4 Personnel standards**

(a) Each applicant for a certificate of need for a megavoltage radiation therapy unit must provide the department with written documentation that the following minimal staff complement shall be available:

1. 1.0 full-time equivalent radiation therapist directing radiation therapy for each program.

i. For the purpose of this regulation a qualified radiation therapist shall be considered to be one who has been:

(1) Certified or is eligible for certification by the American Board of Radiology in general radiology prior to 1976;

(2) Certified or eligible for certification by the American Board of Radiology or the American Osteopathic Board of Radiology in therapeutic radiology since 1976.

2. Adequate coverage in single unit programs by a qualified radiological physicist to insure that cobalt-60 units and other energy units are calibrated and employed properly in keeping with the volume of patients. In multiple unit programs 1.0 full-time equivalent qualified radiological physicist is required.

i. For the purposes of this regulation, qualified radiological physicist shall mean one who holds a degree in the physical sciences and who is:

(1) Certified by the American Board of Radiology in either radiological physics or therapeutic radiological physics; or

(2) Is eligible for such certification; or

(3) Has a bachelor's degree in the physical sciences and three years full-time experience in clinical radiation therapy physics working under the direction of a physicist certified (or board-eligible) by the American Board of Radiology or has a doctorate or master's degree in physical sciences and two years' such experience; or

(4) Has a doctorate or master's degree in radiological or medical physics and two years of post-graduate clinical therapeutic physics experience.

3. 2.0 full-time equivalent radiotherapy technicians (licensed by the State of New Jersey) per unit;

4. 1.0 full-time equivalent nurse [per program] is required in multiple unit programs.

5. 1.0 full-time equivalent simulator technician is required in multiple unit programs.

(b) In addition, supportive personnel consistent with the development of a program, the type of equipment, and the sophistication of treatment planning should be considered. These include simulator technicians, mold room technicians, dosimetrists, and accelerator engineers. Access to machine shop facilities should also be considered.

[8:331-1.3] **8:331-1.5 General criteria**

(a) As part of the application for a megavoltage radiation therapy unit, each application must meet the following minimum general criteria.

1.-8. (No change.)

9. Each applicant must maintain and provide basic statistical data on the operation of the unit and report that data to the New Jersey State Department of Health on a quarterly basis and on a standardized form prepared by the Department. Copies of the full text of the required quarterly reporting forms may be obtained upon written request to the New

Jersey State Department of Health, Health Data Services, Room [502, P.O. Box 1540] 404, CN 360, Trenton, New Jersey 08625.

10. An ad hoc technical advisory committee shall review and comment on this regulation [on a regular basis] **annually** and shall provide advice, upon request, on certificate of need applications and other related issues which come before the S.H.C.C. and the State Department of Health.

(a)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**Ambulatory Care Facilities
Standards for Licensure**

**Proposed Readoption with Amendment:
N.J.A.C. 8:43A**

Authorized By: Charles F. Pierce, Acting 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 September 19, 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) after approval by the Health Care Administration Board. Pursuant to Executive Order No. 66(1978), these rules expire on August 9, 1984.

This proposal is known as PRN 1984-451.

The agency proposal follows:

Summary

The Manual of Standards for Licensure of Ambulatory Care Facilities, N.J.A.C. 8:43A, is due to expire on August 9, 1984, in accordance with N.J.A.C. 8:43A-1.10 and Executive Order No. 66 (1978). Readoption of N.J.A.C. 8:43A for two years, as proposed, will allow the Standards for Licensure of Ambulatory Care Facilities to remain in effect until August 9, 1986. The proposed readoption includes no changes in the current text, with the exception of the proposed amendment, N.J.A.C. 8:43A-1.10, which states that the chapter will expire on August 9, 1986.

N.J.A.C. 8:43A was previously scheduled to expire on August 9, 1983, pursuant to the "sunset" provisions of Execu-

tive Order No. 66 (Governor Byrne, 1978) which mandates the five-year automatic expiration of a rule. On June 20, 1983, the Department proposed that N.J.A.C. 8:43A be readopted so as to extend the expiration date by one year and to "provide time for the thorough evaluation of the standards by concerned persons and facilities and for revision of the standards" (see 15 N.J.R. 994). The proposal was adopted and a notice of adoption was published on October 3, 1983 (see 15 N.J.R. 1663). The complexity of the Department's program of evaluation and revision, as discussed below, underlies the Department's decision to propose the readoption of N.J.A.C. 8:43A for two years rather than to present a revised manual of standards for adoption at this time. In proposing readoption for two years, the Department has taken into consideration the considerable amount of time which the procedure for the promulgation of new rules entails.

The Department proposes that N.J.A.C. 8:43A be allowed to remain in effect for an additional two-year period during which the Department intends to extensively revise the rules. The resultant revision will represent an attempt to reorganize the rules in accordance with rational precepts and to render the rules less prescriptive than they presently are. Accordingly, the rewritten, reorganized rules will emphasize the unity, rather than the diversity, of ambulatory care services through the absence of subchapters currently devoted to individual services. The manual will permit a greater degree of flexibility on the part of the facility. Readoption of N.J.A.C. 8:43A for two years will provide the time required for such an extensive revision to be completed.

Another factor which contributes to the complexity of the task of revising the rules is the need for the rules to accommodate future advances in methods of providing ambulatory care services and technology.

The Department completed a preliminary draft of a revised manual of standards in February 1984. In an effort to elicit and ascertain the views of both the providers of ambulatory care services and those responsible for protecting the health and safety of the consumers of ambulatory care services, the Department conducted a meeting regarding the preliminary draft on March 19, 1984. The varied comments made during that meeting by representatives of ambulatory care facilities and by representatives of divisions within the Department indicated the need for the Department to have additional time in which to consider the opinions rendered and redraft the revised manual before proposing to the Health Care Administration Board that the revised rules be adopted. Readoption of N.J.A.C. 8:43A for two years will provide the time which the Department will need to compare and evaluate the diverse opinions and will ensure the existence of acceptable rules for licensure during this time of evaluation and revision.

Ambulatory care facilities provide a variety of health care services on an outpatient basis. Such services include computerized tomography services, family planning services, family practice services, prenatal and postpartum services, pediatric services, surgical services, drug abuse treatment services, dialysis services, radiology services, health education and counseling services, dental services, emergency medical care, and the services provided by health maintenance organizations. N.J.A.C. 8:43A contains the rules for licensure of facilities providing these various health care services including rules regarding organization and delivery of services, staffing patterns, patient flow, continuity of care, medical records, patient care statistics, financial data, audit and evaluation, infection control, housekeeping services, physical plant, definitions and/or qualifications, licensure procedure, general

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requirements, auspices, administration, and laboratory tests and diagnostic procedures.

The Department's objectives in establishing rules for licensure of ambulatory care facilities are as follows:

1. To ensure access to comprehensive health and medical services, through the licensure of facilities.
2. To protect the patient by establishing minimum standards for quality health care.
3. To protect the safety of each patient receiving health care services, with due regard for patient amenities.
4. To reduce the financial burden of health care services by promoting cost containment.
5. To protect the dignity of the patient.

In order to attain these objectives and to ensure that ambulatory care facilities provide preventive, diagnostic, and therapeutic health services to patients, the Department proposes that the rules for licensure of ambulatory care facilities be allowed to remain in effect through the readoption, at this time, of N.J.A.C. 8:43A. For the reasons discussed above, the Department maintains that an extension of the expiration date of these rules for two years is necessary to allow sufficient time for a thorough evaluation and revision of the rules.

Social Impact

Ambulatory care represents a cost-effective means by which consumers can receive health care. Through early detection and control of diseases, ambulatory care facilities reduce the number of inpatient hospital days required by patients and minimize the loss of days on which patients could otherwise function productively in society. Since licensure is a necessary condition for ambulatory care facility reimbursement by third-party payors, the nonexistence of rules for licensure could result in the closure of many ambulatory care facilities. Closure of facilities could, in turn, seriously restrict access to a valuable source of health care. Readoption of N.J.A.C. 8:43A, therefore, is necessary in order to ensure the continuity of ambulatory care services and to protect the health of the residents of New Jersey.

The comprehensive nature of the health care services provided by the many ambulatory care facilities in New Jersey, which range from family practice services to computerized tomography services, requires that there be minimum rules capable of safeguarding the physical well-being of the consumers of these services. Readoption of N.J.A.C. 8:43A will ensure the existence of such rules.

Economic Impact

If N.J.A.C. 8:43A is readopted, the Manual of Standards for Licensure of Ambulatory Care Facilities will continue to have the same positive economic impact which it presently has on ambulatory care facilities because the facilities will continue to operate under the current regulations. Compliance with N.J.A.C. 8:43A is the basis for licensure which, in turn, makes it possible for ambulatory care facilities to receive reimbursement from third-party payors. Closure of facilities and discontinuation of services could result from the inability of facilities to receive such reimbursement.

Licensure of ambulatory care facilities also produces economically advantageous consequences for consumers and third-party payors. Ambulatory care facilities are intrinsically well-suited to promote containment of health care costs. Costs associated with unnecessary care and unnecessarily long inpatient visits to hospitals can be reduced as a result of the capacity of ambulatory care facilities to provide services which lead to the early detection and control of disease. By

offering preventive, diagnostic, and therapeutic health services on an outpatient basis, ambulatory care facilities afford a means by which a patient may receive health care services without placing an excessive financial burden upon the patient or the patient's family. Readoption of N.J.A.C. 8:43A will reestablish a basis for licensure of ambulatory care facilities and will thereby permit the realization of the potential for cost-containment inherent in ambulatory care.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:43A, as amended in the New Jersey Register.

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

8:43A-1.10 Expiration date of chapter

This chapter concerning Ambulatory Care Facilities shall expire on August 9, 198[4]6.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

State Colleges; Policies and Procedures

Proposed Repeal: N.J.A.C. 9:2-1, 2, 3, 8 and 9

Proposed New Rules: N.J.A.C. 9:6

Authorized by: Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Authority: N.J.S.A. 18A:64-6, 18A:3-14.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses should be addressed to:

Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
225 West State Street
Trenton, New Jersey 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 1984-463.

The agency proposal follows:

Summary

The Board of Higher Education is statutorily charged with establishing policies and procedures governing the operation

of New Jersey's college system. The current regulations concerning the state colleges shall expire on November 21, 1984 pursuant to the provisions of Executive Order 66(1978).

The proposal repeals the following current regulations governing administrative policies at state colleges which are within Chapter 2 of the Administrative Code: N.J.A.C. 9:2-1, 2, 3, 8 and 9. Proposed new rules replacing the above regulations are to be placed within their own chapter in the Code and rearranged into a more meaningful sequence. The old subchapters shall be renumbered as follows:

Old Code Designation	New Code Designation
9:2-1	9:6-1
9:2-2	9:6-3
9:2-3	9:6-5
9:2-8	9:6-2
9:2-9	9:6-4

The proposed rules represent some of the material which is contained in the current rules. The proposal, however, deletes considerable material which was found to be unnecessary or outdated and provides additional clarification or refines the regulations which remain.

The rules establish requirements for admissions policies; baccalaureate degrees standards; academic personnel policies; tenure and multiyear contract rules and reduction in force policies.

Social Impact

The regulations will permit the Board and Department of Higher Education to assure the educational and administrative quality of the state college system in New Jersey. The additions and deletions heretofore mentioned will in no way decrease these standards, but serve to clarify and improve them.

Specifically, the proposal would have the following impact on the following areas:

Admissions

The proposal revises the various units of college preparatory courses which a student seeking admission to a state college must have completed. While the total number of units, sixteen, remains the same, the number of years of math has been increased from two to three, one of which must be algebra and the requirement of one year of laboratory science is increased to two years. This increase in requirements shall be effective for those entering college after July 1, 1987.

Faculty

The state colleges have been given the ability, under the proposal, to make initial faculty appointments for a period up to three years. This will give the state colleges a better opportunity to compete with other institutions for prospective faculty and will provide new faculty with more security than the current one year appointments provide.

The qualifications for faculty rank have also been upgraded with regard to terminal degree requirements and a requirement for a progression of quality in succeeding ranks. These requirements are expected to improve the quality of the faculty at the state colleges, thereby benefiting the institutions and the students.

Non-teaching Professionals

The proposal also provides for the contracts of all non-teaching professionals to end on June 30 of each academic

year. For the purpose of the probationary clock leading to a multi-year appointment consideration, the first year of service will be counted if it begins no later than December 31. This change is intended to simplify the evaluation process by having one evaluation cycle rather than several depending upon a variety of appointment dates.

Reduction in Force Policies

The proposed new rules in this area add a provision under the declaration of fiscal exigency section which would allow a state college board of trustees to declare a state of fiscal exigency for the upcoming fiscal year subsequent to the Governor's annual budget message. This would give the institutions greater flexibility in planning for fiscal exigencies in such a manner so as to minimize the impact upon the college's ability to provide appropriate services by anticipating a fiscal crisis at the beginning of the fiscal year.

Also, further new rules in this area clarify under which circumstances statutory or negotiated agreement provisions shall govern reductions in force at the state colleges. As a result, reductions in force necessary because of non-exigent financial reasons, programmatic reasons or a natural diminution of students shall be governed by applicable statutory or negotiated agreement provisions rather than by these regulations.

Economic Impact

The proposed rules represent for the most part qualitative standards which do not involve additional costs to the institutions or agency.

In two areas, however, the regulations will result in the state colleges saving an undeterminable amount of money. First, by requiring the contracts of all non-teaching professionals to end on June 30th, thereby having one evaluation cycle, the state colleges should be able to administer such evaluations more easily and efficiently, thereby saving money. Second, by allowing a state college more flexibility in declaring a fiscal exigency subsequent to the Governor's annual budget message, a college would be able to save funds by making necessary reductions to be effective at the commencement of the fiscal year.

Full text of the rules proposed for repeal appears in New Jersey Administrative Code at N.J.A.C. 9:2-1, 2, 3, 8 and 9, as amended in the New Jersey Register.

Full text of the proposed new rules follows.

CHAPTER 6 STATE COLLEGES

SUBCHAPTER 1. ADMISSIONS POLICIES

9:6-1.1 General policies

(a) Students seeking admission to New Jersey State Colleges as freshmen shall submit:

1. An official transcript showing graduation or anticipated graduation from an accredited secondary school, courses attempted, completed or in process, and rank in class; or a high school equivalency certificate (G.E.D.). The courses completed or in process must total a minimum of 16 units of college preparatory subjects, including four units of English, three units of mathematics, one of which must be algebra, two units of social studies, and two units of laboratory science. (For students who matriculate prior to July 1, 1987, the mathematics requirement shall be two units and the science

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requirement one unit). The five additional units of academic electives shall be selected from courses in the above college preparatory subjects and foreign languages; and

2. Examination scores of the Scholastic Aptitude Test of the College Entrance Examination Board or the American College Testing Program.

(b) The colleges shall notify the prospective student of his or her acceptance or rejection at any time after the candidate's file is complete. The student shall not be required to accept or reject the offer of admission before May 1 of the year of entering college, except when the application is made as part of an early admission process. This subsection shall not preclude any college from establishing a procedure for early decisions and commitments by students. In reaching admissions decisions, institutions shall apply the same standard for students applying for regular admission or late consideration (after May 1).

(c) The policies set forth in this section are minimum standards and may be raised at the discretion of individual colleges.

9:6-1.2 Standards

(a) The Board of Higher Education believes that one key to high standards in the State Colleges is adherence to sound admission requirements. As such, the policies in this chapter apply without exception to all regularly admitted students. However, the Board recognizes that admissions standards must be administered flexibly in order to meet the specific educational objectives of each institution and in order to provide equitable educational opportunity. Therefore, the State colleges are authorized to make exceptions to the requirements for high school graduation and course distribution, as stated in N.J.A.C. 9:6-2.1.1(a)1, for students admitted through a colleges special admissions program. In accordance with Board of Higher Education policy, students admitted under the Educational Opportunity Fund program shall constitute a minimum of ten percent of the New Jersey residents in the entering freshman class and students admitted through the colleges special admissions program shall not exceed ten percent of the entering freshman class.

(b) While discretion in the administration of these standards does and should rest with the colleges, it is the Board's belief that the intention of such exceptions is to strengthen the quality and diversity of the student body. The Board further wishes to underscore its conviction that academic excellence is inseparable from well-prepared and well-motivated students, and that the intent of these regulations is to provide flexibility, not a weakening of standards.

SUBCHAPTER 2. BACCALAUREATE DEGREE STANDARDS

9:6-2.1 Baccalaureate degree holder

(a) A baccalaureate degree holder should be able to deal creatively and realistically with personal, community, national and international concerns. A college graduate should be able to think logically, to act rationally, and to make appropriate decisions about the future based on past and present conditions and circumstances. He or she should also possess an understanding of ethics and aesthetics as a foundation for the development of a value system that can be translated into effective participation in society.

(b) To qualify for the baccalaureate degree, a student must:

1. Achieve mastery in the use of the English language;

2. Understand and be able to apply the scientific method and basic scientific and mathematical concepts;

3. Have gained a perspective of the social sciences, knowledge about the interaction of human groups, about world and United States history and institutions, and about comparative economic systems;

4. Have acquired basic knowledge and competencies in the humanities, such as literature, philosophy, and the arts, and a knowledgeable appreciation of the value of the humanities to the individual and to society; and

5. Have achieved mastery of a subject of inter-disciplinary field and be aware of his or her specialty's relationship to a career or graduate school experience.

(c) The competencies of (a) and (b) above must be carefully and appropriately evaluated by the faculty.

9:6-2.2 Distribution standards for the baccalaureate degree

(a) Baccalaureate programs at the State Colleges comprise general education, major concentration, and elective coursework.

(b) The Board of Higher Education considers that the role of an institution of higher education is to provide broad knowledge of the world in which we live by study of the major divisions into which man's accumulated knowledge has traditionally been organized. This would imply some substantial exposure to several disciplines before a student may be awarded a baccalaureate degree. Approximately one-half of the student's time during a baccalaureate program shall be devoted to acquiring a solid base of understanding of the accumulated store of knowledge. An exception may be made for specialized degree programs as hereinafter indicated. In all cases, this broad general educational base can be established through survey courses, inter-disciplinary programs which relate major fields or bodies of knowledge, and depth courses in the various disciplines taught by specialists and carefully chose because of the insight these particular courses can provide into the nature of the larger discipline.

(c) A student shall pursue a discipline or course of study in sufficient depth to be acquainted with both the basic body of knowledge therein and the frontiers to which it reaches. The credit requirements for major areas of concentration will vary according to type of program:

1. Within a Bachelor of Arts program, major courses shall represent one-quarter to one-third of the degree program.

2. Within a Bachelor of Science program, up to one-half of the degree may be taken in major or required collateral courses.

3. Within specialized degree programs, such as the B.F.A., the B. Mus. and programs in the regulated professions, major course requirements may exceed one-half of the total required for the degree. While the major component of some specialized degree programs requires a heavy commitment, in no case shall the curriculum be so specialized that the aims of a liberal undergraduate education are relegated to a position of secondary importance.

(d) Within the remaining portion of the curriculum the student's time shall be devoted to elective subjects.

9:6-2.3 Basic skills for college level work

(a) All students matriculating as freshmen, whether admitted through the regular or exceptional procedure at each institution, must take the New Jersey Basic Skills Placement Test. All students found deficient in any of the basic skills according to the standard of the institution are to be placed in the appropriate remedial classes in the first semester.

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(b) Remediation of skills deficiencies shall occur no later than by the completion of the freshman year. Prior to pursuing an academic curriculum in depth, those students who entered the college with unacceptable preparation in the basic skills must have raised their performance to a level deemed appropriate by the college. The college may wish to use satisfactory course performance or some standardized assessment technique to make such judgments. The college must also ensure that graduates have mastered reading, written English, and mathematical concepts.

(c) In the administration of these policies, no credit toward a baccalaureate degree may be awarded for basic skills courses. Colleges may grant credit toward the baccalaureate for satisfactory performance in college-level academic courses that have an additional skills component.

SUBCHAPTER 3. ACADEMIC PERSONNEL POLICIES

9:6-3.1 Academic freedom

(a) Academic freedom derives from the nature of the quest for knowledge. It is essential to the full search for truth and its free exposition, applies to both teaching and research, and shall not be abridged or abused. Academic freedom does not relieve the employee of those duties and obligations which are inherent in the employer-employee relationship.

(b) Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it responsibilities correlative with rights.

1. Employees are entitled to full freedom in research and in the publication of results.

2. An employee is entitled to freedom in the classroom in discussing his or her subject.

3. Employees are citizens and members of a learned profession. When the employee speaks or writes as a citizen, he or she is free from institutional censorship or discipline, but should not represent himself as a spokesperson for the institution.

9:6-3.2 Definitions

The following words and terms, when used in the State and county college tenure law, N.J.S.A. 18A:60-6 et seq., shall have the following meanings unless the context clearly indicates otherwise.

"Academic year" means the period from September 1 through June 30.

9:6-3.3 Appointments

(a) Appointments to the faculty of a New Jersey State College are made by the board of trustees as provided by law.

(b) In making appointments, the board of trustees acts upon the nomination by the president, which is made after appropriate consultation with faculty and administrative officials.

(c) Appointments are subject to the availability of funds and proper recording.

9:6-3.4. Period of appointment

An initial appointment may be made for up to three years. Reappointments shall be for one year until the faculty member attains tenure.

9:6-3.5 Qualifications for rank

(a) The academic attainment level and professional experience requirements for college faculty academic rank are set forth below. Conditions concerning promotion or appointment to such rank are defined in N.J.A.C. 9:6-3.8 (Criteria for promotions):

1. Instructor: an earned master's degree or its equivalent from an accredited institution in an appropriate field of study and enrollment in and actively pursuing an accredited terminal degree program in an appropriate field of study.

2. Assistant Professor: An earned doctorate or other appropriate terminal degree or its equivalent from an accredited institution in an appropriate field of study or completion of all requirements for the doctorate in an accredited institution except for the dissertation. For persons who do not hold the appropriate terminal degree, no reappointment shall be made to the fourth year.

3. Associate Professor: An earned doctorate or other appropriate terminal degree from an accredited institution in an appropriate field of study and five years of professional experience. Evidence of excellence in teaching, scholarly achievement, and service beyond the level of accomplishment of those holding the assistant professor rank.

4. Professor: An earned doctorate or other appropriate terminal degree from an accredited institution in an appropriate field of study and eight years of professional experience. Evidence of excellence in teaching, scholarly achievement and service beyond the level of accomplishment of those holding the associate professor rank.

5. Distinguished Professor: As established by the board of trustees of each college, this rank is intended to provide for the individual who has demonstrated outstanding scholarship, teaching ability, or distinction in a field.

(b) The Board of Higher Education recognizes that on rare occasions individuals may present qualification as to education and experience that their peers will recommend to the board of trustees to be the equivalent of the above qualifications although not corresponding to them to the letter. The requirement of an earned doctorate or other appropriate terminal degree or its equivalent for promotion to the rank of Assistant Professor shall not apply to faculty members employed in the colleges prior to February 22, 1974.

(c) The academic attainment level and professional experience requirements for librarians are as follows:

1. Librarian III: A master's degree in Library Science or its historical antecedent from a then ALA accredited library school. Previous professional library experience is desirable, but not required.

2. Librarian II: A master's degree in Library Science or its historical antecedent from a then ALA accredited library school and three years' professional library experience. A second master's degree in another subject area and/or a reading competence in one foreign language is desirable, but not required.

3. Librarian I: A master's degree in Library Science or its historical antecedent from a then ALA accredited library school, a second master's degree in another subject area or ABD status in an approved doctoral program and five years' professional library experience, with demonstrated and/or potential administrative and coordinating ability. Reading competence in one foreign language is desirable, but not required. A minimum of five additional years' professional library experience may be considered in substitution for the second master's degree or ABD status in an approved doctoral program depending upon the quality of the experience.

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4. The requirement for a master's degree in Library Science or its historical antecedent from a then ALA accredited library school may be met by substituting a master's degree in a related field relevant to an individual's duties. The Library Personnel Committee, where appropriate, may consider and make recommendations on whether such other master's degrees should be so substituted.

(d) The academic attainment level and professional experience requirements for the A. Harry Moore School Faculty are as follows:

1. Demonstration Teacher: New Jersey Certification in Special Education and a master's degree and two years' teaching experience in special education; or a bachelor's degree and five years' teaching experience in special education; or a master's degree and two years' teaching experience in a specialized vocational area; or a master's degree and two years' appropriate experience in a specialized vocational area; or a bachelor's degree and five years' teaching experience in a specialized vocational area; or possession of appropriate credentials in such fields as, but not limited to, occupational therapy, physical therapy and learning disabilities and a master's degree and five years' experience in an appropriate field.

2. Teacher: New Jersey Certification in Special Education and a bachelor's degree and proficiency in a specialized vocational area or possession of appropriate credentials in such fields as, but not limited to, occupational therapy, physical therapy and learning disabilities.

9:6-3.6 Criteria for promotions

(a) Criteria for granting academic rank are set forth in N.J.A.C. 9:6-3.7 (Qualification for rank). These criteria are important indicators of academic achievement. Such achievement is usually accompanied by intellectual growth and maturity. Most important, the academic achievement record is a reasonable objective measure. While this objective measure should be given weight in promotion decisions, it should not necessarily be the dominant factor. Decisions about promotions shall be governed by at least three broad and interrelated factors:

1. Effective teaching;
2. Scholarly achievement; and
3. Contributions to college and community.

(b) Regarding librarians, the major criteria upon which the Personnel Committee will make promotion recommendations are as follows:

1. High quality of performance in the area of assigned responsibility;
2. Professional contributions and scholarly activity;
3. Additional academic preparation as evidenced by advanced degree or other relevant course work;
4. Administrative and/or coordinating ability; and
5. Participation in library, college and community affairs.

9:6-3.7 Limitations for professorial classification

(a) The following guidelines shall apply to academic personnel at the State Colleges:

1. Not more than 30 percent of a teaching faculty at any college shall be professors and distinguished service professors.
2. Not more than 60 percent of a teaching faculty at any college shall be professors and associate professors.
3. Paragraphs 1 and 2 above should not be interpreted as providing quotas for any department or other division within a college.

9:6-3.8 General provisions: Salary schedule

(a) All appointments and reappointments shall be made in accordance with provisions of the salary schedule and the salary schedule regulations.

(b) All salary schedules of New Jersey State Colleges may be amended or revised by the Board of Higher Education.

9:6-3.9 Transfer

With consent of the presidents and boards of trustees of both colleges, a faculty member may transfer from one college to another without loss of rights.

9:6-3.10 Retirement

Conditions of retirement are set forth in the statutes governing the Public Employment Retirement System, the Teachers Pension and Annuity Fund and the Alternate Benefits Program.

9:6-3.11 Adjunct faculty

(a) The Board of Higher Education shall establish salary rates for adjunct faculty teaching at the State Colleges.

(b) Adjunct faculty shall not teach more than the equivalent of half-time (12 teaching credit hours) during any academic year.

9:6-3.12 Visiting specialist

A visiting specialist who may be appointed to a State College with a rank such as artist- or poet- or composer-in-residence shall be one who has achieved distinction in a field such as the arts, the humanities, the sciences, or public life. While the attainment of academic excellence in a given field is desirable, such appointment shall be made principally on the basis the distinction the person has achieved in his or her chosen field. Such an appointment is to be in excess of faculty positions established in the faculty-student ratio. A visiting specialist may serve at a State College for a period not exceeding three years of consecutive, full-time service.

9:6-3.13 Emeritus

The board of trustees upon the recommendation of the president may provide emeritus status for a retiring president, dean, or professor, should it desire to recognize meritorious performance. Such a faculty member shall have the right to attend and to speak at all faculty meetings.

9:6-3.14 Faculty dismissals

No faculty member on tenure may be dismissed except as provided in N.J.S.A. 18A:6-18.

9:6-3.15 Career development; evaluation criteria

(a) The following criteria shall be used for the purposes of the evaluation of professional staff as mandated by N.J.S.A. 18A:60-10:

1. Teaching effectiveness;
2. Effectiveness of performance of other assigned duties and responsibilities;
3. Scholarly achievement;
4. Contributions to college and community;
5. Effectiveness of performance of other responsibilities; and
6. Changing institutional needs do not constitute personal professional deficiencies.

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9:6-3.16 Merit award

(a) The merit award program is intended to recognize outstanding professional contributions by members of the faculty, librarians and non-teaching professionals.

(b) The college's promotional procedure constitutes the normal method of recognizing the highly satisfactory performance of general professional responsibilities over a period of years. The merit award presumes that eligible candidates have demonstrated at least satisfactory performance in all areas of professional responsibility and, in addition, during the two years immediately preceding the award, have made one or more outstanding professional contributions that confer distinction upon the individual and upon the college.

(c) Regarding faculty, the merit award is intended to recognize at least satisfactory performance in all areas of responsibility and one or more noteworthy professional contributions. Meritorious contribution(s) may be in any of the following areas:

1. Teaching: Since teaching is the primary mission of the State Colleges, outstanding performance as a teacher is the primary focus for merit award consideration. Examples of meritorious achievements in teaching could include a teacher who has had great influence on his or her students, or one who has made a significant contribution to the improvement of teaching in his or her Department or the college.

2. Scholarly/creative activity; research: With regard to scholarly/creative activity and research, outstanding contribution(s) should be verified by recognized authorities in the appropriate field and the significant impact of these accomplishments upon the candidate's field or discipline clearly indicated;

3. Professional activity: Significant success in professional activity would normally require that a person have served in a key role with policy implications in the major professional organization in his or her field and have been instrumental in the formulation and implementation of major decisions which affect the discipline.

4. Service to the college: Service to the college could include the chairmanship of a key committee whose work resulted in critical changes or improvement in major college programs; the development of an outstanding course or program which enables the institution to answer an important need of the public or student body or which enhances the Department.

(d) Regarding non-teaching professionals, the merit award is intended to recognize at least satisfactory performance in all areas of responsibility appropriate to an individual's assignment and one or more noteworthy professional contributions which confer distinction upon the individual and upon the college. Noteworthy contribution(s) may be in any of the following areas:

1. Service to the college: Since the non-teaching professional's primary responsibilities are to provide academic and administrative support services, a meritorious service to the college that extends beyond the satisfactory performance of assigned professional responsibilities is the primary criterion for merit award consideration. Noteworthy contributions could include more effective delivery of academic and administrative services; initiation of more cost-effective techniques within an office unit, division or within the college generally; chairmanship of a key committee whose work resulted in critical changes or improvements in major college programs or services; enhancement of the college's relationships with the general public; initiation and implementation of a noteworthy grant funded activity.

2. Professional activity: With regard to professional activity, a significant contribution(s) made by an individual in meeting professional responsibilities beyond the campus could be cited for merit award consideration. Noteworthy contributions of professional activity could include serving in a leadership role with policy implications in the major professional organization in an individual's field; making a significant and identifiable contribution to system-wide committees established by the higher education community that deal with issues falling within the individual's areas of professional expertise; pursuing advanced study, the results of which have a significant impact on the individual's field that extend beyond his or her regular professional responsibilities.

SUBCHAPTER 4. TENURE AND MULTIYEAR CONTRACT RULES

9:6-4.1 Preparation of an academic plan

Each college board of trustees shall prepare an academic plan for its institution indicating the steps it plans to take to achieve a future balance of faculty in which no more than a reasonable proportion are ultimately tenured. The Board of Higher Education believes that by limiting the proportion of tenured faculty, the institution maintains the flexibility to respond to changing educational needs of future generations of students. Accordingly, the academic plan established by each institutional trustee board shall include the proportion of tenured faculty projected each year during the plan's life.

9:6-4.2 Establishment of internal policies on tenure

(a) Each college board of trustees shall establish internal policies which indicate either that it will impose specific restrictions or more intensive and rigorous review procedures for any reappointment conferring tenure which brings the proportion of individuals in a department (or other academic submit) or in the college as a whole above its present level. Reappointments conferring tenure which raise the tenure rate above that level shall be made only as an unusual action when judged by the college board of trustees as being in the best interest of the college.

(b) Tenure shall be awarded only to individuals whose performance during their probationary period gives clear evidence of the ability and willingness to make a significant and continuing contribution to the institution's growth and development. Furthermore, tenure shall be awarded after presentation of positive evidence of excellence in teaching, scholarly achievement, contribution to college and community, and fulfillment of professional responsibilities.

9:6-4.3 Terminal degree requirements

A reappointment conferring tenure may be offered only to faculty members who possess an appropriate terminal degree or its equivalent, except under unusual circumstances when the granting of tenure to an individual not having these qualifications is judged by a college board of trustees as being in the best interest of the institution.

9:6-4.4 Evaluation of tenured faculty

(a) Each college board of trustees shall establish a procedure which the college will employ to evaluate the performance of tenured faculty members.

(b) Such evaluation shall occur not less frequently than every five years.

(c) These evaluations, which shall include student input, shall include such factors as continued teaching competence,

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professional preparation and attainments which are directly related to teaching or administrative assignments, contributions to campus life beyond formal, assigned instructional activity and significant research, scholarly or community activity.

9:6-4.5 Academic rank for non-teaching personnel

(a) Professional staff who meet appropriate qualification requirements for academic rank and serve as presidents, vice presidents for academic affairs, and academic deans are eligible for concurrent academic rank. Nothing shall be construed herein to require a concurrent academic rank appointment, by a board of trustees, to an eligible professional staff member.

(b) Librarians who meet appropriate qualification requirements and hold State payroll titles of librarian I, librarian II, and librarian III are eligible for concurrent academic rank. Concurrent academic rank equivalencies for librarians I, II, and III shall be the following:

State Payroll Title	Concurrent Academic Rank
1. Librarian I:	Assistant professor in the library;
2. Librarian II:	Assistant professor in the library;
3. Librarian III:	Instructor in the library.

(c) Professional staff holding concurrent rank appointments may be reassigned by a president to any college position within his or her area of professional competence and appropriate qualifications for rank.

(d) Employees holding concurrent academic rank appointments shall not be eligible for multi-year contracts or administrative appointment for a term of more than one year, although reappointments may be made without limit.

(e) Under no circumstances may tenure be earned in any administrative position.

9:6-4.6 Non-teaching professionals

Those members of the professional staff who are not eligible for concurrent academic rank or continuation of concurrent academic rank under the provisions of these regulations shall be eligible for multiyear contracts.

9:6-4.7 Contracts for professional staff (non-faculty)

(a) Members of the professional staff not holding faculty rank may be appointed for one-year terms concurrent with the academic year. After completion of five years of probationary service, such employees shall be eligible for a multiyear contract. For professional staff who are members of the State college negotiating unit, each initial appointment of a multi-year contract shall be for three academic years in length. Subsequent reappointments shall be for four years, and then five years. All subsequent contracts shall be for five academic years in length.

(b) For the purposes of this section the academic year shall be from July 1 to June 30. Contracts for professional staff members shall be concurrent with the academic year. In order for the initial term of employment to qualify as a full academic year for purposes of the multiyear contract probationary period, employment under the contract must begin no later than December 31st.

(c) Eligible professional staff members must be notified by the president no later than December 15 in their fifth academic year of service of their reappointment or nonreappoint-

ment to a contract of from two to five academic years in length.

(d) Notwithstanding (a) above, professional staff members serving under multiyear contracts who are promoted in title shall, at minimum, serve one year in his or her new position before becoming eligible for consideration of a multiyear contract in that new position.

(e) Professional staff members serving under a multiyear contract may be assigned by the president to any professional position within their area of competence and qualifications during the term of the contract, but their salary may not be reduced during the duration of the contract below that which they would have received had they continued in their original position, and they may be dismissed from the college during the term of the contract only for cause consistent with appropriate statutory provisions.

(f) Prior to the implementation of these guidelines, the board of each college shall establish a formal procedure for considering and approving the offering of multiyear contract. This procedure should, at minimum, encompass a thorough review of all personnel records including the reports of regular, systematic, and formal evaluations conducted during the employment of the individual.

SUBCHAPTER 5. REDUCTION IN FORCE POLICIES

9:6-5.1 Scope and purpose

This subchapter governs the procedures to be used by the State Colleges when it becomes necessary to reduce the number of employees of a college due to a fiscal crisis. The rules also address the rights of non-civil service employees at the State Colleges of New Jersey under such circumstances. Rights and procedures for civil service employees are contained in the regulations of the Department of Civil Service, N.J.A.C. 4:1.

9:6-5.2 Declaration of fiscal exigency

The board of trustees of any State College may declare a state of fiscal exigency for the State College by a majority vote of the appointed members of the board. A financial exigency for the following fiscal year may be declared subsequent to the announcement of the Governor's Budget Message.

9:6-5.3 Plans and recommendations

Once a state of fiscal exigency is declared, the board of trustees shall direct the president to develop a plan and formulate recommendations to deal with the state of fiscal exigency. Such a plan shall consider a full range of alternatives, from the curtailment of college operations and programs to the layoff of employees.

9:6-5.4 Consultation with college community

The president shall consult with the college community in developing the plan and recommendations to be presented to the board of trustees.

9:6-5.5 Affirmative action

The president's plan and recommendations shall be developed in accordance with the State's commitment to affirmative action. The affirmative action officer of the college shall prepare an analysis of the affirmative action impact of any recommended personnel layoffs to assist the president in development of the recommendations.

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9:6-5.6 Review of recommendations

(a) The board of trustees shall review the president's recommendations, which shall include the affirmative action officer's assessment of their impact, and may accept, reject, or modify such recommendations.

(b) If such recommendations as noted in (a) above include the layoff of employees, the board shall notify the representative of the negotiating unit and fulfill such obligations as are indicated in the agreement between the State and the negotiating unit.

1. The determination by the board of trustees as to which teaching, library or administrative areas are to be reduced shall be based on academic or administrative considerations.

2. The board shall request an affirmative action analysis of its proposed action.

3. Every effort must be made to protect those programs and functions which are of major instructional or administrative significance at the college.

4. Layoff units need not be coincident with established departments or other subdivisions or units, but may include identifiable programs or further subdivisions or specialities within academic programs as appropriate.

5. Each teaching, library or administrative area to be reduced shall constitute a layoff unit.

6. To the extent it is not inconsistent to the preservation of the institution's academic integrity and educational purpose, layoffs within a faculty layoff unit shall be made in order of years of service, laying off faculty with the fewest years of service first.

9:6-5.7 Notice requirements; time period

In the event that the board determines it must implement layoffs, it shall give notice to the academic community of all individuals subject to the proposed layoff at least two weeks prior to the formal board action on said layoffs.

6:6-5.8 Employee notice

The board of trustees shall notify each employee who is to be laid off of such fact as soon as possible.

9:6-5.9 Reemployment lists; generally

(a) With respect to reemployment rights, the college president shall establish a reemployment list, including the names and qualifications of all tenured or multi-year contract employees on layoff status. The college shall not fill a vacancy in an administrative, library or teaching area without first making a written offer of reemployment by certified mail to those employees on the reemployment list who the president believes, as a result of his or her academic judgment, are qualified to fill the position. In the event that two or more employees on the reemployment list have accepted an offer of reemployment for a single vacancy, the college shall give reemployment preference in faculty positions and non-teaching positions in reverse of the order in which they were laid off; that is, last laid off, first rehired.

(b) Employees offered reemployment shall have two weeks from receipt to respond to an offer, which shall be sent via certified mail, return receipt requested, after which it shall be deemed to have expired. Employees on a reemployment list shall have the obligation to keep the college president informed of current addresses.

9:6-5.10 Reemployment lists; time period

Non-tenured or non-multi-year contract employees shall remain on the reemployment list until the end of the annual

contract pursuant to which they were employed on the date of lay off. Employees who are tenured on the date of lay off shall remain on the reemployment list for a period of five years from the date of lay off. Employees serving under a multi-year contract on the date of lay off shall remain on the reemployment list for the duration of the multi-year contract.

9:6-5.11 Reappointment of laid-off employees

Any employee on layoff status who is reemployed after lay off shall be reappointed with a rank and salary at least equivalent to his or her rank and salary step when laid off.

9:6-5.12 Other colleges

Rights established under this subchapter for employees pertain only to the college at which they are employed. Therefore, an employee who is laid off at one college has no rights to reemployment at another college. Nevertheless, colleges shall share lay off lists with each other, and laid off employees shall be given consideration for any vacancies for which they may be qualified.

9:6-5.13 Reduction in force for financial (non-exigent) or programmatic reasons

Reductions in force of tenured faculty or employees on a multi-year contract for financial reasons of a non-exigent nature or programmatic reasons will be implemented at the Colleges in accordance with relevant contractual notice requirements.

9:6-5.14 Reduction in force for reasons of natural diminution of students

Reduction in force for reasons of natural diminution of students will be implemented in accordance with N.J.S.A. 18A-60-3.

(a)

BOARD OF HIGHER EDUCATION

Colleges and Universities Administrative Policies

Proposed Redoption with Amendments: N.J.A.C. 9:2-4

Proposed Redoption: N.J.A.C. 9:2-5, -6, -7, -12, -13

Authorized By: T. Edward Hollander, Chancellor and Secretary.

Authority: N.J.S.A. 18A:3-14, 18A:3-15, 18A:6-26, 18A:66-170, 18A:64-26 et seq.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions, and responses, should be addressed to:

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Grey J. Dimenna, Esq.
 Administrative Practice Officer
 Department of Higher Education
 225 West State Street
 Trenton, New Jersey 08625

The Board of Higher Education thereafter may adopt this proposal without further notice (see 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 the notice of their readoption. The amendments to the readoption become effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-464.

The agency proposal follows:

Summary

On November 21, 1984, pursuant to the provisions of Executive Order No. 66(1978), the Board of Higher Education's regulations regarding administrative policies, now codified as N.J.A.C. 9:2, are scheduled to expire.

The proposal calls for readoption of these regulations in their current form with the exception of those regulations governing the Alternate Benefit Program. The Alternate Benefit Program (N.J.S.A. 18A:66-167 et seq.) is the state pension system for faculty and certain administrators at public institutions of higher education within New Jersey and designated employees within the Department of Higher Education (see N.J.A.C. 9:2-4). By regulation, the Board of Higher Education is authorized to designate which positions within the Department of Higher Education shall be eligible to participate within the Alternate Benefit Program. This list of designated positions within the Department has been modified due to changes in the title of positions.

The following subchapters within Chapter 2 of the Code are also being readopted. Subchapter 5 which involves procedures regarding collective negotiations set forth particular employer and employee groups, negotiating units and selection of employee representatives. Subchapters 6 and 7 govern administrative appeals to the Chancellor and Board of Higher Education. Within these subchapters are procedures governing the filing and processing of appeals before both bodies. Subchapter 12 sets standards for baccalaureate teacher education programs at public colleges and universities. These regulations set forth admission standards, graduation requirements and curriculum for degree programs in teacher education. Subchapter 13 establishes guidelines for auxiliary corporations at state and county colleges. The regulations govern the corporation's creation, operation, fiscal affairs and personnel. As off of the above programs or activities are ongoing responsibilities of the Department, the regulations must be readopted to insure the continued supervision of the Department and Board of Higher Education within these areas.

Subchapters 1, 2, 3, 8 and 9 are not being readopted and are proposed for repeal in a related notice in this Register. New rules concerning State Colleges are also proposed in that notice.

Social Impact

The proposal will permit the Board and Department of Higher Education to effectively monitor and administer the above mentioned programs and particularly with regard to the guidelines for administrative appeals to the Chancellor and Board of Higher Education, will provide an established set of guidelines for procedures before those authorities.

The proposed change in eligible titles within the Department of Higher Education for participation in the Alternate Benefit Program provides for expanded opportunity for employees within the Department to participate in that pension system. As the titles to various positions within the Department have changed in recent years, this proposal will allow all comparable employees to participate within the Alternate Benefit Program and avoid a situation where employees with similar job responsibilities are placed in different pension systems due to a technical difference in titles.

Economic Impact

The proposed regulations will not have an adverse financial impact on either the State or the institutions as they merely continue current regulations which have been effective for several years.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 9:2-5, -6, -7, -12, -13.

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

SUBCHAPTER 4. ALTERNATE BENEFIT PROGRAM

9:2-4.1 General provisions

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

(d) That the holders of the following positions or their equivalent in the Department of Higher Education shall be eligible to participate in the alternate benefit program:

1. Chancellor;
2. Vice Chancellor;
3. Assistance Chancellor;
4. **Deputy Assistance Chancellor;**
- [4.] 5. Special Assistance;
- [5.] 6. Executive Assistant;
- [6.] 7. Confidential Agent;
- [7.] 8. Director;
- [8.] 9. Associate Director;
- [9.] 10. Assistant Director;
- [10.] 11. Program Officer;
- [11.] 12. Program Assistant;
- [12.] [Program analyst;]
13. Program Specialist;
- [14.] [Academic advisor;]
- [15.] 14. Administrative Assistant;
- [16.] 15. Administrative Services Assistant;
- [17.] [Career education coordinator;]
- [18.] [Director, Public Information and Board Activities;]
16. **Evaluation Analyst**
- [19.] [Education advisor;]
- [20.] [Evaluation officer;]
- [21.] [Graduate placement specialist;]
- [22.] 17. Project Coordinator, Computer Planning and Information Systems
- [23.] [Registrar;]
18. **Program Development Specialist;**
19. **Management Compliance Officer;**
20. **Project Specialist;**
21. **Coordinator, Veteran's Programs;**
22. **Assistant Coordinator, Veteran's Programs;**
23. **Supervisor, Processing Services;**
- [24.] [Research and development specialist;]

- [25.] 24. Special Projects Officer;
- 25. **Fiscal Analyst;**
- [26.] Supervisor, fiscal operations;]
- 26. **Graduate Program Coordinator;**
- 27. Supervisor, Program Analysts.

9:2-4.2 (Reserved)
 9:2-4.3 (Reserved)
 9:2-4.4 (Reserved)

(a)

BOARD OF HIGHER EDUCATION

**Student Assistance Programs
 Veteran's Tuition Credit Program**

**Proposed Readoption with Amendment:
 N.J.A.C. 9:2-11 to be recodified as 9:7-7**

Authorized By: T. Edward Hollander, Chancellor and Secretary.
 Authority: N.J.S.A. 18A-71.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Grey J. Dimenna, Esq.
 Administrative Practice Officer
 Department of Higher Education
 225 West State Street
 Trenton, New Jersey 08625

The Board of Higher Education thereafter may adopt this proposal without further notice (see 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 the notice of their readoption.

This proposal is known as PRN 1984-475.

The agency proposal follows:

Summary

The Board of Higher Education, through the Chancellor of Higher Education is statutorily authorized to promulgate rules and regulations to implement the Veterans Tuition Credit Program. The program provides benefits in the form of tuition credits at an institution of higher education to veterans who have resided in New Jersey for at least two years and who were domiciled in New Jersey either at the time of induction or discharge from the armed forces.

First enacted by the Board of Higher Education in 1977, the current regulations expire on November 21, 1984 pursuant to the provisions of Executive Order No. 66(1978). The rules are being readopted without change with the exception of a change in the address to which applications must be sent. In addition, the new rules are being relocated from the administrative policies chapter (N.J.A.C. 9:2) to the student assist-

ance programs chapter (N.J.A.C. 9:7) within the Board's regulations.

The rules establish requirements regarding residency, approved institutions, approved courses of study, benefit amounts, application procedures and payment procedures within the program.

Social Impact

Since its inception in the 1977-1978 academic year, the Veteran's Tuition Credit Program has been funded each year with the exception of the 1978-1979 academic year. It is also not currently funded for the current academic year.

Participation by veteran's in this program has steadily decreased since the initial year of the program. The following number of full and part-time students received awards under the program in the following academic years:

1977-78	11,884
1979-80	7,710
1980-81	4,087
1981-82	3,140
1982-83	2,136
1983-84	1,330

Had the program been funded for the current academic year, the Department anticipated approximately 1,000 veterans taking advantage of the program.

Designed mainly to assist Viet Nam era veterans with the costs of higher education, the program has been highly successful. With nearly 60% of the program recipients attending county colleges, the awards have paid a major portion of their tuition expenses.

Further, the program also has had a beneficial impact upon the institutions of higher education. The program increased the number of veterans attending these institutions without creating a significant administrative burden. Most colleges and universities already had full-time veteran coordinators who assumed responsibility for the administration of the program on each campus. The Department of Higher Education also monitors the program on a state-wide level within the Tuition Aid Grant and Scholarship Office.

Economic Impact

Award amounts under the statute setting up the program, N.J.S.A. 18A:71-64 et seq., are set at a maximum of \$400 per year for full-time students. By regulation, part-time students may receive a maximum award of \$200 per year. During the first three years of funding, awards were only available at half the maximum amounts. Since that time, awards have been funded at the maximum amounts. Below follows the total amount of awards granted each year and the average amount of the awards for full and part-time students:

Academic Year	Total Amount of Awards	Average Full-time Awards	Average Part-time Awards
1977-78	\$1,545,031	\$173	\$ 95
1979-80	1,113,619	197	99
1980-81	567,675	200	100
1981-82	851,470	399	179
1982-83	583,036	396	200
1983-84	357,665	399	200

Had the program been funded this academic year, the Department anticipated awards totalling approximately \$270,000.

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Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 9:2-11.

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

9:7-7.8 Application procedure

(a) Upon completion of written agreement with the institution and the Chancellor of Higher Education, application forms will be mailed to the eligible institution.

1.-3. (No change.)

4. Applications shall be mailed to:

New Jersey Department of Higher Education
Veterans Tuition Credit Program
[P.O. Box 1417] CN 542
Trenton, NJ 08625

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(a)

**DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

**Administration Manual
Medicaid Eligibility**

Proposed Amendment: N.J.A.C. 10:49-1.1

Authorized By: George J. Albanese, Commissioner,
Department of Hman Services.

Authority: N.J.S.A. 30:4D-3i, j, 7 and 7b.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These 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 rule-making procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of 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 1984-474.

The agency proposal follows:

Summary

This proposal concerns the requirement that providers review monthly the eligibility of Medicaid patients receiving

continuing services, because there is no reimbursement for services performed after termination of eligibility. The provider is required to check the patient's eligibility when services are rendered. If the treatment or services extend over several months, the provider should, as a minimum, check the patient's eligibility each month to insure the patient is still eligible for Medicaid.

The New Jersey Medicaid law (N.J.S.A. 30:4D-3i, j) requires that persons must be qualified under the various programs, such as AFDC (Aid to Families with Dependent Children), SSI (Supplemental Security Income), etc., in order to receive Title XIX (Medicaid) services.

The deletion of the phrase "other than by exceptional circumstances" will help insure that providers are reimbursed for services rendered to Medicaid patients during periods of eligibility.

Social Impact

The proposal really restates a basic Medicaid policy; that is, providers will not be reimbursed for services provided to patients who are not eligible for Medicaid. Providers should require the Medicaid patient to present proof of eligibility each time services are rendered but the verification should be done at least monthly.

Economic Impact

So long as providers render authorized services to patients who are eligible for Medicaid, and submit their claims timely and correctly, they will be reimbursed by Medicaid.

The Division will reimburse providers for services rendered to eligible Medicaid patients.

Except for residents of long term care facilities, Medicaid patients are not required to contribute toward the cost of their medical care.

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

10:49-1.1 Who is eligible for Medicaid

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

(e) It is in the best interest of the provider to review monthly the eligibility of patients receiving continuing services. There is no reimbursement for services performed after termination of eligibility [other than by exceptional circumstances].

(b)

DIVISION OF PUBLIC WELFARE

**General Assistance Manual
Nonresidents/Transients Eligibility for
General Assistance; Travel Grants**

**Proposed Amendment: N.J.A.C. 10:85-3.2
and 4.6**

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.

Authority: N.J.S.A. 44:8-111(d) and 44:8-120.

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Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

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 1984-471.

The agency proposal follows:

Summary

This amendment is primarily one of improvement in the structure of regulations rather than one of actual change. It combines into one subsection the regulations related to payment of travel cost. It updates to \$100.00 (currently \$25.00) the level at which the municipal agency must obtain State office approval of travel grants, and makes the approval requirement applicable to all travel grants, rather than for out-of-state only. The amendment also reaffirms without policy change that "nonresidents" are not barred from General Assistance eligibility (see N.J.S.A. 44:8-120).

Social Impact

The only social impact expected is that of a beneficial result which arises from better organized and more clearly written regulations. The additional discretion allowed to local officials in granting travel costs could result in expedited service to a few out-of-state recipients. The effect of limiting local authority on in-state travel is likely to be minimal because travel costs within the State are not likely to be excessive except in unusual circumstances.

Economic Impact

There may be a small administrative savings resulting from the improvement of regulatory structure as well as elimination of the need for State office approval of some grants since, customarily, approval of amounts under \$100.00 have been routinely granted.

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

10:85-3.2 Application process

(a)-(e) (No change.)

(f) Resident defined: A resident of a municipality is a person who maintains a permanent customary home in the municipality, a person who is in the municipality with intention to remain, a person who did maintain such a home prior to entering a medical facility, or a person who enters a New Jersey medical facility from out of state and qualifies as a resident in accordance with (f)liii below. No time intervals are relevant so long as the home is not established for a temporary purpose such as for a visit or vacation. A resident may live in his [/] or her own home, a rented home or apartment, the home of a friend or relative, in a boarding home or, in accordance with (f)liii below, in a residential medical facility.

1. (No change.)

2. [Transients: Persons who are not residents of the State and do not intend to establish residence shall receive such assistance as is necessary for them to return to their state of origin. However, no individual shall be forced to return to his/her state of origin if he/she wishes to establish residence in this State. Assistance in any amount over \$25.00 to nonresident persons enroute to other states shall be granted only prior approval from the DPW.]

Nonresidents/transients: Persons in a municipality who are neither residents nor medical facility patients by the above definitions shall, if otherwise eligible, be granted assistance while in the municipality according to the same standards as for residents.

i. For any person in a municipality who is away from the municipality of his or her customary home and wishes to return but cannot, because of lack of funds, the MWD shall grant sufficient funds to allow the individual to travel to his or her own municipality or to the nearest place at which it has been confirmed that help from nonassistance funds may be expected. Travel costs shall be estimated or ascertained, as appropriate, according to the least expensive method of travel which is appropriate. The travel grant shall be sufficient to allow payment for the fare and such food, clothing, or shelter as may be essential during the trip.

(1) When circumstances prevent an accurate determination as to whether an applicant would be otherwise eligible to receive General Assistance, the MWD will evaluate the application according to the best information available.

(2) Assistance for travel purposes in any amount over \$100.00 shall be granted only with prior approval from the DPW.

3.-5. (No change.)

(g)-(i) (No change.)

10:85-4.6 Emergency grants

(a) An emergency grant shall be authorized to or for an individual (s) otherwise eligible to receive general assistance under the regulations in this manual when circumstances set forth in (a)1-3 below exist. In addition, these regulations shall apply to an emergency (as described in (a)1-3 below) which occurred within the seven calendar days immediately prior to the application for General Assistance if the applicant(s) is determined eligible at the time of application under established procedures and standards

1.-2. (No change.)

[3. Away from home: When a person is present under emergency conditions such that he/she wishes but is unable to return, for the purpose of making application for general assistance, to the place where he/she lives. (See also N.J.A.C. 10:85-3.2(f)2.)]

(b) Standards for emergency grants are:

1.-4. (No change.)

[5. Emergency Travel and Related Costs: When authorized under N.J.A.C. 10:85-4.6(a)3, an emergency grant for a person away from home shall be sufficient for that person to travel to his/her own municipality or to the nearest place at which it has been confirmed that help from non-assistance funds may be expected. Travel costs shall be estimated or ascertained, as appropriate, according to the least expensive method of travel which is appropriate. The emergency grant shall be sufficient to allow payment for such food, clothing, or shelter as may be essential during the trip.

i. When circumstances prevent an accurate determination as to whether an applicant would be "otherwise eligible to

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receive general assistance" as required in subsection (a) of this section, the MWD will evaluate the application according to the best information available.]

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

(a)

DIVISION OF PUBLIC WELFARE

General Assistance Manual Notices and Hearings

Proposed Readoption: N.J.A.C. 10:85-7 Proposed Readoption with Concurrent Amendments: N.J.A.C. 10:85-7.1-7.4

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 September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

The Department of Human Services thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66 (1978) this rule would otherwise expire on December 14, 1984. The readoption of the existing rule becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of readoption. The concurrent amendments to the existing rules become effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-473.

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. 10:85-7.

On October 14, 1976, pursuant to authority of N.J.S.A. 44:8-111(d) and in accordance with applicable provisions of the Administrative Procedure Act, the Department adopted the General Assistance Manual, substantially as proposed in the Notice published June 10, 1976, at 8 N.J.R. 284(a).

N.J.A.C. 10:85-7.1 describes the municipal welfare department's (MWD) responsibility for providing written notification of denial, reduction or termination of assistance to an individual who applies for or receives General Assistance. Further, it establishes the individual's unimpeded right to apply for General Assistance in the municipality in which he or she is currently living. The principle of providing assistance immediately upon receipt of application, if need and eligibil-

ity is apparent, as well as payment of assistance retroactively to the date of application or eligibility, if immediate assistance is not provided, is also established. The right to request a fair hearing is established at N.J.A.C. 10:85-7.1(e)1.

At N.J.A.C. 10:85-7.2 the rules concerning the requirement that an applicant or recipient be provided with a timely notice of adverse action are outlined. Exceptions to these requirements are also presented. The requirement that the notice of adverse action be stated in clear, simple language and contain the reason(s) for the action is also explained. It is further indicated that the notice of adverse action must contain an explanation of the applicant's right to a fair hearing and a statement in Spanish informing the applicant of the nature of the notice.

At N.J.A.C. 10:85-7.3 rules and procedures for processing a local fair hearing request are outlined. Also, included are rules for the selection of a hearing officer and conduct of the hearing.

At N.J.A.C. 10:85-7.4 rules and procedures for processing a request for a State fair hearing are outlined. A State fair hearing may be requested if the applicant is dissatisfied with a local fair hearing or because a local hearing has not been scheduled promptly.

At N.J.A.C. 10:85-7.6 rules for emergency fair hearings are outlined. Emergency hearings are conducted on the local level when the applicant claims insufficient funds have been granted by the municipal welfare department and the applicant is without funds at the time of the request for the emergency hearing. An emergency hearing may also be convened when the municipal welfare department or the Bureau of Administrative Review and Appeals determines that there exists a serious threat to the physical health and safety of the appellant.

The Division of Public Welfare conducted an internal review and evaluation of N.J.A.C. 10:85-7 prior to noticing for readoption. After such review of the rules, that agency determined the rules to be adequate, reasonable and responsive to the purpose for which they were promulgated. The following are significant changes which have been adopted as a result of the ongoing review of N.J.A.C. 10:85-7.

N.J.A.C. 10:85-7.1(e) was amended to stipulate that in the event a local hearing is not convened within 15 days of the request for a hearing, the applicant may request a State level hearing.

N.J.A.C. 10:85-7.2(a) was revised to insure that the recipient receives a 10-day notice of adverse action. In the event the 10-day period extends beyond the last date for which assistance has already been granted, the MWD will continue assistance at an unreduced per diem rate for the balance of the full 10-day period.

N.J.A.C. 10:85-7.3(a) was amended to establish the right of a potential applicant to request a hearing if not afforded the right to apply for assistance or not provided with a formal response to an application for assistance.

N.J.A.C. 10:85-7.3(b)1 established a 10-day limit on the right to request a hearing because of an alleged failure of the municipal welfare department to accept an application. N.J.A.C. 10:85-7.3(b)2 was further amended to mandate that if a State hearing must be convened because a local hearing was not held in a timely manner, assistance shall be continued unreduced until the written decision of the State hearing is rendered unless the recipient agrees in writing to reduction or termination. N.J.A.C. 10:85-7.3(b)3 was amended to allow a Local Assistance Board (LAB) to appoint as a hearing officer, if necessary, a member of the LAB if the member is not an

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elected official. N.J.A.C. 10:85-7.3(b)4 established that, upon request, the municipal welfare department must provide the appellant transportation to and from the local hearing.

N.J.A.C. 10:85-7.6 established criteria and procedures for convening an emergency fair hearing.

Amendments are being made as part of the proposed re-adoption which provide technical revisions to the text of N.J.A.C. 10:85-7.

Social Impact

The social impact of N.J.A.C. 10:85-7 is significant since it establishes the right of the individual to apply for assistance; to receive adequate and timely notice of adverse action and the right to appeal an agency action. This is important since the General Assistance program serves the "truly needy" and is the assistance program of "last resort" in New Jersey. The provisions of N.J.A.C. 10:85-7 impart a sense of fairness to the recipients of the General Assistance program which serves an average of about 30,000 individuals per month.

Information regarding the number and outcome of State level hearings which took place in calendar year 1983 is as follows:

Data applies to GA hearings
183 January to December

	Number of Hearings	Number Emergency	Affirmed	Denied
January	1	1	1	
February	0			
March	5		3	2
April	4		1	3
May	0			
June	1			1
July	1			1
August	5		4	1
September	2		1	1
October	7		5	2
November	3		1	2
December	1	1	1	

Since all of the above mentioned rights are constitutionally protected by the principle of equal protection under the law, failure to readopt N.J.A.C. 10:85-7 would result in serious legal as well as social difficulties.

Economic Impact

Failure to readopt any portion of N.J.A.C. 10:85 would be economically disastrous to the recipient population who rely on the General Assistance program for support. Failure to readopt N.J.A.C. 10:85-7 in particular would leave a recipient without easy recourse or appeal if it was felt that an agency action was incorrect. Without the provisions of N.J.A.C. 10:85-7 an aggrieved applicant or recipient would be forced to appeal an adverse action at great additional public expense through the New Jersey Superior Court. Without the adequate and timely notice provision as stipulated in N.J.A.C. 10:85-7, a recipient's grant entitlement could be reduced or eligibility could be terminated without prior knowledge. Such a situation could cause severe financial difficulties to persons subsisting on a low income since there would be no opportunity to plan for an unexpected loss of funds.

The cost of the local hearing procedures is unknown, as is the number of local hearings convened. However, the average cost of a State level hearing held in the 1983 calendar year was approximately \$200.00.

Inasmuch as the social and economic conditions which led to the proposal at N.J.A.C. 10:85-7 continue to exist, re-adoption of the subchapter is appropriate and necessary.

Full text of the proposed re-adoption appears in the New Jersey Administrative Code at N.J.A.C. 10:85-7, as amended and supplemented by the New Jersey Register.

Full text of the proposed amendments to the re-adoption follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

10:85-7.1 General provisions

(a) **Rights of applicant or recipient:** An individual who applies for or receives General Assistance is entitled to a written notice of denial, reduction or termination of such assistance. Moreover, an applicant or recipient has a right, upon [his/her] **his or her** request, to a local hearing and a State fair hearing, if appropriate, in accordance with the procedures established in this subchapter.

(b) **Opportunity to apply:** Any person who is in need and believes [he/she] **he or she** is eligible for General Assistance shall be given the opportunity to make application in the municipality in which [he/she] **he or she** is living at that time. Such opportunity shall be available during normal business hours and, on an emergency basis, at other times.

(c) **Immediate assistance:** When an applicant is in immediate need according to the provisions of N.J.A.C. 10:85-3.3(a), assistance shall be granted on the day of application (see N.J.A.C. 10:85-4.2(a)3 and 4). When, however, immediate need does not exist or there are, in the judgment of the municipal welfare director, persuasive and compelling reasons to conduct an investigation of the applicant's eligibility before any assistance is granted, a final decision on the application shall be made as soon as eligibility can be verified, but in no event later than 30 days from the date of application.

1. (No change.)

(d) **Approval of application:** If immediate assistance is not granted but eligibility is subsequently verified, a notice shall be sent to the applicant information [him/her] **him or her** of the action taken (see also N.J.A.C. 10:85-7.2(b)2).

(e) **Denial of assistance:** When an application for assistance is denied, the applicant shall be so informed in writing by a notice mailed as soon as possible, but in no event later than 30 days from the date of applicant. Such notice shall include a statement of the applicant's right to appeal the decision. (See notice forms in Appendix A.)

1. Right to [A] appeal: Upon receipt of the notice of such denial, the applicant is entitled to a local fair hearing, provided such request is received within [ten] **10** days from the mailing date of the notice. Following receipt of a written decision on the local hearing, [he/she] **he or she** may further request a State fair hearing if dissatisfied with the local hearing decision (see N.J.A.C. 10:85-7.4(a)).

2. (No change.)

10:85-7.2 Notices to [applicants/recipients] **applicants or recipients**

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

(c) **Content of notices:** Notices of denial, reduction or termination and time-limited notices shall state in clear, simple language the nature of the action, the effective date and the reason such action is being taken. (See notice forms in Appendix A.)

1. (No change.)

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2. Right to appeal: The notice shall include an explanation of the client's right to request, within [ten] **10** days, a local hearing and [his/her] **his or her** further right to a State fair hearing if a local fair hearing is not convened within 15 days of the date of the hearing request.

3. Statement in Spanish: Each notice shall include a statement in Spanish cautioning the individual that the information contained therein relates to [his/her] **his or her** eligibility for assistance and, if [he/she] **he or she** does not understand it, [he/she] **he or she** should contact the MWD.

10:85-7.3 Local hearing

(a) **Basis for hearings:** An [applicant/recipient] **applicant or recipient** may request a local hearing regarding any action on the part of the municipal welfare department concerning a denial, reduction or termination of assistance; designation of a temporary payee; the amount of assistance granted or timeliness of action on an application. A [person/household] **person or household** may also request a local hearing when not afforded the right to apply for assistance or not provided with a formal response to an application for assistance.

(b) **Request for local hearing:** A request for a local hearing may be either oral or written. However, if the request is oral, it shall be the responsibility of the MWD staff to assist the individual in preparing the request in writing.

1. (No change.)

2. Continuation of assistance: When a local hearing is requested within [ten] **10** days of the mailing date of a notice of adverse action, assistance shall be continued unreduced until the hearing is held and the decision rendered by the hearing officer.

i. (No change.)

3. Selection of hearing officer: The hearing officer shall be the municipal director of welfare unless [he/she] **he or she** has participated in the action or inaction which gave rise to the request for a hearing.

i. (No change.)

4. Scheduling of local hearing: The hearing shall be held with reasonable promptness, but in no event later than 15 days after the request is received, at a date and time convenient to the [applicant/recipient] **applicant or recipient** (appellant) and the municipal welfare department. The MWD will, upon request, provide the appellant with transportation to the hearing and return.

i. Abandonment of hearing: A request for a hearing will be considered abandoned if neither the appellant nor [his/her] **his or her** representative appears at the time and place established for the hearing, unless notice is received not later than the scheduled date of hearing that the appellant will be unable to attend for unavoidable cause, in which case the hearing shall be adjourned and rescheduled.

5. Accessibility of records: The appellant or [his/her] **his or her** representative will be provided adequate opportunity, at a reasonable time before the date of the hearing as well as during the hearing, to examine the contents of [his/her] **his or her** file and all documents and records to be used at the hearing.

6. Conduct of local hearing:

i. Participants: Participants in the local hearing will include, at a minimum, the appellant or [his/her] **his or her**

representative, the MWD staff member who made the decision, and hearing officer who will hear both sides of the issue and decide whether or not the action was correct.

(1) Generally, only those persons will be admitted to the hearing whose testimony and presence are necessary to a full and fair determination. The appellant may exercise a right to be assisted in [his/her] **his or her** presentation by a relative, friend or other spokesman, or to be legally represented by a lawyer of [his/her] **his or her** choosing. Observers may attend at the discretion of the hearing officer and with the appellant's consent;

ii. (No change.)

iii. Opportunity for statement: At the beginning of the hearing, the appellant will be given the opportunity to make a statement of the situation as [he/she] **he or she** sees it. The hearing officer will state the point(s) at issue, subject to amendment or correction by the appellant or any of the other parties concerned. At the end of the hearing, the hearing officer will summarize the issue(s);

iv. Report and decision: Within [ten] **10** working days following the hearing, the hearing officer will prepare a brief written report. This report shall include a summary of facts presented at the hearing and the findings (decision) of the hearing officer; it will also state the regulation(s) upon which the decision is based. The final sentence on the report shall advise the appellant of the availability of a State fair hearing.

(1) (No change.)

7. (No change.)

10:85-7.4 State fair hearing

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

(c) Rules concerning withdrawal or abandonment of hearing are:

1. Disposition of hearing through withdrawal: The filing of a request for State fair hearing shall not of itself preclude continued effort to accomplish corrective action or interpretation by the State Division of Public Welfare and/or the MWD through informal adjustment procedures. The MWD may amend or reverse its decision at any time before the State fair hearing, or the client may have [his/her] **his or her** dissatisfaction clarified through explanation or interpretation at any time before the hearing.

i. (No change.)

ii. If, as the result of satisfactory adjustment or for any other reason, the client desires that a hearing shall be discontinued or cancelled, [his/her] **his or her** request to that effect shall be confirmed in writing.

2. Abandonment of hearing: See [section 3 of this subchapter] **N.J.A.C. 10:85-7.3(b)4i** regarding abandonment of a hearing request. This regulation applies equally to local or State fair hearings.

(d) **Conduct of State fair hearing:** A State fair hearing shall be conducted by a State fair hearing officer, following the same procedures as a local hearing see [section 3 of this subchapter] **N.J.A.C. 10:85-7.3(b)5 and 6** regarding accessibility of records, participants, informal atmosphere and opportunity for client's statement).

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

INSURANCE

PROPOSALS

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

**Child Abuse and Neglect Cases
Proposed Readoption: N.J.A.C. 10:129**

Authorized by: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 9:6-8.36(a).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jesse Moskowitz, Administrator
Office of Regulatory and Legislative Affairs
Division of Youth and Family Services
CN 717
Trenton, N.J. 08625

The Department of Human Services thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), this rule would otherwise expire on October 11, 1984. The readoption of this rule becomes effective upon acceptance for filing by the Office of Administrative Law on the notice of its adoption.

This proposal is known as PRN 1984-472.

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 the "sunset" provisions is to ensure that the State's administrative agencies periodically review their rules in order to update archaic rules and repeal unnecessary rules. In accordance with Executive Order No. 66(1978), the Department of Human Services proposed to readopt N.J.A.C. 10:129 after it has determined that the rule is necessary, adequate, reasonable, efficient understandable and responsive to the purposes for which it was promulgated.

The rule implements N.J.S.A. 9:6-8.36a of the Abuse and Neglect Law (N.J.S.A. 9:6-8.21 et seq.) pertaining to the Division of Youth and Family Services (hereinafter Division) reporting suspected child abuse and neglect cases to the county prosecutors as soon as children are identified as victims of suspected cases of abuse or neglect.

The Office of the Attorney General has approved the proposed readoption as required by law (N.J.S.A. 9:6-8.36a). The county prosecutors are planning to schedule a meeting with the Division within three months to determine whether revisions to the regulations are needed.

Social Impact

The proposed readoption will have no direct effect upon the general public. The readoption directly affects only the Division and prosecutors procedurally. The readoption is necessary and should be continued so that Division can communicate suspected child abuse or neglect complaints efficiently with the intended purpose of expediting investigations by prosecutors.

Economic Impact

The substance of the rules themselves have no independent economic impact and the readoption of the rules will not impose a direct economic impact upon the State or any member of the public.

Full text of the proposed readoption appears in New Jersey Administrative Code at N.J.A.C. 10:129.

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(b)

DIVISION OF ADMINISTRATION

Petitions for Rules

Proposed New Rule: N.J.A.C. 11:1-15

Authorized By: Kenneth D. Merin, Acting Commissioner, Department of Insurance.
Authority: N.J.S.A. 52:14B-4(f); 17:1-8.1; 17:1C-6(e).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jasper Jackson, Director
Regulatory and Legislative Affairs
Department of Insurance
CN 325
Trenton, N.J. 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 1984-470.

The agency proposal follows:

Summary

The proposed new rule prescribes the form and procedure for the submission, consideration and disposition of a petition for rulemaking by an interested person.

N.J.S.A. 52:14B-4(f) mandates that every State agency adopt by rule a procedure whereby interested persons may petition the agency to promulgate, amend or repeal any rule. The proposed new subchapter will set forth the procedure which will be utilized by the Department of Insurance in meeting this statutory requirement.

N.J.A.C. 11:1-15.1 states that the rule applies to all persons seeking to petition the Department of Insurance requesting rulemaking activity.

N.J.A.C. 11:1-15.2 sets forth the procedure which the petitioner must follow, including the form of petition.

N.J.A.C. 11:15.3 sets forth the procedure of the Department upon receipt of a petition. The Department will file a notice of the petition with the Office of Administrative Law (OAL) for publication in the New Jersey Register, will act upon the petition within 30 days of its receipt, and will file with OAL for publication a statement of the nature of and reasons for the Department's action.

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Social Impact

The proposed rule will have a positive impact on the public. Persons interested in insurance-related topics will be made aware of procedures available to request rulemaking action by the Department. The rule will also ensure that all requests are treated in an equitable and uniform manner.

The Department will benefit because the procedures will allow for an orderly implementation of N.J.S.A. 52:14-4(f).

Economic Impact

The economic impact of the proposed rule on the Department is uncertain because there is no way of anticipating the extent to which the public will use the procedures. Administrative costs of implementing the rule will be absorbed by the general budget.

There will be no economic impact on the public.

Full text of the proposed new rule follows.

SUBCHAPTER 15. PETITIONS FOR RULES

11:1-15.1 Scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendment or repeal of any rule by the Department of Insurance, pursuant to N.J.S.A. 52:14B-4(f).

11:1-15.2 Procedure for petitioner

(a) Any person who wishes to petition the Department to promulgate, amend or repeal a rule must submit to the Commissioner, in writing, the following information:

1. Name of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request and the petitioner's interest in the request; and
4. References to the authority of the Department to take the requested action.

(b) Petitions shall be sent to the following address:

Commissioner of Insurance
New Jersey Department of Insurance
CN 325
Trenton, N.J. 08625

(c) Any document submitted to the Department of Insurance which is not in substantial compliance with (a) above shall not be deemed to be a petition for a rule requiring further department action pursuant to N.J.S.A. 52:14B-4(f).

11:1-15.3 Procedure of the Department

(a) Upon receipt of a petition in compliance with N.J.A.C. 11:1-15.2, the Department will file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register. The notice will include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.

(b) Within 30 days of receiving the petition, the Department will mail to the petitioner, and file with the Office of Administrative Law for publication in the Register, a notice of action on the petition which will include:

1. The name of the petitioner;

2. The Register citation for the notice of petition, if that notice appeared in a previous Register;

3. Certification by the Commissioner that the petition was duly considered pursuant to law;

4. The nature or substance of the Department's action upon the petition; and

5. A brief statement of reasons for the Department's action.

(c) Department action on a petition may include:

1. Denying the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referring the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations will be mailed to petitioner and submitted to the OAL for publication in the Register.

(a)

DIVISION OF ACTUARIAL SERVICES

Reserve Standards for Individual Health Insurance Policies

Proposed Amendments: N.J.A.C. 11:4-6

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

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17B:19-5.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jasper Jackson, Director
Legislative and Regulatory Affairs
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 1984-469.

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 11:4-6 increase the minimum reserve standards for active life reserves that health insurers are required to meet for anticipated hospital and surgical expense benefits payable. All other changes in the subchapter are editorial.

The proposed amendment changes current minimum reserve standards for hospital and surgical expense benefits. The proposed amendment affects health insurance policies which are non-cancelable, guaranteed renewable or which are non-renewable only for specified reasons. The current minimum reserve standards are prescribed in the 1956 Inter-Com-

pany Hospital Table and the 1956 Inter-Company Surgical Table. Because of the increased hospital and surgical morbidity experience since 1956, these 1956 standards no longer adequately assure that potential claims can be met by the insurers.

The proposed amendment specifies that for policies issued after December 31, 1985 the minimum reserve standards must comply with the 1974 Hospital Table and the 1974 Surgical Table approved by the National Association of Insurance Commissioners. The January 1, 1986 starting date provides insurers with sufficient lead time to make the change.

To aid interpretation, sections have been added to explain the purpose and scope of the subchapter, to define the essential terms, and to provide for severability if a provision in the subchapter is found to be invalid.

Social Impact

Purchasers of health insurance policies will benefit from the proposed amendment because they will be assured that their insurers will maintain adequate reserves to meet hospital and surgical expense benefits. Insurers will be required to maintain higher reserves, but should also benefit from the increased accuracy of the tables and the decreased danger of insolvency.

Economic Impact

There will be no economic impact on the Department. Health insurers will incur an initial cost in changing their computer systems to meet the new standards, and will be required to hold higher reserves for the new issues. Since the cost to health insurers will not be great, any costs passed on to insureds will be minimal.

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

SUBCHAPTER 6. RESERVE STANDARDS FOR INDIVIDUAL HEALTH INSURANCE POLICIES

[FOREWORD]

[The National Association of Insurance Commissioners, at their December, 1964 meeting, approved a report of an industry advisory committee on Reserves for Individual Health Insurance Policies. This report recommended the adoption of a new table, the 1964 Commissioners Disability Table, as a minimum reserve standard for policies providing loss of time benefits for disability due to accident and sickness. A copy of the table is set forth as an appendix to the report in Volume 1 of the 1965 Proceedings of the National Association of Insurance Commissioners. This report also recommended other changes in the standards adopted in December, 1956 by the N.A.I.C. which were made effective in New Jersey as of October 1, 1957. Necessary reserve tables, on the basis of the 1964 Commissioners Disability Table, for various policy plans and interest rates will be made available by H.I.A.A.]

11:4-6.1 Purpose

Pursuant to N.J.S.A. 17B:19-5, the Commissioner of Insurance is authorized to promulgate rules establishing the minimum reserve standards and mortality, morbidity or other contingency bases which must be utilized by health insurers to calculate policy and loss reserves. This subchapter establishes such regulations.

11:4-6.2 Scope

This subchapter applies to all insurers authorized to write health insurance in this State.

11:4-6.3 Definitions

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

"1959 Accidental Death Benefits Table" is the minimum standard for accidental death benefits adopted by the National Association of Insurance Commissioners.

"Active life reserve" is the pro rata unearned premium reserve and the additional reserve required to fund the current cost of future health benefits.

"Claim reserve" is the present value of amounts not yet due on claims and reserves for future contingent benefits.

"1964 Commissioner's Disability Table" is the minimum standard for total disability due to accident or sickness adopted by the National Association of Insurance Commissioners.

"Health Insurance" is defined at N.J.S.A. 17B:17-4.

"1974 Hospital Table" is the minimum standard for hospital expense benefits adopted by the National Association of Insurance Commissioners to replace the 1956 Inter-Company Hospital Table.

"1956 Inter-Company Hospital Table" is the minimum standard for hospital expense benefits adopted by the National Association of Insurance Commissioners.

"1956 Inter-Company Surgical Table" is the minimum standard for surgical expense benefits adopted by the National Association of Insurance Commissioners.

"Mortality table" is a table used to determine life expectancy.

"Morbidity table" is a table used to determine health expectancy.

"1974 Surgical Table" is the minimum standard for surgical expense benefits adopted by the National Association of Insurance Commissioners to replace the 1956 Inter-Company Surgical Table.

[11.4-6.1] 11.4-6.4 Active life reserve -general

(a) Active life reserves are required for all in-force policies and are in addition to any reserves required in connection with claims.

(b) For policy Types A, B and C, described in subsection (e) of this Section the minimum reserve shall be determined as specified herein.]

(c) (b) [It should be emphasized, however, that these are] **This subchapter contains minimum standards for active life reserves.** [and highles] **Higher**, adequate reserves shall be established by the insurer in any case where experience indicates that these minimum standards do not place a sound value on the liabilities under the policy.

(e) **11:4-6.5** Types of individual health insurance policies [including the following:]

[1.] (a) Type A [-] **are** policies which are guaranteed renewable for life or to a specified age such as 60 or 65, [as] **at** guaranteed premium rates.

[2.] (b) Type B [-] **are** policies which are guaranteed renewable for life or to a specified age, such as 60 or 65, but under which the insurer reserves the right to change the scale of premiums.

[3.] (c) Type C [-] **are** policies in which the insurer has reserved the right to cancel or refuse renewal for one or more reasons, but has agreed implicitly or explicitly that, prior to a

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specified time or age, it will not cancel or decline renewal solely because of deterioration of health after issue; however, policies shall not be considered of this type if the insurer has reserved the right to refuse renewal provided the right is to be exercised at the same time for all policies in the same category, unless premiums are based on the level premium principle.

[4.] (d) Type D [-] are all other individual policies.

[NOTES:]

[(a)] (e) The [above] definitions set forth in (a) through (d) above do not classify "franchise" as a type of policy. Such policies are frequently written under an agreement limiting the insurer's right to cancel or refuse renewal. Usually the right is reserved to refuse renewal of all policies in the group or other categories such as those ceasing to be members of the association, and this would place such policies in Type D in accordance with the last clause under [paragraph 3 of this Section] (c) above. However, if premiums are based on the level premium principle or if the renewal undertaking for the individual meets the requirements for Type A, B or C, the franchise policy should be so classified for reserve purposes.

[(b)] (f) A policy may have guarantees qualifying it as Type A, B or C until a specified age or duration after which the guarantees, or lack of guarantees, may qualify it as Type A, B, C or D. In such case, the policy in each period shall be considered for reserve purposes according to the type to which it then belongs.

[(c)] (g) Where all of the benefits of a policy, as provided by rider or otherwise are not of the same Type (A, B, C or D), each benefit shall be considered for reserve purposes according to the type to which it belongs.

[(f)] **11:4-6.6** [The reserve] Reserve standards for policies of Type A, B or C [include the following:]

[1.] (a) The maximum interest rate for reserves shall be the maximum rate permitted by law in the valuation of currently issued life insurance.

[2.] (b) The mortality assumptions used for reserves shall be according to a table permitted by law in the valuation of currently issued life insurance.

[3.] (c) Morbidity or other contingency:

[i.] 1. The minimum standard for total disability due to accident or sickness, shall be the 1964 Commissioner's Disability Table.

[ii.] 2. For policies issued prior to January 1, 1986, minimum standard for hospital expense benefits shall be the 1956 Inter-Company Hospital Table. For policies issued after December 31, 1985, the minimum standard for hospital expense benefits shall be the 1974 Hospital Table.

[iii.] 3. For policies issued prior to January 1, 1986, the minimum standard for surgical expense benefits shall be the 1956 Inter-Company Surgical Table. For policies issued after December 31, 1985, the minimum standard for surgical expense benefits shall be the 1974 Surgical Table.

[iv.] 4. The minimum standard for accidental death benefits shall be the 1959 Accidental Death Benefits Table.

[v.] 5. As to all other benefits, the insurer shall adopt a standard which will produce reserves that place a sound value on the liabilities under such benefit.

[4.] (d) Negative reserves on any benefit may be offset against positive reserves for other benefits in the same policy, but the mean reserve on any policy shall never be taken as less than one-half the valuation net premium.

[5.] (e) The minimum reserve shall be on the basis of a two-year preliminary term.

[6.] (f) The reserve method shall be the mean reserves diminished by appropriate credit for valuation net deferred premiums. In no event, however, shall the aggregate reserve for all policies valued on the mean reserve basis, diminished by any credit for deferred premiums, be less than the gross pro rata unearned premiums under such policies.

[7.] (g) Provided the reserve on all policies to which the method or basis is applied is not less in the aggregate than the amount determined according to the applicable standards specified above, an insurer may use any reasonable assumptions as to the interest rate, mortality rates, or the rates of morbidity or other contingency, and may introduce an assumption as to the voluntary termination of policies. Also, subject to the preceding condition, the insurer may employ methods other than the methods stated above in determining a sound value of its liabilities under such policies, including but limited to the following:

[i.] 1. The use of mid-terminal reserves in addition to either gross or net pro rata unearned premium reserves;

[ii.] 2. Optional use of either the level premium, the one-year preliminary term, or the two-year preliminary term method;

[iii.] 3. Prospective valuation on the basis of actual gross premiums with reasonable allowance for future expenses;

[iv.] 4. The use of approximations such as those involving age groupings, groupings of several years of issue, average amounts of indemnity;

[v.] 5. The computation of the reserve for one policy benefits as a percentage of, or by other relation to, the aggregate policy reserves, exclusive of the benefit or benefits so valued;

[vi.] 6. The use of a composite annual claim cost for all or any combination of the benefits included in the policies valued.

[8.] (h) For statement purposes the net reserve liability may be shown as the excess of the mean reserve over the amount of net unpaid and deferred premiums, or, regardless of the underlying method of calculation, it may be divided between the gross pro rata unearned premium reserve and a balancing item for the "additional reserve."

11:4-6.7 Reserve standards for policy Type D

The minimum reserve standard for policy Type D shall be the gross pro rata unearned premium.

11:4-6.2 to 11:4-6.7 are recodified as 11:4-6.8 to 11:4-6.13
(No change in text.)

[11:4-6.8 Effective date

The effective date of this regulation No. 1-1965A-2 shall be December 1, 1965.]

11:4-6.14 Severability

If any provision of this subchapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect other provisions or applications of the subchapter which can be given effect without the invalid provision or application and to this end, the provisions of this subchapter are severable.

(a)

REAL ESTATE COMMISSION

Branch Office Compliance (Maintained Offices)

Proposed Amendment: N.J.A.C. 11:5-1.19

Authorized By: Division of the New Jersey Real Estate Commission, Daryl G. Bell, Director.
Authority: N.J.S.A. 45:15-6, 45:15-12; 45:15-13.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Daryl G. Bell, Director
New Jersey Real Estate Commission
201 East State Street
Trenton, New Jersey 08625

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

This proposal is known as PRN 1984-446.

The agency proposal follows:

Summary

The proposed amendment changes what is required to be printed on the branch office license, and requires that the name of the individual in charge and other licensed personnel be prominently displayed in the branch office. The existing rule requires that the license contain the name of the office supervisor. The amendment would require the branch office license to display the name of the broker for the firm, as the individual ultimately responsible for the acts of brokerage that occur. Rather than have the name of the office supervisor on the license, his or her name is to be displayed in the form of an appropriate sign. Not only does this amendment inform the public of all individuals responsible for the firm, but it eases the administrative burden imposed on the Commission reissuing branch office licenses each time a supervisor is moved or replaced. Many firms regularly rotate office supervisors from less busy branch offices to more busy branch offices as their managerial skills improve. This often results in a whole series of license changes that must be processed by Commission personnel.

Additionally, the proposed amendment requires branch offices to maintain a list of the firm's licensees who may conduct business at the branch office. Single location offices are required to post the licenses of all brokers and salespersons for public information pursuant to N.J.S.A. 45:15-12. When a broker has a main office and one or more branch offices, all licenses are displayed in the main office. The proposed amendment would make available the same information for customers of the branch offices.

Social Impact

The proposed amendment has a positive social impact on the public, in that it provides customers of real estate branch offices with the names of individuals licensed to do business

at that location. It also provides them with the name of the broker ultimately responsible for the business, as well as advising them of the name of the person in charge of the office.

Economic Impact

The proposed amendment has a positive economic impact in that it will save time of Commission licensing personnel in processing changes in branch office licenses. It will have negligible economic impact on real estate brokers, who must post a list of individuals who are licensed to do business at branch offices. The benefit to the public in knowing who may conduct business at the location far outweighs the small cost of posting a list. Brokers will benefit by not being required to pay license change fees when branch office supervisors are rotated, in that change of the physical license is unnecessary.

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

11:5-1.19 Branch offices [compliance with N.J.A.C. 11:5-1.18 (Maintained offices)]

(a)-(e) (No change.)

(f) When a branch license is issued to a broker it shall specifically set forth [the name of the licensee in charge as "office supervisor"] **the name of the broker and the address of the branch office**, and shall be conspicuously displayed at all times in the branch office. **The branch office shall also prominently display the name of the licensee in charge as "office supervisor" and the names of all broker-salespersons or salespersons doing business at that branch office.**

(b)

REAL ESTATE COMMISSION

Office Closing and Transfer Procedures

Proposed Amendment: N.J.A.C. 11:5-1.24

Authorized By: Division of the New Jersey Real Estate Commission, Daryl G. Bell, Director.
Authority: N.J.S.A. 45:15-6 and 45:15-17.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Daryl G. Bell, Director
New Jersey Real Estate Commission
201 East State Street
CN 325
Trenton, NJ 08625

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

This proposal is known as PRN 1984-445.

The agency proposal follows:

Summary

The proposed amendment ensures that licensed real estate brokers will adequately protect their principals, employees, and the public in general when closing or transferring responsibility for their brokerages.

Most of the duties imposed by the proposed amendment upon a broker when closing an office or substituting a broker of record are presently mandated or implied in the Real Estate License Act, N.J.S.A. 45:15-1 et seq., or in existing rules, N.J.A.C. 11:5-1.1 et seq. The existing rules leave the burden of gathering information and discovering abuses on the Commission, often after a complaint is received. The proposed amendment will consolidate these duties and will require an affidavit attesting to the fact that all principals, employees, the Commission and the public have been given notice of the change and that their interests have been protected. The amendment will place an affirmative duty upon the brokers to prove compliance. The existing broker will not be eligible for relicensing and no new broker of record may be substituted unless such compliance is proven.

In addition to the basic duties in N.J.A.C. 11:5-1.24(a) and (b) regarding the return of licenses, the proposed amendment sets forth procedures for closing the office and transferring responsibility.

The proposed N.J.A.C. 11:5-1.24(c) requires that, as a condition to relicensing, a broker engaging in business as a sole proprietor, broker of record of a corporation, or broker of record of a partnership, submit an affidavit certifying that procedures to close the office have been completed. The required contents of the affidavit are set forth.

Proposed N.J.A.C. 11:5-1.24(d) permits eligibility for relicensing in situations where there is a change in broker of record, as opposed to the office closing procedures provided for in N.J.A.C. 11:5-1.24(c).

Proposed N.J.A.C. 11:5-1.24(e) specifies the procedures to be followed when there is a change in broker of record. A joint affidavit signed by outgoing and incoming broker of record will be submitted as evidence of compliance with the procedures.

Social Impact

The proposed amendment will have a positive impact on the enforcement efforts of the Real Estate Commission, as it will reduce the number of staff hours necessary to determine that the closing of a real estate brokerage or change of broker of record has been properly completed. Brokers will not be eligible for relicensing unless they comply with the provisions of the amendment. The proposed amendment will have a positive effect on the public by promoting knowledge of the status of brokers responsible for an agency's activities and will alert the Commission to changes in individuals responsible for acts of brokerages.

Economic Impact

The proposed amendment will not substantially affect the administrative costs of the Commission. Reviewing submissions will increase the workload of the Commission staff, but since the information will be compiled by the brokers rather than sought by the staff, there will be a net reduction in staff time expended.

The proposed amendment will have some economic impact on brokers as it requires them to prepare the documents for submission to the Commission. However, such costs are negligible, as other license forms and documents are required to be prepared at the same time.

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

11:5-1.24 Return of license when [licensee] **broker** ceases to be active; **office closing; change of broker of record**

(a) Each broker who ceases to be active shall immediately return to the Commission his license, and licenses of all salespersons and broker-salespersons for cancellation.

(b) Each employee's license must be accompanied by a letter terminating employment in compliance with N.J.S.A. 45:15-14.

(c) **No broker engaging in the real estate brokerage business as a sole proprietor, as a broker of record of a partnership or as a broker of record of a corporation shall be relicensed as a broker or salesperson unless within 30 days of the date on which the broker ceases engaging in the real estate brokerage business he or she shall complete and submit an affidavit to the Commission certifying that:**

1. The broker's license, the corporate or partnership license, and the licenses of all salespersons and broker-salespersons have been returned to the Commission for cancellation;

2. The broker's trust account has been closed and that all funds held in trust for others have been disbursed to proper parties;

3. All commissions owed to salespersons and broker-salespersons have been paid, or, if not yet received by the broker, will be paid upon receipt;

4. No further commissions are due the broker except that any commissions for services previously rendered and payable in the future upon the occurrence of specified events are described on a list attached to the affidavit. The list shall describe the nature and amounts of such outstanding commissions with sufficient information to identify each transaction;

5. The broker has notified all principals in ongoing transactions, in writing, that the broker has ceased engaging in the real estate brokerage business or that the broker will hereinafter engage in the real estate brokerage business in another capacity. The notice shall describe the disposition of pending transactions and the name of custodian and place of deposit of any funds received from principals;

6. The broker has removed from the licensed premises all signs indicating that the premises contains the office of a licensed real estate broker;

7. The broker has recalled all signs and other advertisements or trade materials indicating that the broker is engaged in the real estate brokerage business;

8. The broker has advised the appropriate telephone services that the firm is no longer engaged in the real estate brokerage business, and that further telephone directories should not contain the name of the individual or firm as licensed brokers;

9. There are no outstanding fines or penalties due and owing the Real Estate Commission;

10. The broker acknowledges his or her responsibility to maintain permanent type records as required in N.J.A.C. 11:5-1.12. The broker must provide the address of the place of depository of such records and acknowledge responsibility to advise the Commission of any change in the name of the custodian or place of depository for a period of six years.

(d) **When a new broker of record of a corporation or partnership is being substituted for the existing broker of record, the existing broker of record satisfies the certification requirements of (c) above when in compliance with the substitution procedures of (e) below.**

(e) No new broker of record of a corporation or partnership shall be substituted unless the new broker of record and the former broker of record prepare and submit a joint affidavit to the Commission certifying that:

1. Custody of all funds held in trust for principals has been assumed by the new broker of record;
2. The new broker of record has reviewed all pending transactions and is satisfied that all funds held in trust have been accounted for;
3. All salespersons' commissions are paid to date;
4. The new broker acknowledges responsibility to pay salespersons' commissions in accordance with the policy for payment existing on the date of substitution;
5. No fines are presently owed to the Real Estate Commission, and if any fines are assessed after the date of substitution for actions occurring prior to substitution, both the former broker and new broker are jointly and severally responsible for payment;
6. All signs and advertisement have been changed to reflect the broker now authorized to transact business in the name of the firm;
7. All records required to be maintained pursuant to N.J.A.C. 11:5-1.12 have been turned over to the new broker, and the new broker acknowledges responsibility to maintain such records for a period of six years;
8. The new broker acknowledges that he or she will be responsible to transact business in the name and on behalf of the firm.

(a)

DIVISION OF ACTUARIAL SERVICES

Hospital-Medical-Dental Services
Dental Plan Organizations

Proposed New Rule: N.J.A.C. 11:10-1

Authorized By: Kenneth D. Merin, Acting Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), and 17:48D-1 et seq., specifically 17:48D-23.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jasper J. Jackson, Director
Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 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 1984-468.

The agency proposal follows:

Summary

Pursuant to the "Dental Plan Organization Act", N.J.S.A. 17:48D-1 et seq., the Commissioner of the Department of Insurance is required to regulate persons and corporations who offer plans for the prepayment or postpayment of dental services, and is authorized to promulgate rules to effectuate the purposes of the Act. This subchapter establishes rules which facilitate the implementation of the Act.

The Dental Plan Organization Act became effective on June 1, 1980. At that time, the Department of Insurance began to review applications, issue certificates of authority and carry out other regulatory functions required by the law. In the course of performing these functions, questions arose concerning the proper interpretation of the Act. In addition, while basic systems for implementing the Act were developed, the need for more specific standards and uniform procedures for assuring compliance became readily apparent.

The Department responded to this need by proposing rules regulating DPO's on March 21, 1983 (see 15 N.J.R. 423(a)). Since that time, many useful suggestions for improving the proposal have been received by the Department in the form of written comment on the original proposal and other feedback offered by interested parties. This proposal has been shaped with the help of these public comments and suggestions. Valuable experience gained by the Department during the intervening period also proved to be beneficial in developing the current proposal.

The proposed rules formalize and expand on the procedures currently utilized by the Department for the regulation of dental plan organizations. Specific standards are also prescribed. These standards include those relating to a dental plan organization's contracts with dentists, submissions or filings with the Department, financial reporting, surplus, complaint handling, fidelity bonding and malpractice insurance, and schedule of charges.

Recognizing that the Act defines DPO's as direct providers of dental services, the proposal prohibits DPO's from utilizing dentists as independent contractors in the treatment of their enrollees (see N.J.A.C. 11:10-1.5(c)). DPO's may not attempt to insulate themselves from liability for the dental services provided in its name. Both the DPO and its dentists are required to share equal responsibility for the dental services provided, so enrollees will have redress to either party in the event of a problem. Although many existing contracts between DPO's and dentists refer to dentists as independent contractors, dentists are nevertheless responsible to enrollees and DPO's for their actions. Thus, the prohibition merely clarifies the relationship which already exists. Dentists may still treat enrollees in their own offices, but may not do so as independent contractors.

Another significant prohibition concerns fee-for-service or indemnity coverage. As with the original proposal, this version of the rules prohibits DPO's from covering dental services on a fee-for-service, expense incurred or indemnity basis, as such coverage is insurance or plans permitted to be provided by dental service corporations. DPO's are authorized to provide capitation plans only in which dentists are on salary or are paid on the basis of the number of enrollees covered rather than the cost of the service rendered.

A critical section of the rules are the provisions dealing with the expense limitation (N.J.A.C. 11:10-1.9). To facilitate interpretation of these provisions, the following is offered for the benefit of the regulator and regulated alike.

The expense limitations in N.J.S.A. 17:48D-14, together with the requirements for filing of schedules of charges con-

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tained in N.J.S.A. 17:48D-10, constitute the rate control provisions of the Dental Plan Organization Act. While N.J.S.A. 17:48D-14 speaks in terms of percent limitations of "gross contract and certificate income" that may be used "for general expenses, acquisition expenses and miscellaneous taxes, licenses and fees," it is clear that the intent of the statute is to limit the "retention component" of enrollee charges. In insurance parlance, retention is that part of premiums or considerations that is not applied for the provision or indemnification of benefits.

To illustrate, in the first year of a D.P.O.'s operation, the total expenses of operation, such as salaries, rent, data processing and development costs are relatively fixed and the number of enrollees (and hence the amount of "gross contract and certificate income") is typically small. The D.P.O. should price its coverage on a basis reflecting what per enrollee expenses would be on a seasoned block of business if it is to be sufficiently competitive to attract customers. The actual total expenses of the Plan will almost certainly exceed 30 percent of the contract income and may well exceed 100 percent of that income. It would be patently illogical to attempt to limit D.P.O. expenses in this instance to 30 percent of income actually received or expected to be received under projections based on reasonable assumptions. The only logical interpretation of N.J.S.A. 17:48D-14 is that the cost of benefits, which does vary directly with the number of enrollees and hence with the amount of contract income, must be at least 70 percent of the contract income which the D.P.O. expects to receive. The remaining 30 percent of contract income is the "retention" component of enrollee charges, which is applied toward the administrative expenses of the Plan and its operating losses. To interpret the law otherwise would be equivalent to prohibiting the successful formation of any new dental plan organizations.

Social Impact

By clarifying the requirements of the Act, the proposed rules will facilitate the compliance efforts of all DPOs. For instance, a descriptive definition of the term "capitation" is given. This term is mentioned in the Act as the key determiner of the existence of a "Dental plan" which in turn is essential to the definition of a DPO in the law. However, capitation is not defined in the Act and there are no unambiguous definitions of the term in insurance literature. Since a premium or subscriber charge paid by an enrollee is similar to a capitation in that both are calculated on a "per head" or "per capita" basis and do not vary directly with the volume of services required by an enrollee, the terms have confused regulators and DPOs alike. The definition given in the proposed rule should help to alleviate this confusion.

The specific standards prescribed will ensure that the purposes of the Act are fulfilled and will provide for additional safeguards to the enrollees being served.

Economic Impact

The costs to a DPO above that which is already needed to comply with the Act will be minimal. The surplus requirement of \$25,000 is designed to permit a dental plan organization to gradually accumulate the amount over a number of years. The public stands to benefit from the surplus being held for its protection. This surplus will help to guarantee that the DPO will fulfill its obligations in the event it has financial difficulties.

The minimum amounts set for fidelity bonds and malpractice insurance may increase a DPO's costs. This coverage is,

however, required by the Act in amounts to be determined by the Commissioner. The increase in costs for this insurance is small in comparison to the potential loss a DPO can suffer from employee theft and malpractice suits.

The proposed rules will facilitate compliance with the Act and should serve to moderate the compliance costs of all DPOs. The Department had originally incurred costs in implementing the Act and carrying out the regulatory procedure which is already in place. The costs to the Department of implementing the proposed rules, in addition to the costs already incurred, are negligible.

Full text of the proposed new rule follows.

CHAPTER 10**HOSPITAL-MEDICAL-DENTAL SERVICES****SUBCHAPTER 1. DENTAL PLAN ORGANIZATIONS****11:10-1.1 Purpose**

(a) The Dental Plan Organization Act (N.J.S.A. 17:48D-1 et seq.) regulates persons and corporations which offer plans for the prepayment or postpayment of dental services. The Act provides for the licensing and supervision of dental plan organizations to protect enrollees of the plan and to assure that the services contracted for are actually delivered.

(b) Section 23 of the Act authorizes the Commissioner to promulgate rules and regulations to effectuate its purposes. This subchapter establishes rules to implement the Act. These rules are designed to facilitate compliance with the Act by clarifying its requirements. Specific standards are also prescribed to ensure that the purposes of the Act are fulfilled.

11:10-1.2 Scope and application

(a) This subchapter applies to dental plan organizations as defined in N.J.S.A. 17:48D-2c and N.J.A.C. 11:10-1.3. Such organizations may offer group and individual dental plans on a capitation basis.

(b) If the dental plan organization utilizes more than one full-time equivalent dentist to serve dental plan enrollees, it is subject to the Act and this subchapter.

(c) An individual dentist in solo practice who capitates his services is not required to comply with the Act or this subchapter.

(d) Supplemental dental plans as defined at N.J.A.C. 11:10-1.3 are subject to the Act and this subchapter. A DPO may not offer a supplemental dental plan unless it can be actuarially demonstrated that the capitation rate for such a plan is proportionate to the rate for an identical plan that provides 100 percent full coverage for the same services provided under the supplemental plan.

(e) An organization which provides coverage of dental services on a fee-for-service basis cannot qualify as a dental plan organization. Such organizations may not operate in this State without a certificate of authority as a health insurer or hospital, medical, dental or health service corporation, since fee-for-service coverage is either insurance or service benefits.

11:10-1.3 Definitions

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

"Capitation" refers to the method by which the DPO, and its dentists, are compensated for the direct provision of serv-

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ices on a prepaid or postpaid, individual or group basis. "Capitation" exists when a DPO, and the individual dentist providing services, is compensated on the basis of the presence of an enrollee to whom services have been promised under a contract and such services are available to an enrollee if needed. Under a capitation arrangement, the DPO, or more particularly, the individual dentists, are "at risk", and generally the risk is that volume of services that must be provided by the DPO might be higher than anticipated, rather than that the amount the DPO must pay (or indemnify) for those services will exceed the expectation. An arrangement whereby the DPO compensates individual dentists on a fee-for-service basis is not permitted. A plan which uses dentists who are employed and paid a salary by the DPO, or who are compensated on a capitation basis according to the number of enrollees, is permissible.

"Commissioner" means the Commissioner of the Department of Insurance.

"Department" means the Department of Insurance.

"Dental Plan Organization" (or "DPO") means a direct provider of dental services compensated on a prepaid or postpaid capitation basis, which provides such services to either individuals or groups. The provision of such services by the DPO is deemed to be a "non-delegable" duty. An arrangement whereby dental services are provided indirectly through "independent contractors" is not considered a DPO. An arrangement whereby compensation to dentists for dental services is provided on a fee-for-service basis is not considered a DPO.

"Fee-for-service" is a reimbursement arrangement in which the amount reimbursed for dental services is paid either to an insured (or subscriber) or to a provider of services and the amount is determined on the basis of the dental procedure performed and/or the amount charged by the dentist for the procedure. An example of a fee-for-service plan is one covering or indemnifying the services provided by dentists on the basis of a schedule of fees or percentage reimbursement of the fee charged, under which the dentist does not share in the "volume of service" risk assumed by the DPO.

"One Full-Time Equivalent Dentist" means one dentist working full time or an aggregation of hours spent by more than one dentist on DPO enrollees so as to equal a 40-hour week. A full-time general practitioner can serve a group of at least 1,500 enrollees and dependents combined. This number could vary by specialty and service performed; for example, an orthodontist may serve a smaller number of patients than a general practitioner.

"Supplemental Dental Plan" means an arrangement in which a dentist or group of dentists agrees to relieve patients of paying any patient charges or copayments associated with dental insurance or other dental coverage for a predetermined fee. Supplemental dental plan also means an arrangement which covers less than 50 percent of an enrollee's dental expenses regardless of whether the enrollee has other coverage.

11:10-1.4 General rules

(a) To obtain an application for a certificate of authority as a dental plan organization, a written request for the appropriate forms must be submitted to the Commissioner. Applicants shall complete and return the forms with the supporting documents requested by the Department.

(b) To renew its certificate of authority, a DPO shall remit the \$100.00 renewal fee to the Commissioner 30 calendar days prior to the renewal date.

(c) The notice of significant modification of information submitted with the application required by N.J.S.A. 17:48D-4 shall include the document being modified and an explanation of the modification. Examples of modifications which are considered significant include, but are not limited to:

1. Changes in the DPO's organizational structure;
2. New officers, partners or members of the DPO's board of directors, board of trustees, executive committee or other governing board or committee;
3. Changes in the group or individual contract form issued by the DPO; and
4. Adjustments to financial statements.

11:10-1.5 Written agreements with dentists

(a) Every DPO shall enter into a written agreement with each dentist who will be providing dental services for plan enrollees, unless the dentist is employed by the DPO.

(b) Agreements with dentists shall include:

1. The amount and method of compensation and the service to be provided;
2. The minimum number of hours per week which the dentist must make available for the treatment of plan enrollees or a statement that an appointment must be granted to an enrollee within 10 working days of the date of request;
3. A statement that treatment for an emergency must be granted within 24 hours of the emergency;
4. The DPO's program for the assurance of quality dental care;
5. The requirement for malpractice insurance coverage; and
6. The date and term of the agreement.

(c) Agreements with dentists shall not include:

1. Provisions creating or purporting to create, an "independent contractor" relationship between the DPO and the dentist, or otherwise attempting to restrict the responsibility of the DPO for the dental services provided by the dentist; or
2. Any compensation agreement on a "fee-for-service" basis or any other basis which shields the dentist from the "volume of services" risks assumed by the DPO.

11:10-1.6 Evidence of coverage and group contracts

(a) The DPO shall prepare and issue the evidence of coverage form to each enrollee. Covered groups may distribute the forms to its members on behalf of the DPO.

(b) An evidence of coverage form must contain all the information required by N.J.S.A. 17:48D-9. A card containing only basic identifying information is not sufficient to meet these requirements.

(c) No evidence of coverage, or group contract, or amendment thereto, may be issued or delivered until a copy of the form has first been filed with the Commissioner and has not been disapproved by the Commissioner. A form or amendment, which is significantly different from that previously filed with the Commissioner, may not be issued until it has first been filed with the Commissioner, may not be issued until it has first been filed with the Commissioner and has not been disapproved by the Commissioner. All forms and amendments shall be filed at least 30 working days prior to the planned date of issuance.

(d) All evidence of coverage forms shall clearly identify the name of the dental plan organization on its cover and in the text.

(e) All exclusions, exceptions, limitations, items not covered and services not provided by the plan should be clearly

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identified in the evidence of coverage form and group contract forms.

(f) Coordination of benefits and non-duplication of benefits provisions which limit payment to 100 percent of allowable expenses when more than one dental plan covers an enrollee are not permitted in an evidence of coverage or group contract issued by a DPO unless the following conditions are met:

1. Enrollees are covered under a group, not an individual contract;
2. The provisions are not operative with respect to dental plans provided by another DPO;
3. The DPO follows the rules set forth in the "Coordination of Benefit Guidelines" adopted by the National Association of Insurance Commissioners and any subsequent amendments or supplements thereto;
4. The funds recovered as a result of these provisions are credited directly against the charges payable by the group for the plan's services; and
5. If these conditions are met, both the group contract and evidence of coverage must include the coordination of benefits or non-duplication of benefits provisions.

(g) Provisions which exclude coverage for services provided by other dental plans or by dental insurance are not permitted in a contract issued by a DPO.

(h) No DPO may cover dental services on a fee-for-service, expense incurred or indemnity basis. A DPO may offer dental services directly (that is, not on an indemnity, expense incurred or fee-for-service basis), and may do so only on a capitation basis. A DPO may also arrange for the provision of dental services on a fee-for-service, expense incurred or indemnity basis by purchasing coverage for such service from a duly authorized insurer, or a hospital, medical, dental or health service corporation.

(i) An evidence of coverage issued to a non-group enrollee is subject to the plain language requirements of N.J.S.A. 56:12-1 et seq. All evidences of coverage, including those issued to enrollees of a group, should be written in a simple, clear, understandable and easily readable way. In writing an evidence of coverage form to be issued to an enrollee of a group, a DPO may use the guidelines set forth in N.J.S.A. 56:12-10 to assure compliance with this subsection.

11:10-1.7 Financial reporting

(a) Every DPO shall submit to the Commissioner a quarterly report of its activities on the form prescribed by the Commissioner within 45 calendar days after the end of each calendar quarter. The Commissioner in his discretion may waive this submission requirement.

(b) A DPO which also maintains a non-dental plan practice shall segregate its non-dental plan activities from its dental plan activities and report its dental plan activities only in the quarterly and annual report forms prescribed by the Commissioner. Non-dental plan activities include those activities involving private practice dentistry.

(c) A DPO which is engaged in non-dental plan practice shall also report the activities of the entire organization in financial reports prepared by its accountant within 15 working days of completion of the report. The assets of the entire organization of which the DPO is a part are considered to be assets of the DPO.

(d) All financial reports from DPOs which are not incorporated shall include a breakdown of the personal finances of its proprietors and the finances of the dental plan.

(e) The records of a DPO shall be audited by an independent certified public accountant in preparing the financial statement of its Annual Report. The independent certified public accountant who audited the records and prepared the financial statement shall certify in writing the DPO's financial statement, and this certification shall be submitted with the Annual Report.

11:10-1.8 General surplus

(a) Every DPO shall accumulate and maintain a minimum general surplus of \$25,000. The rate of accumulating the surplus shall be five percent of its contract and certificate income in its first year of operation following the effective date of this subchapter, three and one-half percent in the second year and two percent annually thereafter.

(b) This surplus shall consist of unencumbered funds, cash or marketable investments available for the protection of the DPO's enrollees.

(c) The general surplus shall be maintained over and above its reserves, liabilities and special contingent surplus.

(d) The Commissioner may waive all or a part of the general surplus requirement if the DPO maintains a contract(s) with an insurer, or a hospital medical, dental or health service corporation which is sufficient to assure the performance of its obligations.

11:10-1.9 Expense limitation

(a) To achieve compliance with the expense limits set forth in N.J.S.A. 17:48D-14, every DPO shall:

1. Use at least 70 percent of its gross contract and certificate income in the first year of operation, 75 percent in the second year, and 80 percent in all subsequent years for the direct provision of provisional dental services to enrollees;
2. Set its per enrollee retention in conformity with the statutory limits in constructing its schedule of charges.

(b) Expenditures for the direct provision of professional dental services are, in general, that portion of the DPO's total expenses which would exist if the DPO were simply a dental practice and if enrollees were the patients of that practice. Monies paid to dentists for their time, for the cost of their assistants, hygienists, and other support personnel, for their laboratory costs, malpractice insurance, and for all other necessary costs of offices and equipment which are not required for the non-dental care delivery activities of a DPO are examples of such dental expenditures.

(c) Portions of expenditures such as rent, utilities, building maintenance, accounting, real estate taxes, payroll taxes, depreciation, amortization, employee benefits, interest and bad debts, which a dentist or dental group incurs in delivering dental care, may also be counted as expenditures for dental services as long as a reasonable method of allocating these expenditures to the dental and non-dental functions is used.

(d) Gross contract and certificate income not needed for the direct provision of dental care shall be considered as retention and will be subject to the limitations of N.J.S.A. 17:48D-14. Two examples of items of retention are profits and marketing costs.

(e) Copayment income shall be considered gross contract and certificate income in determining compliance with the expense limitations. Similarly, the costs of providing the dental services to which the copayments apply shall be included with other dental service costs. For the purpose of this subsection, copayment income means the fees that a DPO collect for the portion of the dental services which is not covered under the dental plan contract.

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(f) The year of operation for determining the applicable expense limitation (see N.J.S.A. 17:48D-14) shall be the year that the DPO first enters into a dental plan with any group or enrollee.

11:10-1.10 Complaints and other communications

(a) Complaint systems required of every DPO (see N.J.S.A. 17:48D-12) shall provide that a written response shall be furnished to the enrollee within 15 working days after its receipt of a written complaint. The DPO's response shall, based on the information available to it at the time of response, be complete and accurate.

(b) Every DPO shall, based on the information available to it, provide the Department of Insurance with a complete and accurate written response to any inquiry from the Department within 15 working days after its receipt of such inquiry.

(c) Every DPO shall furnish an appropriate reply to all other communications which reasonably suggest that a response is expected within 15 working days of receipt.

(d) Every DPO shall retain all written complaints and correspondence relating thereto for at least three years after the date of the last correspondence in file.

11:10-1.11 Fidelity bonds and malpractice insurance

(a) The minimum amount of the fidelity bond on each director, officer, partner or employee of the DPO required by N.J.S.A. 17:48D-8 shall be \$50,000.

1. Every DPO shall increase the bond amount as appropriate whenever its risk of loss for individual employee theft is substantially greater than \$50,000.

2. The fidelity bond shall name the DPO and the State of New Jersey as dual obligees.

(b) All dentists serving enrollees of a DPO shall be insured against professional liability or for malpractice in an amount not less than \$1,000,000.

(c) The fidelity bond and the malpractice policy shall be obtained only from insurers which are authorized to conduct business in New Jersey.

11:10-1.12 Schedule of charges

(a) Every new or revised schedule of charges must be filed with the Commissioner at least 30 working days prior to its effective date. A DPO shall not use a schedule of charges which has been disapproved by the Commissioner.

(b) All filings of charges must include sufficient information to enable the Commissioner to determine whether the charges are not excessive, inadequate or unfairly discriminatory. All details, including the actuarial principles, assumptions and methods of calculation used in developing the rates, must accompany the filing.

(c) Every filing of a schedule of charges shall include projections of the following information:

1. The schedule of charges to be used by the DPO during the period that the charges are to be effective;

2. The portion of the charge to be used for the direct provision of professional dental services to enrollees (N.J.A.C. 11:10-1.9(b) and (c));

3. The portion of the charges to be used for retention (N.J.A.C. 11:10-1.9(d)), except for the items of retention referred to in 4 below; and

4. Anticipated profits and losses, surplus additions and reductions, each of which shall be itemized separately.

(d) Every filing of a revised schedule of charges shall include the information required by (a) through (c) above, the percentage increase or decrease requested and the prior experience under the old rates itemized as described in (c) above.

(e) Compliance with N.J.S.A. 17:48D-10b. (requirements for the establishment of charges) shall be satisfied if:

1. The ratio of retention to the charge falls within the limitations set forth by N.J.S.A. 17:48D-10a; and

2. The portion of charges intended for professional dental services meets the standards prescribed by N.J.A.C. 11:10-1.9(a)1. Development of the dental portion of the charges shall be based on actual utilization of the DPO, or on comparable experience if the DPO does not yet have adequate utilization. Projections based on trends observed within the DPO, the profession of dentistry or the overall economy shall also be included in this development.

(f) A schedule of charges for a supplemental dental plan is also subject to (a) through (e) above. In determining whether such charges comply with (a) through (e) above, the Department shall consider whether the charges for a supplemental dental plan are proportionately equivalent to the charges for a dental plan providing greater benefits. For example, charges for a supplemental dental plan covering 20 percent of dental expenses must be at least one-fifth of the charges for a plan covering 100 percent of these dental expenses.

11:10-1.13 Enforcement

Any DPO which violates any provision of this subchapter shall be subject to the penalty for violations of the Dental Plan Organization Act and amendments thereto. DPOs are also subject to suspension, nonrenewal or revocation of their certificate of authority for failure to comply with this subchapter pursuant to N.J.S.A. 17:48D-16.

11:10-1.14 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.

(a)

DIVISION OF ADMINISTRATION

Auto Body Repair Facilities

Proposed Amendments: N.J.A.C. 11:14-1.3, 2.1, 2.4, 3.1, 3.3, 4.1 and 4.2

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

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e) and P.L. 1983, c.360, N.J.S.A. 39:13-1 et seq.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jasper J. Jackson, Director
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 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.

The proposal is known as PRN 1984-467.

The agency proposal follows:

Summary

N.J.A.C. 11:14-1 et seq., a rule concerning the licensing of auto body shops was proposed on January 3, 1984 and adopted on June 15, 1984 with changes reflecting public comment (see 16 N.J.R. 1798(b)). In response to further public comment and agency review, the rule is being further amended to implement the Auto Body Repair Facility Act (N.J.S.A. 39:13-1 et seq.) The proposed amendments provide clarification of the rule requirements, and also place upon licensees certain additional reporting requirements.

The definition of controlling interest replaces the definition of true owner set forth in N.J.A.C. 11:14-1.3. The new definition specifies more clearly what constitutes a controlling interest in a licensed facility. With a specific definition, the requirements of the rule with respect to those parties with a controlling interest in a license facility can be more precisely delineated. For example, the proposed amendment to N.J.A.C. 11:14-2.1(b)2. requires that applications for a license include the names and addresses of persons or entities with a controlling interest in the facility in addition to the names of owners, partners and corporate directors and officers. A person or entity with a controlling interest is defined as having the power to direct the management and policies of the licensee directly or indirectly.

The proposed amendments to N.J.A.C. 11:14-3.1(a) and (b) clarifies the section to specify that all persons listed on the application, as required in N.J.A.C. 11:14-2.1(b)2., are responsible for the conduct of the business of the facility.

The proposed amendments to N.J.A.C. 11:14-3.3 extend the obligations of licensees to report changes in certain information called for in the license application, such as changes in address. The proposed amendments specify how and when the

licensee must inform the Commissioner of the changes. The proposed amendments also add a provision specifying what will constitute service of process by the Commissioner.

Social Impact

The Department of Insurance needs to know the names and addresses of all people in control of a licensed auto body repair facility. The proposed amendments puts an affirmative duty on the licensee to inform the Department of changes in the identity or address of such people. The public benefits by increased departmental efficiency in investigations and other administrative matters.

Economic Impact

There will be a modest cost increase to licensees in updating their information to the Department. There will be minimal costs to the Department for this additional recordkeeping function.

Full text of the current rules may be found at 16 N.J.R. 1799.

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

11:14-1.3 Definitions

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

“Auto body repair facility” [means] includes a business or person who for compensation, engages in the business of repairing, removing or installing integral component parts of an engine, power train, chassis or body of an automobile damaged as a result of a collision. For the purpose of this chapter, the following are not deemed to be auto body repair facilities and are not required to be licensed:

- 1.-4. (No change.)

“Controlling interest” means possession of the power to direct or cause the direction of the management and policies of an auto body facility, whether through the ownership of voting securities or otherwise. The Commissioner will presume control exists if any person or entity, directly or indirectly, owns, controls, holds the power to vote, or holds proxies representing 10 percent or more of the voting securities of any auto body facility. This presumption may be rebutted by showing control does not exist in fact. The Commissioner may determine control exists in fact, notwithstanding, the presence or absence of a presumption to that effect.

[“True owner” means the controlling interest in the auto body repair facility.]

SUBCHAPTER 2. LICENSING PROCEDURES

11:14-2.1 Application for a license

(a) Any person seeking to engage in the business of an auto body repair facility shall apply, in accordance with the provisions of this subchapter, to the Commissioner for a license authorizing him to engage in such business.

1. Any person now engaged in the business of an auto body repair facility or otherwise desiring to engage in such business in accordance with the operative date of this chapter shall apply to the Commissioner for a license within 60 days of the effective [day] date of this chapter.

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(b) Every applicant for a license, whether Type 17 or Type 18 designated, shall file with the Commissioner, in such form and detail as may be required by the Commissioner, an application setting forth the following:

1. The name, address and telephone number of the auto body repair facility;

2. The name and residence address of the [true] owner **and/or possessor of a controlling interest** of the facility, if a single proprietorship; if a partnership, the name and address of each partner; if a corporation, the name and address of each officer, [and] director **and possessor of a controlling interest**;

3. The name, address and telephone number of the person designated as the manager of the facility;

4. The business in which the applicant has been engaged for the five years preceding the date of application, and, if employed, the name and address of the employer;

5. Whether the applicant or the manager has ever been convicted of a crime;

6. Whether the applicant or manager of the facility has ever been denied, or had suspended or revoked a license to engage in any business, profession or occupation licensed under the laws of any state; and

7. Whether the applicant has [an ownership and/or beneficial] **any interest in any other auto body repair facility.**

(c) Each application for a license shall be duly not[ar]ized by a New Jersey Notary Public.

(d)-(g) (No change.)

11:14-2.4 Surrender of license

All licenses, although issued and delivered to a licensee, shall at all times be the property of the State of New Jersey and upon any suspension, revocation, refusal to renew or other termination of the license, such license shall no longer be in force and effect. Under these circumstances the licensee or other person having possession or custody of the license shall forthwith deliver it to the Commissioner either by personal delivery or by **certified** mail.

SUBCHAPTER 3. REQUIREMENTS OF A LICENSED AUTO BODY REPAIR FACILITY

11:14-3.1 Responsibility of licensees

(a) The owner **and/or possessor of a controlling interest in** [of] the auto body repair facility shall be responsible for the conduct of the business of the facility and for the actions of all employees, including the designated manager, performed in connection with the business of the facility.

(b) In the case of partnership and corporate licensees, the partners or corporate officers and directors, **or any person or entity possessing a controlling interest** as the case may be, shall be held individually responsible for the conduct of the business of the facility **and for the actions of all employees, including the designated manager, performed in connection with the business of the facility.**

11:14-3.3 Notice and recordkeeping requirements

(a) Each licensee is to furnish an outdoor sign which shall read: "Registered: State of New Jersey—Auto Body Repair Facility" with the facility's license number. The sign must contain letters at least 2" high with a stroke of approximately ½" and visible from the road and located in a conspicuous location for the general public to see. In the event zoning ordinances prohibit the posting of this sign or such posting is

otherwise impractical, the facility shall place the sign on **the exterior** of its building.

(b) Each facility shall post in a conspicuous location accessible to the public a "Notice to Consumers", concerning violations of the Auto Body Repair Facility Act and the availability of the Department for complaints pertaining thereto. The Notice shall be prescribed and furnished by the Commissioner.

(c) All licensed auto body repair facilities shall maintain copies of estimates, work orders, invoices, parts purchase orders and appraisals prepared by that facility. Such copies shall be kept for two years and shall be available for inspection by the Commissioner during normal business hours.

(d) The person designated as manager of the facility shall be available during normal business hours.

(e) Each auto body repair facility shall, on a quarterly basis, provide the Commissioner with written notice of any change in the list of employees furnished in accord with N.J.A.C. 11:14-2.1(e).

(f) **The licensee shall notify the Commissioner in writing of any change in address of the facility or of any change in address of persons or entities required to be listed on the application by N.J.A.C. 11:14-2.1(b)2 and 3. The notification shall be made within 20 days of the address change in the manner required in (h) below.**

(g) **The licensee shall notify the Commissioner in writing whenever any person or entity required to be listed on the application by N.J.A.C. 11:14-2.1(b)2. is no longer associated with the facility. The notification shall be made within 20 days of the departure of the person or entity in the manner required in (h) below.**

(h) **All address change notifications shall be sent by certified mail, with return receipt requested, to the License Division, New Jersey Department of Insurance, 201 East State Street, CN 325, Trenton, New Jersey 08625 or shall be delivered by personal delivery to that Division.**

(i) **An amended application must be filed when there is a substitution or addition to persons or entities listed in N.J.A.C. 11:14-2.1(b)2.**

(j) **Any process issued to licensees pursuant to the statutory authority of the Commissioner of Insurance, including but not limited to subpoenas, orders, and orders to show cause, may be served upon a licensee by sending said process by certified mail, with return receipt requested, to the current residence address and a current business address of the licensee.**

SUBCHAPTER 4. VIOLATIONS, INVESTIGATIONS AND GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF LICENSE

11:14-4.1 Violations

(a) Pursuant to section 4 of P.L. 1983 c. 360, the Commissioner may refuse to issue a license or may suspend or revoke the license of any auto body repair facility or refuse to issue a renewal thereof if he determines that the applicant or licensee:

1. Has made or authorized any material written or oral statement, which is known to be untrue or misleading **in connection with the operation of an auto body repair facility;**

2.-8. (No change.)

11:14-4.2 Additional violations

(a) The Commissioner may refuse to issue a license or may suspend or revoke the license of any auto body repair facility

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or refuse to issue renewal thereof, if he determines that the applicant or licensee:

- 1. Has made a material false statement or concealed a material fact in connection with the application for **or renewal of a license**;
- 2. Is not the [true] owner [of] **or possessor of a controlling interest in the facility of the auto body repair facility**;
- 3. Has been guilty of gross negligence **in the auto repair business**;
- 4. Has been guilty of fraud or fraudulent or deceptive practices; or
- 5. Has willfully failed to comply with any of the provisions of this chapter.

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(a)

THE COMMISSIONER

Unemployment Benefit Payments

Proposed Amendments: N.J.A.C. 12:15-1.2, 12:17-1.2 through 1.6, 3.1, 4.1, 4.2, 5.1, 11.2 and 12:20-3.2

Proposed New Rule: N.J.A.C. 12:17-12

Authorized By: William G. Van Note, Jr. Acting Commissioner, Department of Labor.

Authority: N.J.S.A. 43:21-1 et seq. (L.1984, c.24) specifically 43:21-11.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Frederick C. Kniesler, Assistant Commissioner
Income Security
Labor Building-Room 602
John Fitch Plaza
Trenton, New Jersey 08625

The Department of Labor 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 1984-466.

The agency proposal follows:

Summary

The proposed amendments reflect various changes to the Unemployment Compensation Law resulting from the recent enactment of L.1984, c.24.

The revisions to N.J.A.C. 12:15-1 are technical amendments which define the titles of Director, Division and Controller to comply with the Unemployment Compensation Law.

The revisions to N.J.A.C. 12:17-1 are technical amendments which reflect the organizational structure of the Department of Labor.

The revisions to N.J.A.C. 12:17-3 redefine a week of total or partial unemployment as a calendar week ending at midnight Saturday. Similarly, the proposed revisions to N.J.A.C. 12:17-4 would require employers to keep a record of earnings in such form so that the division through inspection, may verify such earnings for individuals who may be eligible for partial benefits. Employers would also be required to issue in writing a statement listing the individual's earnings for any calendar week in which the individual works less than full time.

The proposed revisions to N.J.A.C. 12:17-11.2 would compute an individual's weekly benefit rate to the next lower dollar in those situations where the benefit rate is reduced because the individual is receiving a pension or retirement pay.

A new Subchapter 12 is proposed to set forth eligibility and verification guidelines for the payment of Dependency Benefits as provided under Chapter 24, L.1984.

The proposed revision to N.J.A.C. 12:20-3.2 would permit an interested party to have an attorney or non-attorney represent the party during a hearing before the Appeal Tribunal. This proposed rule also complies with the recent amendments made to the Unemployment Compensation Law under Chapter 24, L.1984.

Social Impact

The proposed revisions to the existing rules and the proposed adoption of a rule setting forth guidelines for dependency benefits are necessary to enable the Department to comply with recent amendments to the Unemployment Compensation Law. It is anticipated that the proposal will have a beneficial social impact for claimants and employers by simplifying the concept of a week of unemployment; by permitting attorneys and non-attorneys to represent parties at unemployment insurance hearings, and by establishing a series of eligibility and verification criteria for the payment of dependency benefits.

Economic Impact

Although the Department foresees a slightly higher operational cost to administer the dependency benefit provision, it is anticipated that the Federal government will fund these additional costs. It is also anticipated that these changes will have no or minimal economic impact on employers and claimants.

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

12:15-1.2 Definitions

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

"Director" means the Director of the Division of [Employment Security] **Unemployment and Temporary Disability Insurance** in the Department of Labor [and Industry].

"Department" means the **New Jersey Department of Labor**.

"Division" means the Division of [Employment Security] **Unemployment and Temporary Disability Insurance** in the Department of Labor [and Industry].

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“**Controller**” means the Office of the Assistant Commissioner for Finance and Controller of the Department of Labor.

12:17-1.2 Request for separation or wage information

(a) Upon request by the Division of [Employment Security] **Unemployment and Temporary Disability Insurance** for information with respect to wages or the separation of any worker from an employer or employing unit, such employer or employing unit shall, within [seven] **ten** calendar days after the date of mailing the form covering such request, complete the form and return it to the unit which initiated the request.

(b) Failure to comply with such requests will subject the defaulting employer to the penalties prescribed in N.J.S.A. 43:21-16(b)[(2)].

12:17-1.3 Notice of failure to apply for or to accept suitable work

(a) When any individual fails to apply for, or to accept, suitable work when offered by a former employer, and such failure, in the opinion of the employer, disqualifies such individual for benefits, such employer shall, within 48 hours of such failure, complete Form BC-6 (Notice of Failure to Apply for or to Accept Suitable Work) and forward it to the proper local [employment service] **unemployment insurance claims** office setting forth the facts which in the opinion of the employer constitute such individual's failure, without good cause, to apply for, or to accept suitable work.

(b) (No change.)

12:17-1.4 Notice of unemployment due to mass separations

(a) (No change.)

(b) The employer shall, 48 hours prior to any mass separation, file a notice thereof with the local [employment service] **unemployment insurance claims** office nearest the place of employment.

(c)-(f) (No change.)

12:17-1.5 Notice of unemployment due to labor dispute

In case of unemployment due to a labor dispute, the employer or employing unit shall file immediately with the local [employment service] **unemployment insurance claims** office nearest the place of employment a notice setting forth the existence of such dispute, the approximate number of workers involved, the name and address of the bargaining agency if any, together with a brief statement of the nature of the dispute.

12:17-1.6 Notice of temporary separation from work

(a) Whenever a worker is temporarily separated from his work through no fault of his own or not of his own accord, the employer, upon request by the local [employment service] **unemployment insurance claims** office, shall verify the expected duration of the worker's period of unemployment, the reason for his separation, and the date on which the employer expects the worker to return to his work.

(b) (No change.)

12:17-3.1 Weeks with reference to unemployment defined

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

[“Benefit weeks” means:

1. A benefit week with respect to any partially unemployed individual who is employed by a regular employer or employ-

ing unit on the basis of a payroll period of seven consecutive days and who works less than his normal customary full-time hours for such employer or employing unit because of lack of full-time work shall coincide with such payroll period;

2. A benefit week with respect to any partially unemployed individual who is employed by a regular employer or employing unit on other than a weekly basis shall be any seven-consecutive-day period of unemployment chosen by the individual; provided, that no day of unemployment shall occur in more than one such week;

3. A benefit week with respect to any other individual shall be any seven-consecutive-day period of unemployment chosen by the individual; provided, that no day of unemployment shall occur in more than one such week.]

“Week of partial unemployment” means a **calendar week ending at midnight Saturday** in which an individual performs some services and/or earns remuneration which does not exceed his weekly benefit rate plus 20 percent of such rate or \$5.00, whichever is the greater (fractional parts of a dollar omitted).

“Week of total unemployment” means a **calendar week ending at midnight Saturday** in which an individual performs no services and with respect to which he receives no remuneration.

12:17-4.1 Regular employee records

(a) In addition to the requirements set forth in [Sections 5.1 (Payroll records) and 5.2 (Individual workers records) of Chapter 16 of this Title.] **N.J.A.C. 12:16-5.1 and 5.2**, each employer shall keep his payroll records in such form that it would be possible from an inspection thereof to determine with respect to each regular employee in his employ who may be eligible for partial benefits:

1. Remuneration for each [pay period] **calendar week** [or failing that, for any seven-consecutive-day period;] **ending at midnight Saturday**.

2. Whether any such period was a week of less than full-time work;

3. Time lost, if any, during such week when work was available.

12:17-4.2 Evidence of weekly partial unemployment

(a) In cases of less than full-time work, when the remuneration payable by an employer to an individual in his employ does not exceed 120 percent of the maximum weekly benefit rate, the employer not later than the time when such remuneration is payable shall issue to the individual in writing a statement (in the form of a pay envelope, pay check stub, copy of pay check, or similar pay voucher) with respect to such **calendar week ending at midnight Saturday** which shall show the following information:

1.-5. (No change.)

12:17-5.1 Registration and filing

(a) A claim to establish a benefit week under [Section 3.1 (Weeks with reference to unemployment defined) of this Chapter **N.J.A.C. 12:17-3.1** shall be filed by the individual in person at a local [employment service] **unemployment insurance claims** office and shall constitute such individual's notice of unemployment, [registration for work] and claim for benefits or waiting period credit, with respect to each such week of partial unemployment covered by the claim.

(b) (No change.)

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12:17-11.2 Amount of Reduction

(a) For weeks of unemployment beginning on or after January 1, 1981, the amount of any such reduction shall be determined by taking into account contributions made by the individual for the pension, retirement or retired pay, annuity or other similar periodic payment. The following schedule will apply.

1. If such payment is made under a plan to which the individual did not contribute, the amount of benefits payable to such individual for any week will be reduced by an amount equal to the amount of such pension, retirement or retired pay, annuity or other payment which is reasonably attributable to such week provided that the reduced weekly benefit amount will be computed to the next [higher] lower multiple of \$1.00 if not already a multiple thereof.

2. If such payment is made under a plan to which the individual contributed (but less than 100%), the amount of benefits payable to such individual for any week will be reduced by an amount equal to 50% of the amount of such pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week, provided that the reduced weekly benefit amount will be computed to the next [higher] lower multiple of \$1.00 if not already a multiple thereof.

3. If such payment is made under a plan to which the individual contributed 100 percent, the amount of benefits payable to such individual for any week shall be reduced.

SUBCHAPTER 12. DEPENDENCY BENEFITS

12:17-12.1 Definitions

“Dependent” means an individual who is unemployed during the calendar week in which the claimant files an initial or transitional claim, and is the claimant’s:

1. Spouse, that is, a person to whom the claimant is legally married; or

2. Unmarried child, that is, son, daughter, stepson, stepdaughter, legally adopted son or legally adopted daughter under the age of 19, or under the age of 22 and is attending an educational institution as defined in subsection (y) of N.J.S.A. 43:21-19.

12:17-12.2 Declaration of dependents

(a) An individual shall declare in writing, on an application form prescribed by the Division of Unemployment and Temporary Disability Insurance dependents claimed in accordance with N.J.S.A. 43:21-3(c)(2) on the date that the individual files an initial or transitional claim to establish a benefit year. In accordance with N.J.A.C. 12:17-12.3, the individual shall agree to provide proof of those dependents claimed in a form and manner prescribed by the Division.

(b) In both unemployed spouses establish initial or transitional claims on or after September 30, 1984, the benefit years of which are concurrent in any part, only one of those claimants may receive dependency allowance benefits even though the total number of dependents of the claimants may exceed three.

(c) If an individual is ineligible to receive dependency benefits in any amount because covered earnings in the base year entitle the individual to the maximum weekly benefit rate payable under N.J.S.A. 43:21-3(c)(1), the individual’s spouse may declare the same dependent(s) on an initial or transitional claim the spouse may establish during the benefit year of the individual.

(d) The death of a claimant during the benefit year of a claim which includes a dependency allowance shall constitute

termination of the assignment of eligible dependent(s) to that claim as of the date of the claimant’s death.

12:17-12.3 Verification and proof of dependency status

(a) An individual who claims a dependent for allowance purposes shall provide to the Division within 28 days (42 days for those individuals filing interstate claims with New Jersey as the liable state and for those individuals filing claims for disability benefits during unemployment) from the date of the claim appropriate verification and proof of the declared dependency status, which may include but is not limited to: Federal or State income tax return(s) filed for the tax year immediately preceding the filing of the application for dependency allowance; birth, baptismal, or marriage certificate(s) or certified copies thereof; divorce, annulment or adoption decree(s) or certified copies thereof; support/alimony orders; custodian/guardian orders or any other legal documents which verify the status of claimed dependents.

(b) If a married claimant declares an unemployed spouse as a dependent, the spouse’s social security number shall be provided to the unemployment claims office no later than 28 days from the date of claim.

(c) An individual who is eligible for unemployment compensation benefits and who has not yet submitted the required verification and proof of declared dependency status shall be paid the determined weekly benefit rate, which includes the dependency allowance based on the declared number of eligible dependents, until the prescribed period for satisfying the verification and proof requirement has elapsed.

(d) If the verification and proof requirement is not satisfied in a timely manner, the claimant’s entitlement to dependency allowance benefits for weeks paid on the claim shall be re-determined, and the claimant shall be liable for full reimbursement to the Division of benefits paid based on the unverified dependency status.

12:17-12.4 Payment

(a) The claimant shall not be paid dependency benefits for any week for which no regular or extended unemployment benefits are payable.

(b) If a claimant is eligible for partial unemployment benefits for a week claimed, the benefit payment shall equal the difference between 120 percent of the established weekly benefit rate (which includes any determined dependency allowance) and the individual’s remuneration earned during the week claimed.

12:20-3.2 Conduct of hearings

(a) The proceedings shall be fair and impartial and shall be conducted in such manner as may be best suited to determine the claimant’s benefit rights. Hearings shall, in the absence of a showing of sufficient cause for a closed hearing, be open to the public. The examiner shall open the hearing by ascertaining and summarizing the issue or issues involved in the appeal. The parties, [or] their attorneys or representatives may examine or cross-examine witnesses, inspect documents, and explain or rebut any evidence. An opportunity to present argument shall be afforded the parties, which argument shall be made part of the record. Where a party is not represented [by counsel], the tribunal shall give him every assistance that does not interfere with the impartial discharge of its official duties. The tribunal may examine each party or witness to such extent as it deems necessary. All oral testimony shall be under oath or affirmation and shall be recorded and kept.

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

(a)

THE COMMISSIONER

Contributions, Records and Reports Hearings

Proposed Amendments: N.J.A.C. 12:16-10.1 through 10.8

Authorized By: William G. Van Note, Jr., Acting Commissioner, Department of Labor. Authority: N.J.S.A. 43:21-1 et seq. (L.1984, c.24) specifically 43:21-11.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to: Audley Clarke, Director Office of Legal Management Labor Building-Room 1000 John Fitch Plaza Trenton, New Jersey 08625

The Department of Labor 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 1984-465.

The agency proposal follows:

Summary

The proposed amendments reflect various changes to the Unemployment Compensation Law resulting from the recent enactment of Chapter 24, L.1984. The current procedure provides for an administrative appeal to the Commissioner of the Department of Labor from decisions issued by the Director of Unemployment and Temporary Disability Insurance. The proposed amendments would eliminate the intermediate decision process by the Director of Unemployment and Temporary Disability Insurance and require a hearing officer designated by the Commissioner to conduct hearings and submit a recommended decision to the Commissioner. After allowing the petitioner the opportunity to file objections to the hearing officer's recommendation, the Commissioner of the Department of Labor would issue a final decision.

Social Impact

It is anticipated that the proposal will have a beneficial social impact for employers and claimants by eliminating the necessity for an appeal to the Commissioner of Labor only after a final determination by the Director of the Division of Unemployment and Temporary Disability Insurance.

Economic Impact

The Department foresees a slightly lower cost to administer the hearing process since there will be a single level of appeal to the Commissioner of Labor. It is anticipated that this change will have no, or minimal, economic impact on employers and claimants.

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

SUBCHAPTER 10. HEARINGS

12:16-10.1 Scope of Subchapter All hearings involving any question of coverage, [or] status, [or] liability for contributions, penalties and interest, [or of] reporting, [or of] refunds, or [of] rates of contribution shall be conducted in accordance with the procedure [hereinafter] prescribed in this Subchapter.

[12:16-10.2 Appearances Appearances for and on behalf of interested parties at hearings and proceedings shall be limited to accredited lawyers of the New Jersey Bar.]

[12:16-10.3] 12:16-10.2 Application (a) Any written notice of determination by a representative of the [Division,] Department as to any question of coverage, [or] status [or] liability for contributions, penalties and interest, [or of] reporting, [or of] refunds, or [of] rates of contributions shall be deemed final, unless any party with an interest in the matter shall make written request for a hearing within [20] 30 days after the [receipt] date of the [notification, or thereafter upon good cause shown] notice. (b) Requests for hearings shall be directed to the [Division, attention of hearing officer] Director of Legal Management.

[12:16-10.4] 12:16-10.3 Scheduling (a) When a hearing is requested, the [hearing officer] Director of Legal Management shall [supply necessary forms of] provide the requesting party with a ["petition for hearing"] "Petition for Hearing", which shall be completed and returned to him within ten days after receipt thereof. (b) Upon the filing of the ["petition for hearing"] "Petition for Hearing", [copies] a copy shall be furnished to the [chief auditor and the chief counsel] Controller. (c) A ["notice of hearing"] "Notice of Hearing" shall be sent to the parties with an interest of record, specifying the place, date and time of the hearing, at least ten days prior to the date of the hearing. (d) A copy of such notice shall be furnished to the chief counsel. (e) All hearings shall be promptly scheduled.]

[12:16-10.5] 12:16-10.4 Conduct (a) All hearings shall be [formal and] held before a hearing officer designated by the Director of Legal Management. (b) A prehearing conference may be held at the hearing officer's discretion for the purpose of determining admissions or stipulations and the factual and legal contentions of the parties. Failure of the petitioner to appear at a scheduled conference or to participate therein, shall be considered a withdrawal from or an abandonment of interest in the proceeding, unless within five days thereafter it is shown to the satisfaction of the hearing officer that there was good cause for such failure. [(b)] (c) The hearing officer may issue subpoenas to compel the attendance of witnesses[,] or the production of books, records and all other papers necessary as evidence in the proceedings, may administer oaths, examine and cross-examine witnesses, and do such other acts as may be necessary for the hearing and determination of the issues involved.

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[(c)] (d) The [chief counsel, his representative] **Attorney General** or any qualified representative of the Division[,] shall have the right to appear at any hearing [and], examine and cross-examine any witnesses, and adduce evidence.

[(d)] A technical observance of the rules of evidence shall not be required.

(e) The testimony shall be confined to developing the facts pertinent and relevant to the issues.

(f) Stipulations in writing of facts agreed upon may be made a part of the record.

(g) A complete stenographic record of the hearing shall be made and, if necessary, transcribed.

(h) When the hearing is concluded, oral argument upon both the law and the facts may be presented or required; briefs or written memoranda may be presented, or required within a reasonable time to be fixed by the hearing officer.

(i) Any interested party may withdraw from the proceedings by filing with the hearing officer written notice to that effect.]

[(j)] (e) Failure to appear at a scheduled hearing shall be considered as a withdrawal from, or an abandonment of interest in the proceedings unless within five days thereafter it is shown to the satisfaction of the hearing officer that there was good cause for such failure.

[(k)] (f) Adjournments of hearings shall be granted at the discretion of the hearing officer.

[(l)] (g) The hearing officer shall deliver to the [Director] **Commissioner** a complete record of the proceedings, together with his **proposed** findings of fact **and conclusions**.

[12:16-10.6] **12:16-10.5** Decisions and notification

(a) All [determinations and] **final** decisions shall be made by the [Director] **Commissioner**.

(b) Copies of [all determinations made] **decisions issued** by the [Director] **Commissioner** shall be supplied or mailed to all interested parties [by the hearing officer and attested by him].

(c) Any [determination and] decision of the [Director] **Commissioner** shall become final as to any party upon the mailing of a copy thereof to such party [or to his attorney, or upon the mailing of a copy thereof to such party] at his last known address, **or to his attorney**.

[12:16-10.7] Review of decisions

(a) Any determination or decision of the Director shall be reviewable by the Commissioner of Labor and Industry, provided application therefor is made within 20 days after the same become final.

(b) The determination and decision of the Commissioner shall become final as to any party upon the mailing of a copy thereof to such party or to his attorney, or upon the mailing of a copy thereof to such party at his last-known address.

12:16-10.8 Request for rehearing

(a) Applications or requests for a rehearing or a redetermination shall be made within 20 days after the determination and decision of the Director or Commissioner has become final.

(b) Such applications or requests shall be directed to the Division, attention of hearing officer.]

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(a)

OFFICE OF STATE ATHLETIC COMMISSIONER

Boxing Rules

Proposed Amendments: 13:46-5.2; 13:46-5.19; 13:46-5.20; 13:46-5.23; 13:46-8.5; 13:46-8.9; 13:46-8.14; 13:46-11.3

Proposed Repeal: 13:46-2, 3, 7 and 12; 13:46-4.13, 13:46-5.1, 5.9, 5.14, 5.22, 5.24, 5.25 and 5.30; 13:46-8.4, 8.20 and 8.34; 13:46-19.2

Proposed New Rules: 13:46-1A.4; 13:46-2, 3, 7 and 12; 13:46-19.2

Authorized By: Office of State Athletic Commissioner, Robert W. Lee, Deputy Commissioner.

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

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

Robert W. Lee, Acting Commissioner
Office of State Athletic Commissioner
Justice Complex
Trenton, New Jersey 08625

The Office of State Athletic Commissioner may thereafter 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.

The proposal is known as PRN 1984-462.

The agency proposal follows:

Summary

The proposal has two primary purposes. The first is to adopt new regulations which will protect the safety of boxers competing in New Jersey and ensure that these boxers are physically and mentally fit for competition. To accomplish this purpose, the proposal would repeal many of the existing medical and safety regulations governing the sport of boxing, which had been criticized by the New Jersey State Commission of Investigation (S.C.I.) in its Interim Report on the "Inadequate Regulation of Boxing," and would modernize the regulatory process through the adoption of new strict and precise regulations governing such important subjects as the physical examinations required to be undergone by boxers, the safety of ring and boxing equipment and the qualifications and training requirements for a boxer's seconds (cornermen).

The second purpose of the proposal is to consolidate all of the boxing regulations dealing with boxing equipment, ring equipment, safety and health requirements, weight classifica-

tions, and the regulations governing the conduct of a boxer's seconds into separate Subchapters of the regulations. As will be discussed in detail below, currently, for example, the rules governing ring and boxing equipment and safety requirements are spread throughout several Subchapters of the regulations. Moreover, many of these regulations are inconsistent with each other. The proposal would consolidate these rules into separate Subchapters. With these changes, the rules will be readily, easily and correctly applied to protect the safety and health of boxers competing in New Jersey.

The following detailed synopses describe the content of the proposal.

Initially, the proposal would repeal the "Foreword" to the boxing regulations. The "Foreword" states that the boxing rules are merely "a guide" to the conduct of boxing and can be interpreted on an ad hoc basis by the Office of State Athletic Commissioner (Commission) on a "practical" basis "under varying circumstances." Because strong regulations are necessary to preserve the integrity of the sport of boxing and to ensure the physical safety of boxers, it is proposed that the "Foreword," which is inconsistent with this goal, be repealed.

N.J.A.C. 13:46-1A.1 et seq. governs boxing weights and classes. N.J.A.C. 13:46-1A.1, 1A.2 and 1A.3 will remain unchanged by this proposal. N.J.A.C. 13:46-1A.4 will be amended to include a new subsection (f) which will immediately disqualify any boxer failing to make the weight required by his boxing contract and N.J.A.C. 13:46-1A.2 and 1A.3 at the time of weigh-in. No boxer will be given the opportunity to attempt to lose weight quickly (by often dangerous methods) in order to participate in a bout. This proposal would serve to safeguard the health of the boxer.

The proposal will also add a new rule, N.J.A.C. 13:46-1A.5, governing the type of scales used to conduct the weigh-in. This regulation had previously been codified in the Subchapter of the regulations dealing with ring equipment as N.J.A.C. 13:46-2.9. This proposal would repeal that regulation.

The proposal would repeal N.J.A.C. 13:46-2.1 through 2.16. These regulations, grouped under the Subchapter entitled "Ring Equipment," actually cover such different topics as ring equipment; scales used for the weigh-in; boxing equipment, such as gloves, hand bandages, stools, powdered resin, and requirements pertaining to timekeepers. Although many of these rules will be retained, the proposal would place them in Subchapters of the regulations dealing with similar subjects. Moreover, many of the regulations need to be strengthened to provide more protection for the health and safety of the boxer.

Therefore, the proposal would adopt new rules, N.J.A.C. 13:46-2.1 through 2.9, which will govern Ring Equipment and Safety Requirements. Proposed N.J.A.C. 13:46-2.1 will require licensed promoters to arrange for and hold boxing bouts only in premises approved by the Commissioner.

New rule N.J.A.C. 13:46-2.2 will require all licensees to safeguard the premises where boxing bouts are conducted so as to insure to the Commission's satisfaction that adequate protection against riot or disorderly conduct has been provided. This regulation would replace N.J.A.C. 13:46-3.20, which is contained in the Subchapter of the regulations governing ring safety and which will be repealed by this proposal. That regulation had required that police officers be provided by the licensee to maintain order. New rule N.J.A.C. 13:46-2.2 would permit licensees to utilize security personnel other than police officers to safeguard the premises, thereby reduc-

ing the burden often placed on local police departments, while ensuring the safety of the participants and spectators at boxing matches.

New rule 13:46-2.3 will permit the Commission, as a safety requirement, to determine whether or not intoxicating liquors may be sold at the scene of a boxing show and to establish the terms and conditions under which such sales may be made. This new regulation would replace N.J.A.C. 13:46-3.18, which will be repealed by this proposal.

New rule N.J.A.C. 13:46-2.4 will provide authority to Commission inspectors and physicians to enter and inspect all training quarters used by boxers under the jurisdiction of the Commission to observe the conduct, facilities and cleanliness of such quarters and to appraise the activities and the physical condition of boxers during training. This rule will serve to safeguard the safety of boxers by ensuring that boxers do not train in substandard facilities and will permit the Commission to determine if boxers serving suspensions are engaging in prohibited contact training.

New rule 13:46-2.5 will consolidate the existing regulations governing ring dimensions, floor covering and safety features which are currently spread throughout several Subchapters of the regulations. N.J.A.C. 13:46-2.5(a) will require that the boxing ring be not less than 18 feet nor more than 24 feet square between the ring ropes. This rule will replace current rule N.J.A.C. 13:46-2.1(a) without change.

N.J.A.C. 13:46-2.5(b) will require that the ring platform extend beyond the ropes for a distance of at least two feet. This rule will replace current rule N.J.A.C. 13:46-2.1(b), which had required the platform to extend beyond the ropes a distance of three feet.

N.J.A.C. 13:46-2.5(c) will require that the ring and platform be equipped with a one-inch layer of Celotex Building Board Number 2 or a similarly approved substance. This rule will consolidate and replace current rules N.J.A.C. 13:46-3.1 and 3.3 and N.J.A.C. 13:46-2.1(f), without substantial change.

N.J.A.C. 13:46-2.5(d) will require that the ring floor be additionally padded to a thickness of at least a one-inch layer of "Ensolite Boxing Ring Pad" or similar material. This rule will replace current rule N.J.A.C. 13:46-2.1(d) and require that safer ring floor padding be used than had been previously required.

N.J.A.C. 13:46-2.5(e) will require that the ring padding be covered by canvas duck or similar material, tightly stretched and laced to the ring platform. This rule will replace current rule N.J.A.C. 13:46-3.2 and will be more specific as to the type of ring covering that must be used.

N.J.A.C. 13:46-2.5(f) will require that ring posts be at least 18 inches away from the ring ropes, that the ring post not be more than three inches in diameter, that the posts not extend from the floor more than 58 inches and that the ring posts be thoroughly padded. This safety rule will consolidate and replace current rules N.J.A.C. 13:46-2.1(c), 2.3 and 2.4, without substantial change.

N.J.A.C. 13:46-2.5(g) will require, as a safety feature, that four, rather than three, ring ropes be used and sets forth the height at which each rope must be maintained. The rule also requires that the ropes be well-padded and kept at the correct tautness. This rule will consolidate and replace current rules N.J.A.C. 13:46-2.4 and 3.4.

N.J.A.C. 13:46-2.5(h) will govern the height of the ring (no more than four feet above the floor of the building) and require that two sets of steps for the boxers be provided. In all cases where space safely permits, a third set of steps will be

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required for use by the attending physician, referee, ring announcer, round card carriers and Commission representatives. This new rule would consolidate and replace current rules 13:46-2.2, 2.16 and 3.5(a).

N.J.A.C. 13:46-2.5(i), governing the site and installation of the ring gong or bell, will replace current rule N.J.A.C. 13:46-2.5, with no change.

N.J.A.C. 13:46-2.5(j) will require the promoter to have an attendant available at all times to make repairs and required corrections to the ring as shall be ordered by the Commission. This rule will reduce delays in boxing shows as well as ensure that necessary repairs are made promptly to protect the safety of the boxer.

N.J.A.C. 13:46-2.5(k) will require that the ring be amply illuminated. This rule will reduce the chance of eye injury or other injury that could be caused by poorly-lit rings.

New rule 13:46-2.6 will set forth the type and number of stools and ringside seats which must be made available for each bout for the boxers and ringside officials. This rule will replace and consolidate current rules N.J.A.C. 13:46-2.6, 2.8(g) and 3.5(b), without substantial change.

New rule N.J.A.C. 13:46-2.7 will require that the ring platform be cleared of all obstructions at the ten-second whistle prior to the start of the round. This rule will replace current rule N.J.A.C. 13:46-2.10 without substantial change.

New rule N.J.A.C. 13:46-2.8 will govern the type of emergency medical facilities and equipment which must be provided by the promoter at each boxing show. Currently, N.J.A.C. 13:46-3.6, which will be repealed by this proposal, requires only that a stretcher be kept under the ring. The new rule will require that a stretcher, emergency oxygen and an ambulance be provided for each boxing show, together with such other facilities as the Commission may prescribe.

New rule N.J.A.C. 13:46-2.9, governing round cards used at boxing shows, will replace current rule N.J.A.C. 13:46-2.15, with no change.

The proposal will repeal N.J.A.C. 13:46-3.1 through 3.27. These regulations, grouped under the Subchapter entitled "Ring Safety," actually cover such different topics as ring equipment; boxing equipment; the use of drugs by boxers; physical condition certificates; the boxer's record, and physical examination of boxers. Although some of these rules will be retained, the proposal would place them in Subchapters of the regulations dealing with similar objects. Moreover, many of the regulations need to be clarified and strengthened to provide more protection for the health and safety of the boxer.

Therefore, the proposal would adopt new rules N.J.A.C. 13:46-3.1 through 3.9, which will govern Boxing Equipment and Safety Requirements. New rule N.J.A.C. 13:45-3.1 will set forth the specifications for the bandages used to protect the boxer's hands. The new rule will set forth the size of such bandages and the manner in which they are applied to the boxer's hands, as well as require that the bandages be inspected by the Commission to ensure that the bandages are of the proper type and size and that they have been properly applied. This rule should serve to reduce the risk of injury to a boxer's hands as well as to prevent boxers with hand injuries from competing. The new rule would replace and consolidate current rules N.J.A.C. 13:46-2.11, 2.12, 2.13 and 2.14. Current rule 13:46-2.11(d), which permits a greater amount of bandage to be applied if requested by the boxer, will be repealed by this proposal since such a rule would enable boxers with hand injuries to compete.

New rule N.J.A.C. 13:46-3.2 will set forth the specifications for the condition and size of boxing gloves. Currently, under N.J.A.C. 13:46-2.8(a) through (d), which will be repealed by this proposal, new gloves must be used only for windup bouts. The new rule will require, as a safety feature, that new gloves be used in all bouts of ten rounds or longer.

New rule N.J.A.C. 13:46-3.3 will replace current rule N.J.A.C. 13:46-2.8(e), which had required that the boxer's gloves pass inspection by the referee or the Commission. The new rule would require that the gloves be inspected by the Commission's representative and the ringside physician prior to the fight to ensure that no violation of the safety regulations has occurred. The new rule also specifies the manner in which the gloves must be laced, to reduce the risk of injury to the boxer's eye from the laces of a glove, and requires that gloves be removed after the bout for inspection, if necessary, by the Commission or ringside physician. Subsection (b) of the new rule, requiring that gloves damaged during a fight be immediately replaced, will codify the existing practice and reduce the risk of injury to the boxer from the use of damaged gloves.

New rule 13:46-3.4, governing the boxer's abdominal guard, will replace current rule N.J.A.C. 13:46-3.15. The new rule will require that the guard be of a type approved by the Commission and that the guard be inspected prior to a bout.

New rule N.J.A.C. 13:46-3.5, governing the boxer's mouth piece, will replace current rule N.J.A.C. 13:46-3.19 and require that the mouth piece be well-fitting and subject to examination and approval by the ringside physician before a bout.

New rule N.J.A.C. 13:46-3.6 will require that the boxer provide himself with trunks of a type approved by the Commission. This rule will prevent a boxer from appearing in boxing trunks which, because of their size or the material from which they are made, may pose a risk to the boxer's safety.

New rule N.J.A.C. 13:46-3.7 will prohibit the use of shoes with spikes, cleats, hard soles or hard heels in a bout. Again, this rule should reduce the risk of injury to boxers.

New rule N.J.A.C. 13:46-3.8 will replace current rule N.J.A.C. 13:46-5.25 and require that all boxers be cleanly shaven when they participate in ring contests. The requirement should also increase the safety of the sport, for example, by making it easier for the ringside physician to examine the boxer's face should he be cut. The new rule would also require that the boxer's hair be trimmed or tied back so as to not interfere with his or his opponent's vision. Again, this rule is a necessary safety requirement.

New rule N.J.A.C. 13:46-3.9, governing other boxing equipment, would consolidate and replace current rules N.J.A.C. 13:46-2.8(f) through (h), without substantial change. The new rule would require the promoter to provide a clean water bucket and plastic bottle for use in each boxer's corner, as well as powdered resin for canvas and such other articles as may be required by the Commission.

Next, the proposal would repeal N.J.A.C. 13:46-4.13 governing suspension bulletins sent to clubs and matchmakers by the Commission of boxers under suspension. This rule will be replaced by a more comprehensive rule, N.J.A.C. 13:46-12.11, contained in this proposal, which will be discussed in greater detail below. Current rules N.J.A.C. 13:46-4.1 through 4.12 and N.J.A.C. 13:46-4.14 through 4.36 will remain unchanged by this proposal.

The proposal will also repeal and amend several of the regulations contained in Subchapter 5 of the current rules.

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The proposal will repeal N.J.A.C. 13:46-5.1 which had required precensure and other physical examinations of boxers. The rule will be replaced by a series of more comprehensive new rules, N.J.A.C. 13:46-12.1 et seq., contained in this proposal, which will be discussed in greater detail below.

The proposal will amend N.J.A.C. 13:46-5.2 and provided that no boxer under the age of 18 or above the age of 35 be licensed. The current rule had permitted boxers over the age of 35 to box in New Jersey if special permission from the Commission was obtained. In order to safeguard the boxer, this rule would prohibit over-age boxers from competing.

Current rules N.J.A.C. 13:46-5.3 through 5.8 will remain unchanged by this proposal.

The proposal would repeal N.J.A.C. 13:46-5.9 which permits "minors" to box in New Jersey. Again, as a safety requirement, minors shall not be permitted to box in this State.

Current rules N.J.A.C. 13:46-5.10 through 5.13 will remain unchanged by this proposal.

The proposal will repeal N.J.A.C. 13:46-5.14, which provides for mandatory rest periods for boxers who have been knocked out or technically knocked out in a bout. This rule will be replaced by a stricter and more comprehensive new rule, N.J.A.C. 13:46-12.6, contained in this proposal, which will be discussed in greater detail below.

Current rules N.J.A.C. 13:46-5.15 through 5.18 will remain unchanged by this proposal.

The proposal will amend N.J.A.C. 13:46-5.19, covering age limitations on rounds of boxing, by deleting subsection (e), which had given the Commission discretion to waive the age limitations. Under the amendment, and for reasons of safety, the age limitations will be strictly adhered to.

The proposal will amend N.J.A.C. 13:46-5.20 by permitting boxers to be matched at four, six, eight, ten 12 or 15 rounds only.

Current rule N.J.A.C. 13:46-5.21 will remain unchanged by this proposal.

The proposal will repeal N.J.A.C. 13:46-5.22, which had required that a boxer undergo an eye examination 30 days after receiving his license. This rule will be replaced by a more comprehensive new rule, N.J.A.C. 13:46-12.1 et seq., contained in this proposal, which will be discussed in greater detail below.

The proposal will amend N.J.A.C. 13:46-5.23, which had provided for mandatory rest periods of 30 days between bouts for fighters in main events and 14 days for other bouts. Since an undercard bout may last just as long as a main event, this rule did little to protect the safety of the boxer. Therefore, the new rule will use the length of the fight as the basis for the mandatory rest period which must follow the bout. At the Commission's discretion, the rest period may be extended to cover situations in which a boxer, although actually fighting a bout of short duration, may, because of the intense nature of the fight require a longer rest period before boxing again.

The proposal will repeal N.J.A.C. 13:46-5.24, governing a boxer's inability to perform in a fight due to illness. This regulation will be replaced by a more comprehensive new regulation, N.J.A.C. 13:46-12.9, contained in this proposal, which will be discussed in greater detail below.

The proposal will repeal N.J.A.C. 13:46-5.25, the current "clean shaven" rule which, as discussed above, will be replaced by a new rule, N.J.A.C. 13:46-3.8, contained in this proposal.

Current rules N.J.A.C. 13:46-5.26 through 5.29 and 5.31 will remain unchanged by this proposal.

The proposal will repeal N.J.A.C. 13:46-5.30, which provides for a pre-fight physical examination. This regulation will be replaced by a series of more comprehensive new regulations, N.J.A.C. 13:46-12.1 et seq., contained in this proposal which will be discussed in greater detail below.

The proposal will repeal N.J.A.C. 13:46-7.1 through 7.14. These regulations govern the conduct of a boxer's seconds, also known as "cornermen or cutmen," who patch up lacerations and prevent bleeding suffered by boxers in a fight, and who provide instruction to the boxers between rounds. The current regulations contain no real standards or qualifications which a second must meet prior to licensure. The rules also do not cover or regulate the type of equipment used by a second during a bout. To increase the safety of the sport and to set standards for the conduct of seconds, new regulations N.J.A.C. 13:46-7.1 through 7.11 are proposed.

New rule N.J.A.C. 13:46-7.1 will require that an applicant for a second's license pass a written and/or oral examination relating to the boxing regulations, treatment of injuries, physical conditioning, health care, first aid, effects of drugs, and bandaging of a boxer's hands. This regulation would ensure that the second is qualified to perform his tasks prior to assisting a boxer.

New rule N.J.A.C. 13:46-7.2 will require that a boxer have at least two but no more than three seconds. Only one of the seconds will be permitted in the ring between rounds. This new rule consolidates and replaces current rules N.J.A.C. 13:46-7.2, 7.3 and 7.8.

New rule 13:46-7.3 will require that the seconds remain silent and seated during the progress of the round and not enter the ring to assist a boxer unless the bout has been terminated. This new rule, which will replace current rule N.J.A.C. 13:46-7.9, will reduce the risk that a boxer will be distracted by his corner while engaging in a bout, prevent verbal abuse of the referee, and ensure that a second does not interfere with the ringside physician in his assistance of an injured boxer.

New rule N.J.A.C. 13:46-7.4 will provide that a second's equipment shall at all times be subject to inspection by the ringside physician. This rule is designed to prevent a second from utilizing unsafe and unapproved first aid and other ring equipment.

New rule N.J.A.C. 13:46-7.5 specifically prescribes the items which a second may utilize in a boxer's corner, such as first aid equipment. The rule also specifically prohibits the use of certain dangerous and unsafe materials.

New rule N.J.A.C. 13:46-7.6 will prohibit a second from excessively spraying or throwing water on a boxer between rounds. Besides the danger to the boxer's health that the indiscriminate spraying of often cold water on his body may have, this rule will also reduce the risk of injury to a boxer from slipping on a wet ring canvas.

New rule N.J.A.C. 13:46-7.7 will provide penalties for any second violating the safety rules and sets forth other circumstances, such as conviction of a crime or providing false information, which may lead to the suspension of a boxer's second.

New rule 13:46-7.8 replaces current rule 13:46-7.6 without change. New rules 13:46-7.9 through 7.11 replace current rules N.J.A.C. 13:46-7.12 through 7.14, without change.

Safety considerations also underlie the proposal's treatment of the regulations contained in Subchapter 8, dealing with boxing referees. N.J.A.C. 13:46-8.1 through 8.4 of the current rules will remain unchanged by this proposal. However, N.J.A.C. 13:46-8.4 will be repealed. This rule, which requires

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referees to submit cardiograms at the time of licensure has been replaced by a new comprehensive regulation dealing with the physical examination of referees, N.J.A.C. 13:46-12.8, contained in this proposal, which will be discussed in greater detail below.

The proposal will amend N.J.A.C. 13:46-8.5 covering the referee's apparel by requiring that the referee's costume be approved by the Commission. As a safety feature, the amendment to the rule also prohibits the referee from wearing any jewelry or a wristwatch, which may accidentally cut or injure a boxer.

Current rules 13:46-8.6 through 8.8 will remain unchanged by this proposal.

The proposal will amend N.J.A.C. 13:46-8.9, which only permits the participants and the referee to be in the ring during a round. The amendment would also permit the ringside physician to enter the ring in fulfillment of his responsibilities as described in new rules, N.J.A.C. 13:46-12.1 et seq., to be discussed below.

Current rules N.J.A.C. 13:46-8.10 through 8.13 will remain unchanged by this proposal.

The proposal will amend N.J.A.C. 13:46-8.14, which currently governs only the stoppage of a fight. For the purpose of increasing the safety of the sport, the amendment will provide for a mandatory eight count whenever a boxer is knocked down, (as currently required under N.J.A.C. 13:46-3.10(a)), as well as when a boxer has received a serious and sustained beating without defending himself. This standing eight count would permit the referee and the ringside physician to assess the boxer's condition immediately instead of waiting for the boxer to be knocked down after possibly receiving further punishment. If the boxer appears to be in physical danger, the fight may be terminated by the ringside official or the referee. The decision of the ringside physician to terminate the contest would be final. Subsection (c) of the proposed rule would permit the referee to stop a bout after the occurrence of three knock downs in a round again to protect the safety of the boxer. The bout could also be stopped sooner by the referee or ringside physician. Subsection (d) also provides, as another safety measure, that the referee may stop a bout to protect a badly beaten boxer. If a boxer is cut or injured, the referee must immediately call the ringside physician into the ring to examine the boxer. In such cases, the referee or the ringside physician, to safeguard the health of the boxer, may terminate the bout, with the decision of the ringside physician to terminate a bout being final.

Current rules N.J.A.C. 13:46-8.15 through 8.19, and 8.21 through 8.33 will remain unchanged by this proposal. N.J.A.C. 13:46-8.20, which had provided that the referee be the sole judge for stopping a bout, is proposed for repeal since, under the new rules described in this proposal, the ringside physician has been given authority to terminate a bout. N.J.A.C. 13:46-8.34, which permits the Commission to extend a championship fight of 12 rounds, ending in a draw, for three additional rounds, will also be repealed. This rule does not safeguard the health of the boxer.

The proposal will amend N.J.A.C. 13:46-11.3, which provides that rounds of boxing shall be limited to two minutes except that, in the Commission's discretion, rounds may last three minutes. The rule also provides that the rest period between rounds shall be one minute. The amendment to N.J.A.C. 13:46-11.3 will provide for a three minute round, which comports with the present practice of the Commission. As a safety measure, N.J.A.C. 13:46-11.3(b) will provide for a one minute rest period between rounds, which may be ex-

tended by the ringside physician in order to allow the physician sufficient time, when necessary, to assess a boxer's physical condition between rounds.

The remaining rules in Subchapter 11 of the regulations, dealing with timekeepers, will remain unchanged by this proposal.

The major goal of this proposal is to ensure that boxers are physically and mentally fit for competition. The regulations as they now exist do not always comport with this goal. Currently, to participate in a bout in New Jersey, a boxer need merely sign a certificate attesting that he has no known physical defect, (N.J.A.C. 13:46-3.7), and submit a statement of his past ring experience, (N.J.A.C. 13:46-3.27; 9.6; 3.17; 3.21(b)), which is often incomplete and incapable of verification. The current regulations covering the pre-fight physical examination of boxers have also been criticized. Although the rules require that a boxer be examined when he applies for a license, (N.J.A.C. 13:46-5.1(a)), and one week prior to a fight, (N.J.A.C. 13:46-5.30)), the rules do not specify the type of examination required. The pre-fight examination currently conducted at the weigh-in also incomplete, with insufficient attention being given to the condition of the boxer's eyes and neurological functions. The current rules barely deal with the issue of eye examinations and actually permit a boxer to obtain a boxing license without undergoing an eye examination. N.J.A.C. 13:46-3.14; N.J.A.C. 13:46-5.22. The present rules also do not require a boxer to undergo periodic examinations as a condition of continued licensure and the records of the pre-fight physical currently administered are not kept in a centralized file for later use. N.J.A.C. 13:4-3.19; 5.1(b); 12.6.

Currently, a boxer is not required to undergo a urinalysis for the detection of drugs, although a cursory examination for signs of drug use is sometimes performed. N.J.A.C. 13:46-3.12; 3.13. A complete overhaul of the regulations governing pre-licensure and pre-fight physicals is needed to correct these deficiencies.

The role of the ringside physician also needs to be redefined. Currently, the ringside physician may not stop a fight because of medical reasons or to prevent serious injury to a boxer. N.J.A.C. 13:8-20(b), 8.2; 8.21(b); 3.10(b); 3.22; 8.9, 8.14; 12.4. Since it is the ringside physician who is medically trained to observe the physical condition of the boxer, the role of the ringside physician must be expanded.

Rules governing post-fight physical examinations are also necessary. Currently, unless the fight results in a knock-out or serious injury to a boxer, a boxer need not undergo a post-fight examination. Thus, physical problems which could be revealed through such an examination may go undetected. Even if a boxer is knocked-out, the present regulations do not specify the type of examination required to be conducted. N.J.A.C. 13:46-8.28; 3.24. The boxer presently cannot be ordered to enter a hospital for testing. A knocked-out boxer must presently serve a 30-day suspension before he fights again. No physical examination is required after the expiration of the suspension. N.J.A.C. 13:46-5.14(a); 3.26; 3.8; 3.9. Moreover, no written notice is given to the boxer concerning the suspension and a boxer may engage in contact training during the suspension.

The current rules, although they seemingly disfavor a boxer engaging in a bout after six consecutive losses, (N.J.A.C. 13:46-3.21), or after a year of inactivity, (N.J.A.C. 13:46-3.11), mandate neither a suspension nor a medical examination before the boxer returns to the ring. Rules governing the type of physical examinations to be given to referees and other ring officials also need to be adopted and enforced.

For these reasons, the proposal will repeal N.J.A.C. 13:46-12.1 through 12.7 which currently deal in a cursory manner with Commission physicians. In their place, a new Subchapter 12 will be adopted entitled "Rules to Safeguard Health." New rule 13:46-12.1(a) will require that a boxer, as a condition to licensure or the renewal of licensure, undergo a thorough medical examination by a physician or physicians appointed by the Commission, one of whom is certified in neurology or neurosurgery, to establish his physical and mental fitness for competition. The type of examination that will be required is set forth in N.J.A.C. 13:46-12.1(b) and will include a complete history of the applicant (medical and ring record), the administration of an electrocardiogram and electroencephalogram, a urinalysis and the conduct of thorough ophthalmological examination and a neurological examination. At the physician's discretion, additional tests will be performed. A computerized tomography test will be conducted when recommended by the examining neurologist. The pre-licensure examination would be conducted no earlier than 30 days and no later than 10 days prior to licensure. N.J.A.C. 13:46-12.1(c). This requirement would prohibit boxers from receiving licenses on the day of a fight, as sometimes occurs now, when it would be impossible to adequately assess the physical and mental condition of the boxer. In addition, the Commission at its discretion may order such additional examinations of a boxer at any time for the purpose of determining his continued fitness and qualification to engage in a boxing contest. N.J.A.C. 13:46-12.1(d). Pursuant to new rule N.J.A.C. 13:46-12.1(e), no applicant shall be granted a license unless the Commission physician has certified his fitness to engage in a boxing contest. The decision of the physician would not be subject to review by the Commission. The new rule would repeal and replace present rules N.J.A.C. 13:46-3.7 and 3.27 (physical condition certificates); 5.1 and 5.30 (pre-licensure examinations); 3.14 and 5.22 (eye examinations, cerebral hemorrhage), and 3.19 (periodic examination).

New rule N.J.A.C. 13:46-12.2 will require that boxers undergo pre-fight physicals to be conducted by a Commission physician. This regulation will require two such examinations, at the weigh-in and shortly before the fight. N.J.A.C. 13:46-12.2(a). Although the pre-fight examination will be less "intense" than the pre-licensure examination, it would consist of as many of the same procedures as the examining physician feels are necessary. In all cases, the examination must include a thorough eye and neurological examination and a urinalysis. Pursuant to N.J.A.C. 13:46-12.2(b), the boxer would not be permitted to enter the ring unless his fitness to engage in the boxing contest had been certified by the Commission physician. Any medical reason will be sufficient to disqualify the boxer. The new rule would repeal and replace current rule N.J.A.C. 13:46-5.30 and 12.1 (pre-fight physicals); 5.24 (inability to perform due to illness), and 12.7 (physically unfit contestants).

New rule N.J.A.C. 13:46-12.3 will prohibit a boxer from using any drug either before or during a match. A urinalysis to detect any use of such drugs will be conducted at the pre-licensure and pre-fight examinations and at any other time, at the discretion of the Commission. The detection of any drug will mandate that the boxer be disqualified from competing and that he be suspended indefinitely. Similar sanctions will be imposed against a boxer who refuses to submit to testing. The rule would also expressly prohibit the use of anti-hemorrhage drugs, such as Monsel's solution. The new rule would repeal and replace N.J.A.C. 13:46-3.12 (use of stimulants), and 3.13 (Monsel's solution).

New rule N.J.A.C. 13:46-12.4 will require the presence of at least one ringside physician for each bout. To provide protection to the boxer, the physician must terminate any bout if, in his opinion, a contestant has received severe punishment or is in danger of serious physical injury. If a serious injury occurs, the physician shall render any emergency treatment necessary, order further treatment or hospitalization as necessary, and issue a full report to the Commission within 24 hours. Any boxer, manager or second refusing to comply with the physician's orders regarding hospitalization will be suspended indefinitely. Subsection (c) of the new rule would also permit the ringside physician to enter the ring during the progress of a bout to terminate the bout. This rule is a drastic improvement over the current rules which prohibit the ringside physician from stopping a bout. The new rule will repeal and replace N.J.A.C. 13:46-3.23 (referee to determine physical condition); 3.24 (physician to examine K.O.'d boxer), and amend N.J.A.C. 13:46-8.9 (only referee in ring), and 8.14 (stopping a bout).

New rule N.J.A.C. 13:46-12.5 will require boxers in all bouts to undergo a medical examination following a fight, with particular emphasis on eye and neurological functions. Such an examination should serve to reveal physical problems that may not be detected under the current regulations, which require such an examination only after a knock-out or serious injury.

New rule N.J.A.C. 13:46-12.6(a) will require a boxer, who has sustained a knock-out or severe injury, to be thoroughly examined by a Commission physician within 24 hours following the fight. In all cases, the examination must include the administration of an electrocardiogram and electroencephalogram and the conduct of a thorough eye and neurological examination. Pursuant to new rule N.J.A.C. 13:46-12.6(b), a boxer who is knocked out will be suspended for a 60-day period. A boxer who is technically knocked-out will be suspended for 30 days. Upon the physician's order, the suspension shall be extended when necessary. Under Subsection (c) of the new rule, a boxer under suspension will be prohibited from boxing in a match or engaging in contact training during the period of the suspension and will be required to undergo another thorough examination prior to re-entering the ring. This regulation would repeal and replace current rules N.J.A.C. 13:46-3.7 (suspended boxers); 3.9 (reinstatement); 3.26 (mandatory 60-day suspension), and 5.14 (mandatory rest period).

New rule N.J.A.C. 13:46-12.7 will repeal and replace current rules N.J.A.C. 13:46-3.21 (six defeat rule) and 3.11 (inactivity rule). The new rule will prohibit boxers who have lost six consecutive fights, or who have been inactive for one year or more, from boxing and contact training until they have undergone a thorough physical examination conducted by a Commission physician. The purpose of this rule will be to detect possible physical reasons for the defeats or the inactivity and ensure that such boxers are physically competent to engage in boxing.

New rule N.J.A.C. 13:46-12.8 will require annual medical examinations for all licensed judges and referees and also require that a referee submit to a pre-fight medical examination on the day of the bout. This rule will repeal and replace current rules N.J.A.C. 13:46-3.25 and 8.4.

Pursuant to new rule N.J.A.C. 13:46-12.9, boxers will be required to report any serious injury, disabling illness or hospitalization incurred by them to the Commission. The matter will then be reviewed by a Commission physician who will examine the boxer if necessary to determine his condition.

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This rule will prevent boxers from concealing illness or injuries and will replace current rule N.J.A.C. 13:46-5.24.

Currently, the Commission does not maintain a complete, centralized file of a boxer's medical history, with the result that the records of a boxer's past medical examination are often unavailable to the ringside physician. New rule N.J.A.C. 13:46-12.10 will require the Commission physician to make a detailed written record of each and every medical examination performed under this subchapter and to file these reports with the Commission within 24 hours of each such examination. The Commission must then provide the ringside physician with copies of all medical records pertaining to an individual boxer at least one day prior to a bout, for his use in examining the boxer. The bout will not be permitted to take place if the boxer's complete medical history is not in the possession of the ringside physician.

To ensure that boxers serving suspensions do not participate in bouts or engage in contact training, new rule N.J.A.C. 13:46-12.11 will require the Commission to maintain a list of all suspended boxers in this State and in other jurisdictions and to send written notice of the suspension to the boxer, his manager, and every other boxing jurisdiction. The ringside physician will be required to check the current suspension list before permitting a boxer to compete. Any boxer, manager or promoter who violates this rule, will have their licenses revoked.

Finally, N.J.A.C. 13:46-19.2 presently provides that match-makers and promoters will be held responsible if they make matches in which one of the principles is outclassed. The proposal will repeal this rule and it will be replaced by new rule 13:46-19.2. The new rule will provide that the Commission, prior to approving a match, shall inquire into the relative merits of the contestants, their past records and whether they are suitable opponents. The Commission shall have the right to disapprove any match that is not in the best interest of boxing or of the health of either of the contestants.

Social Impact

The proposal would have a positive social impact. In direct response to the report issued by the State Commission of Investigation, the proposal will repeal many of the current rules governing boxing which have been criticized as being incomplete and ineffective and will adopt comprehensive regulations designed to protect the safety of boxers competing in New Jersey and to ensure that these boxers are physically and mentally fit for competition. The new rules governing ring and boxing equipment, as discussed in the summary of these rules, make many significant changes in the current boxing regulations that will increase the safety of the sport. Comprehensive regulations that will ensure that a boxer's second are properly qualified are also included in the proposal. Most importantly, rules to safeguard the health of the boxer will be adopted as part of this proposal.

Economic Impact

Because the proposal provides for safer boxing and fosters increased public confidence in the sport, the economic impact would be positive. Safer boxing will reduce medical expenses for boxers. Even though a boxer may have to undergo more physical examinations under the proposal than at present, such examinations will protect boxers from the increased risk of injury by boxing while incapacitated, with the result that their medical expenses should actually be reduced. With increased public confidence in the safety and integrity of the sport of boxing, it is expected that attendance at boxing shows

will not decrease, thereby economically benefitting the boxing industry and the public through State tax revenue.

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

[Foreword]

[These rules are established as a guide to the conduct of all boxing, wrestling and sparring exhibitions and performances and are subject to such reasonable interpretation and amendment as the Commissioner shall deem desirable and practical under varying circumstances.]

SUBCHAPTER 1. DEFINITIONS

(No change.)

SUBCHAPTER 1A. BOXING WEIGHT AND CLASSES

13:46-1A.1 through 1A.2

(No change.)

13:46-1A.3 Weighing of boxers

(a)-(e) (No change.)

(f) Any boxer failing to make the weight required by his boxing contract and by N.J.A.C. 13:46-1A.2 and 13:46-1A.3 at the weigh-in shall be immediately disqualified from participating in the boxing contest. Under no circumstances shall a boxer be given the opportunity to participate in a second weigh-in.

13:46-1A.4 Scales

Scales used for weighing-in boxers shall be of standard make, thoroughly tested and approved by the sealer of weights and measures annually in the municipality in which the club is located.

Delete current text at N.J.A.C. 13:46-SUBCHAPTER 2.

SUBCHAPTER 2. RING EQUIPMENT AND SAFETY REQUIREMENTS

13:46-2.1 Approval of premises for boxing

Licensed promoters may only arrange for and hold boxing bouts in premises approved by the Commission.

13:46-2.2 Duty to safeguard premises

All persons, clubs, corporations or associations licensed by the Commission are required to make such arrangements to safeguard the premises where boxing bouts are conducted so as to insure to the Commission's satisfaction that adequate protection against riot or disorderly conduct has been provided. Any violation of this section subjects the offending licensee to such penalties as the Commission may thereafter decide.

13:46-2.3 Sale of intoxicating liquors at boxing shows

The Commission shall determine whether or not the sale of intoxicating liquors will be permitted at the scene of a boxing show and shall establish the terms and conditions under which such sales may be made.

13:46-2.4 Inspection of training quarters

Commission inspectors and physicians shall have authority at all times to enter and inspect all training quarters of boxers under the jurisdiction of the Commission to observe the conduct, facilities and cleanliness of such quarters and to ap-

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praise the activities and the physical condition of boxers during training.

13:46-2.5 Ring dimensions; floor covering; safety features

(a) The boxing ring shall be not less than 18 feet nor more than 24 feet square between the ring ropes.

(b) The ring platform must extend beyond the ropes for a distance of at least two feet.

(c) Every ring and platform used for boxing in New Jersey shall be equipped with a one-inch layer of Celotex Building Board Number 2 or a similarly approved substance. Said application shall be between the floor of the ring and the canvas-covered padding.

(d) The ring floor, both within and outside the ropes, must be padded to a thickness of at least a one-inch layer of "Ensolite Boxing Ring Pad" or similar material applied over the one inch base of Celotex Building Board or similar material.

(e) Ring padding must be covered by a clean, unbroken covering of canvas, duck or similar material tightly stretched and laced to the ring platform.

(f) Ring posts shall be at least 18 inches away from the ring ropes. Ring posts shall not be more than three inches in diameter and may extend from the floor of the ring to a height no more than 58 inches and shall be thoroughly padded to the satisfaction of the Commission.

(g) Ring ropes shall be maintained as follows:

1. There shall be four ring ropes, not less than one inch in diameter and well-padded at all times by a soft material approved by the Commission.

2. The lower rope shall be 13 inches above the ring floor, the second rope 26 inches above the ring floor, the third rope 39 inches above the ring floor, and the top rope 52 inches above the ring floor.

3. Ring ropes must be adjustable and shall be kept at the correct tautness.

(h) The height of the ring and/or steps shall be as follows:

1. The ring shall be not more than four feet above the floor of the building and shall be provided with two sets of suitable steps approved by the Commission for the use of each of the contestants.

2. The boxer's steps shall be securely placed in diagonally opposite corners of the ring.

3. In addition, in all cases where space permits, a third set of steps leading to the boxing ring shall be securely installed in a neutral corner for use exclusively by the attending physician, referee, ring announcer, round card carriers and Commission representatives.

(i) The size and use of a gong or bell shall be as follows:

1. The gong or bell must not be less than 18 inches in diameter, and adjusted securely on a level with the ring platform.

2. The timekeeper shall use a metal hammer to indicate the beginning and ending of rounds, so that the contestants can hear the sound of the bell or gong.

(j) It shall be the responsibility of the promoter to have an attendant available at all times during the progress of the event capable of making repairs, corrections and adjustments to the ring, the lights and other necessary fixtures as shall be ordered by the Commission.

(k) The ring shall be amply illuminated by overhead lights which shall be arranged so that shadow is eliminated and discomfort from heat and glare minimized for persons in or near the ring.

13:46-2.6 Stools and/or chairs

(a) A ring stool of a type approved by the Commission shall be available for each boxer. Stools must be thoroughly cleaned or replaced after each bout.

(b) An appropriate number of stools or chairs, of a type approved by the Commission, shall be available for each boxer's seconds in the corner of each boxer. Stools must be thoroughly cleaned or replaced after each bout.

(c) Suitable separate ringside seats for the judges, timekeeper, physicians and Commission representatives, which must be approved by the Commission before the commencement of any boxing program, must be provided.

(1) Seats must be sufficiently high enough to give all ringside officials a clear, unobstructed view of the ring.

13:46-2.7 Ring to be clear of obstructions

The entire ring platform shall be cleared of all obstructions, including such articles as buckets and stools at the ten second whistle before the end of the rest period between rounds, and none of these articles shall be placed on the ring floor until the bell has ended the round.

13:46-2.8 Emergency medical facilities and equipment

All promoters must provide medical information, facilities and equipment, including but not limited to a stretcher and emergency oxygen, adequate for emergency occasions, and an ambulance for each boxing show, and all such medical facilities and equipment must be approved in advance by the Commission.

13:46-2.9 Round cards

Each boxing club shall provide a sufficient supply of white, squarishaped round cards, numbered on both sides from 1 to 15. These shall be visible from the ring to all spectators and shall contain no advertising or any other printed matter.

Delete current text at N.J.A.C. 13:46-SUBCHAPTER 3.

SUBCHAPTER 3. BOXING EQUIPMENT AND SAFETY REQUIREMENTS

13:46-3.1 Specifications for bandages on boxer's hands

(a) In all weight classes up to and including middleweights, the bandages on each hand of a boxer shall be restricted to soft quaze cloth not more than ten yards in length and two inches in width, held in place by not more than six feet of surgeon's adhesive tape one inch in width.

(b) In all other classes light heavyweights and heavyweights, the bandages shall be not more than 13 yards in length and two inches in width, held in place by not more than eight feet of surgeon's tape one inch in width for each hand.

(c) One winding of surgeon's adhesive tape, not over one and one-half inches wide, shall be placed directly on each hand for protection near the wrist. The tape may cross the back of the hand twice but shall not extend to within one inch of the knuckles when the hand is clenched to make a fist.

(d) The bandages shall be evenly distributed across the hand, without zigzagging, lumping or curling.

(e) Bandages and tape shall be placed on the hand in the dressing room and adjusted in the presence of the Commission inspector and in the presence of the manager or chief second of his opponent.

(f) Under no circumstances are gloves to be placed on the hands of a contestant until the approval of the Commission's representative is received.

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13:46-3.2 Condition and size of gloves

(a) The gloves shall be new for all main events and also for all bouts scheduled for 10 rounds or more. All gloves shall be in good condition or they must be replaced.

(b) All gloves are to be furnished by the licensed club or promoter.

(c) All gloves must weigh at least eight ounces, except that in the Commission's discretion, six ounce gloves may be used in the flyweight, bantamweight and featherweight classes.

13:46-3.3 Adjustment of boxer's gloves

(a) In all bouts, the gloves shall be inspected by the Commission's representative and the ringside physician prior to the fight. The gloves shall be adjusted in the dressing room under the supervision of the Commission's representative, and the laces of each glove shall be knotted on the back of the wrists and there shall be placed on the wrists of the gloves, over the laces, a strip of one-inch surgeon's adhesive tape. The gloves must be removed in the dressing room after the bout.

(b) If a glove bursts or is otherwise damaged during the progress of a bout, the referee shall interrupt the bout and require that such glove be replaced before the resumption of the bout.

13:46-3.4 Abdominal guard

(a) All boxers must equip themselves with a foul-proof abdominal guard of the boxer's own selection, type to be approved by the Commission.

(b) Abdominal guards shall be examined before all bouts by a representative of the Commission.

13:46-3.5 Mouth pieces

No boxer shall be permitted to perform in any contest without equipping himself with a well-fitting mouthpiece, which shall be subject to examination and approval by the attending physician.

13:46-3.6 Boxer's trunks

Each boxer on a program must provide himself with trunks of a type approved by the Commission.

13:46-3.7 Types of shoes barred from ring

No shoes with spikes, cleats, hard soles or hard heels are permitted in the ring.

13:46-3.8 Cleanly shaven

(a) All boxers must be cleanly shaven when they participate in ring contest.

(b) Hair must be trimmed or tied back in such a way, (subject to the approval of the Commission physician) as to not interfere with the vision of either fighter or cover any part of the boxer's face.

13:46-3.9 Other boxing equipment

(a) For each bout there shall be a clean water bucket and a clean plastic bottle in each boxer's corner. These articles shall be provided by the licensed club or promoter.

(b) The licensed club or promoter shall also provide powdered resin for canvas and such other articles as may be required by the Commission for conducting the boxing contests.

SUBCHAPTER 4. LICENSES

13:46-4.1 through 4.12

(No change.)

13:46-4.13 [Suspension bulletins] **(Reserved)**

[Clubs and their matchmakers will take notice of the suspension bulletins sent out by the Commissioner and shall not permit any person under suspension to take any part whatsoever as a participant or in arranging or conducting matches, or work during the period of suspension.]

13:46-4.14 through 4.36.

(No change.)

SUBCHAPTER 5. BOXERS

13:46-5.1 [Physical examination] **(Reserved)**

[(a) Any boxer applying for a license must first be examined by a physician or physicians who have been appointed by the Commission as examining physicians to establish both physical and mental fitness for competition.

(b) The Commission may order examinations of boxers at any time for the purpose of determining whether such boxers are fit and qualified to engage in future contests.]

13:46-5.2 Age

[(a) The minimum and maximum ages for professional boxing in New Jersey are from 18 to 35 years old.

(b) Any boxer still active when he reaches the age of 35 must retire unless he has special permission from the Commissioner in writing to continue his ring career.]

(a) The Commission shall license no applicant as a professional boxer who is under the age of 18 or above the age of 35.

13:46-5.3 through 5.8

(No change.)

13:46-5.9 [Minors] **(Reserved)**

[All boxers who are minors must have written authorization by their parent or legal guardian.]

13:46-5.10 through 5.13

(No change.)

13:46-5.14 [Rest period; reinstatement after knockout] **(Reserved)**

[(a) If a boxer has been knocked out or if a technical knockout decision has been rendered against him by a referee, such boxer shall serve a rest period of a minimum of 30 days when a knockout has been occurred and an indefinite period of at least 20 days following a technical defeat.

(b) Such boxer shall make written application for reinstatement and submit medical proof of his physical well being.]

13:46-5.15 through 5.18

(No change.)

13:46-5.19 Age limitations on rounds of boxing

(a) Boxers 18 years of age are permitted to box six rounds.

(b) Boxers 19 years of age are permitted to box up to eight rounds.

(c) Boxers 20 years of age are permitted to box ten rounds.

(d) Boxers 21 years of age are permitted to box more than ten rounds.

[(e) The Commissioner in his discretion, may grant permission to the contrary.]

13:46-5.20 Number of rounds

[Boxers can be matched at four, six, eight, ten, 12 or 15 rounds, or bouts of other duration at the discretion of the Commissioner.]

Boxers can be matched at four, six, eight, ten, 12 or 15 rounds.

13:46-5.21 Fouls

(No change.)

13:46-5.22 [Eyes; submission of medical report] **(Reserved)**

[Every licensed boxer, within 30 days after receiving his license, shall submit to the Commissioner a medical report of the condition of his eyes. Any failure to comply shall result automatically in suspension.]

13:46-5.23 Time between bouts

[For boxers in main events, there shall be an interval of 30 days between the dates of the bouts or for such time as shall be determined at the discretion of the Commissioner. For all bouts underneath the main contest, the interval shall be 14 days or for such time as shall be determined at the discretion of the Commissioner.]

If a boxer has competed anywhere in a bout of ten rounds or more, he shall not be permitted to box in this State until 30 days have elapsed since his last bout. If a boxer has competed anywhere in a bout of six to 10 rounds, 20 days must elapse before his next bout. If a boxer has competed anywhere in a bout of four to six rounds, 14 days must elapse before his next bout. If a boxer has competed anywhere in a bout lasting three rounds or less, 10 days must elapse before his next bout. At the Commission's discretion, the suspensions outlined above may be extended where indicated by the circumstances of the boxer's last fight.

13:46-5.24 [Inability to perform contract due to injuries or illness] **(Reserved)**

[Whenever a licensed boxer, because of injuries or illness, is unable to take part in a contest for which he is under contract, he (or his manager) must immediately report the fact to the nearest Commission representative, and the boxer shall submit to an examination by a physician designated by the Commissioner or his representative. The examination fee of the physician is to be paid by the boxer.]

13:46-5.25 [Cleanly shaven] **(Reserved)**

[All boxers must be cleanly shaven when they participate in ring contests.]

13:46-5.26 through 5.28

(No change.)

13:46-5.30 [Examination prior to licensing and boxing] **(Reserved)**

[Any boxer applying for a license or renewal thereof or licensed boxer scheduled to appear in any boxing contest must be examined by a staff physician at least one week prior to taking part in any match, or at a later date at the discretion of the Commissioner.]

13:46-5.31 Grounds for suspension of license

(No change.)

Delete current text at N.J.A.C. 13:46-SUBCHAPTER 7.

SUBCHAPTER 7. SECONDS

13:46-7.1 Licensing and training standards for seconds

Prior to the issuance of a license of a boxing second, the applicant must pass a written and/or oral examination relating to the Commission's rules and regulations, treatment of injuries, physical conditioning, health care, nutrition, training, first aid, effects of drugs and alcohol and the bandaging of a boxer's hands.

13:46-7.2 Number of seconds

Each contestant must have at least two and no more than three seconds and each such second may wear only such costume as may be prescribed by the Commission. Only one of such seconds may be inside the ring at the sound of the time-keeper's whistle, ten seconds before the round is to begin, and shall remove all obstructions, such as buckets and stools at that time.

13:46-7.3 Conduct of seconds

No second may coach any of the boxers during the progress of any round. No second may enter the ring and assist a boxer back to his corner unless the bout has been terminated by the referee or ringside physician.

13:46-7.4 Equipment subject to inspection

First aid and other ring equipment of a second shall in all cases at all times before, during and after use at a bout, be subject to inspection by the attending physician whose decision as to the propriety of its use shall be final.

13:46-7.5 Items permitted in the boxer's corner

(a) A bucket with ice, plastic water bottle, sponge and surgical tape must be available in each boxer's corner. Without specific permission of the Commission, the only other materials which a second may bring to or use at ringside are Vaseline, Adrenalin (in a manufacturer's vial, pre-measured in a 1/1,000 solution), cotton swabs, gauze pads, clean towels, thrombin, avitene, pressure plates, hydrogen peroxide, mouthwash solution, bandage scissors and sterile skin closures.

(b) The following materials are expressly prohibited: monsel solution, drugs of any type, "new skin," Flex Collodion, silver nitrate, any substance with an iron base, ammonia capsules and smelling salts.

13:46-7.6 Excessive spraying of water on boxers

Any excessive or undue spraying or throwing of water on any boxer between rounds is forbidden.

13:46-7.7 Penalties for violations

(a) Any second who violates any of the regulations under this section shall be subject to license revocation, license suspension and/or fine at the discretion of the Commissioner.

(b) Any second holding a license may be suspended for arrest or conviction on a charge involving moral turpitude or for unbecoming conduct at any time or place reflecting discredit to boxing. Under similar circumstances, application for a license or a renewal thereof may be summarily rejected.

(c) Any second who gives incorrect information on any application may be suspended by the Commissioner.

(d) A second under suspension shall not work in any boxer's corner.

PROPOSALS

LAW AND PUBLIC SAFETY

13:46-7.8 Second acting as manager

A second holding only a second's license shall not attempt to act as manager, or assist in any way in obtaining matches. If found guilty of such actions, he shall be suspended.

13:46-7.9 Aid to an injured boxer

No second shall attempt to render aid to an injured boxer before the ringside physician has had an opportunity to examine the boxer.

13:46-7.10 Advertising on persons of second

No advertising matter shall appear on the person or clothing of seconds appearing in the ring in any capacity.

13:46-7.11 Termination of boxer's performance

(a) No second may terminate the performance of the boxer he is serving either between rounds or during the progress of any boxing contest in which such boxer is a contestant.

(b) Violation of this Section shall result in automatic suspension of the second together with the boxer he is serving and the boxer's purse shall be withheld by the Commission pending investigation of the violation.

SUBCHAPTER 8. BOXING REFEREES

13:46-8.1 through 8.3

(No change.)

13:46-8.4 [Cardiograms; physical examination] **(Reserved)**

[Referees must submit cardiograms one month prior to license renewal time and be examined by the club physician before each show.]

13:46-8.5 Apparel

[Apparel required for boxing referees shall be gray flannel shirt, grey trousers, black bow tie and black shoes.]

(a) A referee may wear only such costume as may be prescribed by the Commission.

(b) No jewelry or wristwatches shall be worn by a referee during a bout.

13:46-8.6 through 8.8

(No change.)

13:46-8.9 Persons in ring during round

No persons other than the contestant, [and] the referee and the ringside physician may be in the ring during the progress of a round.

13:46-8.10 through 8.13

(No change.)

13:46-8.14 [Stopping a bout] **Mandatory eight count; three knockdowns in one round; stopping a bout**

[The referee may, in his discretion, stop a bout to protect a badly beaten boxer. The referee may stop a contest if he considers it too one-sided. In cases where a boxer sustains a cut eye or any other injury which the referee feels may incapacitate the boxer, the referee shall, at the end of the round, call into the ring the club physician for examination of the boxer. In such cases the referee shall be guided by the physician's advice.]

(a) A boxer shall be required to take a full count of eight if:
1. A boxer has been knocked down, even if he has regained his feet prior to or during the count of eight; or

2. A boxer has received a severe and sustained beating without defending himself.

(b) When a boxer receives a count of eight during a boxing contest, the referee or ringside physician may terminate the contest if a boxer appears to be in physical danger. In such cases, the decision of the ringside physician to terminate the contest shall be final.

(c) Three knockdowns in any one round, as the result of a blow, as distinguished from a slip or fall from being off balance, may be regarded, in the discretion of the referee, as justifiable reason for the referee to halt a contest. A boxer's condition may also justify stopping a contest after less than three knockdowns.

(d) The referee may stop a bout to protect a badly beaten boxer. The referee may also stop a contest if he considers it too one-sided. In cases where a boxer sustains a cut or any other injury which the referee feels may incapacitate the boxer, the referee shall immediately call the ringside physician into the ring for examination of the boxer. The referee or ringside physician may terminate the contest if a boxer appears to be in physical danger. In such cases, the decision of the ringside physician to terminate the contest shall be final.

13:46-8.15 through 8.19

(No change.)

13:46-8.20 [Referee sole judge for stopping bout] **(Reserved)**

[(a) No manager or second is permitted to toss in a towel.

(b) The referee is the judge of whether or not a bout shall be stopped, with the further provision of consultation with the officially assigned physician when a boxer's physical condition is in question.]

13:46-8.21 through 8.33

(No change.)

13:46-8.34 [Extension of championship bout] **(Reserved)**

[In any State championship bout for the duration of 12 rounds, when the referee has scored the bout a draw, such bout shall be continued for three additional rounds to a total of 15 for the contest, and at the finish the referee in his judgment shall award the decision to the winner.]

SUBCHAPTER 11. TIMEKEEPERS

13:46-11.1 through 11.2

(No change.)

(a) A timekeeper shall limit each round of boxing to two minutes except at the discretion of the Commissioner each round of boxing shall be three minutes.

(b) Each rest period between rounds shall be one minute.]

(a) A timekeeper shall limit each round of boxing to three minutes.

(b) Each rest period between rounds shall last 60 seconds. This period may be extended by the ringside physician in order to allow the physician sufficient time to examine a boxer's physical condition between rounds.

13:46-11.4 through 11.9

(No change.)

Delete current text at N.J.A.C. 13:46—SUBCHAPTER 12.

SUBCHAPTER 12. RULES TO SAFEGUARD HEALTH

13:46-12.1 Pre-licensure medical examinations

(a) A boxer, as a condition to licensure or to the renewal of licensure by the Commission, shall undergo a thorough medical examination by a physician or physicians appointed by the Commission, one of whom is certified in neurology or neurosurgery, to establish his physical and mental fitness for competition.

(b) An examination within the meaning of (a) above shall include a complete history of the applicant (medical and ring record) and any or all of the following laboratory procedures at the discretion of the Commission and the physician: chest X-ray, skull X-ray, flat abdominal X-ray, complete blood count for bleeding and coagulation time, serological examination for syphilis and any other test which might be indicated by the past record or present condition of the applicant. In all cases, the examination shall include the administration of an electrocardiogram and electroencephalogram, a urinalysis, and the conduct of a thorough ophthalmological examination. In appropriate cases upon the recommendation of the examining neurologist, a computerized tomography or any other test shall be administered and the results thereof and the recommendation of the examining neurologist forwarded to the Commission.

(c) An examination shall be made no earlier than 30 days but no later than 10 days prior to licensure or the renewal thereof.

(d) In addition to the examination required by (a) above, the Commission at its discretion may order such additional examinations of a boxer at any time for the purpose of determining his continued fitness and qualification to engage in a boxing contest.

(e) No applicant shall be granted a license unless the Commission physician has certified his fitness to engage in a boxing contest.

13:46-12.2 Pre-fight medical examinations

(a) All boxers in all bouts must be given a medical examination by a physician appointed by the Commission on the day of the bout, both at the weighing-in and in the evening, a short while before the boxing program commences. This physical examination shall include as many of the procedures outlined in N.J.A.C. 13:46-12.1(b) as the examining physician may decide are necessary. In all cases, the examination shall include the administration of a thorough ophthalmological and neurological examination and a urinalysis.

(b) No boxer shall be permitted to enter the ring unless the Commission physician has certified his fitness to engage in a boxing contest. A boxer may be disqualified for any medical reason.

13:46-12.3 All drugs prohibited; drug testing

(a) The use of any drug, narcotic, stimulant, depressant, or analgesic of any description, or alcoholic substance, by a boxer either before or during a match, shall result in the immediate disqualification of the boxer from the match and indefinite suspension from boxing.

(b) The boxer must submit to any prefight or postfight urinalysis or other laboratory procedure ordered by the Commission physician to detect the presence of any drug. Refusal to submit to such testing shall result in the immediate disqualification of the boxer from the match and an indefinite suspension from boxing.

(c) The application of Monsel's solution or any of its derivatives, or any similar drug or compound, on the body of a boxer before a fight is prohibited.

13:46-12.4 Duties of ringside physician

(a) Ringside physicians shall be appointed by the Commission. No boxing bout or wrestling exhibition may commence or proceed unless the ringside physician is present and seated at ringside.

(b) The ringside physician must terminate any boxing bout if in the opinion of such physician any contestant has received severe punishment or is in danger of serious physical injury. In the event of any serious injury, such physician shall immediately render any emergency treatment necessary, order further treatment or hospitalization if required, and fully report the entire matter to the Commission within 24 hours and subsequently thereafter, if necessary. Such physician may also require that the injured boxer and his manager remain in the ring or on the premises or report to a hospital after the contest for such period of time as such physician deems advisable. Any boxer, manager or second refusing to comply with the physician's orders regarding hospitalization shall be suspended indefinitely.

(c) Anything to the contrary notwithstanding in these rules, the ringside physician may enter the ring during the progress of a bout or between rounds and terminate any boxing bout to prevent severe punishment or serious physical injury to a contestant.

13:46-12.5 Post-fight medical examinations

(a) All boxers in all bouts must be given a physical examination by a Commission physician immediately following the bout. This physical examination shall include as many of the procedures outlined in N.J.A.C. 13:46-12.1(b) as the examining physician may decide are necessary. In all cases, the examination shall include the administration of a thorough ophthalmological and neurological examination.

(b) Any boxer refusing to submit to a post-fight-medical examination shall be immediately suspended for an indefinite period.

13:46-12.6 Medical examination of boxer after severe injury or actual knockout

(a) Any boxer who has sustained any severe injury or actual knockout in a bout shall within 24 hours be thoroughly examined by a physician approved by the Commission. Such examination shall include any or all of the procedures as provided in N.J.A.C. 13:46-12.1(b) as the examining physician may decide are necessary. In all cases, the examination shall include the administration of an electrocardiogram and electroencephalogram and the conduct of a thorough ophthalmological examination and a neurological examination.

(b) Any boxer who is knocked out in a boxing match shall be suspended from boxing for a 60-day period. Any boxer who is technically knocked out in a boxing match shall be suspended for a 30-day period. Upon the physician's order, the Commission shall extend the suspension already imposed.

(c) No boxer who has been suspended under the provisions of (b) above shall be permitted to enter the ring again or to contact train or spar as a boxer outside the ring until a thorough medical examination of the type required by (a) above has been performed by a physician approved by the Commission and said physician has certified the boxer's fitness to engage in a boxing contest.

13:46-12.7 Mandatory medical examination of contestant losing six consecutive fights; inactivity for one year

(a) Any contestant who has lost six consecutive fights shall be automatically suspended from boxing and contact training as a boxer. The boxer shall not be reinstated until he has submitted to a medical examination, of the type specified by N.J.A.C. 13:46-12.1(b), conducted by a Commission physician.

(b) Any boxer who has not been active for one year or more shall be suspended from boxing until such time as he has submitted to a medical examination, of the type specified by N.J.A.C. 13:46-12.1(b), conducted by a Commission physician.

13:46-12.8 Medical examination of judges and referees

(a) Annual medical examinations must be given to all licensed judges and referees by a Commission-approved physician and such examinations shall be of the same type and thoroughness as specified by N.J.A.C. 13:46-12.1(b).

(b) All referees must also submit to a pre-fight medical examination, by a physician appointed by the Commission on the day of the bout, of the type specified by N.J.A.C. 13:46-12.2(a).

(c) No referee shall be permitted to enter the ring unless the Commission physician has certified his fitness to perform his duties during the boxing contest.

13:46-12.9 Inability to perform contract due to injury or illness

(a) Whenever a licensed boxer considers himself unable by reason of injury or illness to participate in a bout for which he is under contract, he shall immediately notify the Commission of this fact and, before entering the ring again, the boxer must submit to a medical examination performed by a Commission physician of the type specified by N.J.A.C. 13:46-12.1(b).

(b) In the event that a boxer is treated for any serious injury or disabling illness, or has been hospitalized, by his personal physician for any reason, he or his manager shall immediately notify the Commission, which will refer the matter to a Commission physician for review. The boxer, thereafter, must submit to such medical examination as may be ordered in the discretion of the Commission physician before engaging in any boxing contest.

(c) Any boxer failing to immediately report an illness or injury to the Commission as required by (a) and (b) above shall be immediately suspended for an indefinite period.

13:46-12.10 Medical reports

(a) The Commission physician shall make a detailed written record of each and every medical examination performed by him under this section, N.J.A.C. 13:46-12.1 et seq., on forms provided by the Commission or on such other forms as may be necessary. The original of all such records shall be filed with the Commission within 24 hours of each such examination.

(b) The Commission shall provide copies of all medical records pertaining to an individual boxer to the Commission physician assigned to that boxer's next bout, at least one day in advance of said bout. No boxer shall be permitted to engage in a boxing contest unless the Commission physician assigned to that contest has the boxer's complete medical history in his possession prior to the pre-fight examination.

(c) Commission physicians must fill out and return to the Commissioner immediately after a boxing show a printed injury insurance form, reporting serious injuries.

13:46-12.11. Suspension notices

(a) The Commission shall maintain a current listing of all boxers who are under suspension in this State and in any other boxing jurisdiction. The Commission shall provide a copy of the suspension list to each attending physician at each boxing contest conducted in this State and shall promptly transmit a current copy of the suspension list to every other boxing jurisdiction. Under no circumstances shall a boxer on the suspension list be permitted to participate in a boxing contest or to contact train or spar as a boxer.

(b) The Commission, upon placing a boxer on the suspension list, shall immediately mail a written suspension notice to the boxer and his licensed manager at their last known addresses, specifying the nature of the suspension, the reason therefore, and the length of the suspension, where known.

(c) Any boxer who participates in a boxing contest or who engages in contact training as a boxer during the period of his suspension shall have his license revoked. Any licensed manager of a boxer on the suspension list who participates in a boxing contest or who engages in contact training as a boxer, shall have his license revoked. Any licensed promoter of a boxing show in which a boxer on the suspension list participates shall have his license revoked.

SUBCHAPTER 19. MATCHMAKERS

13:46-19.1 Observance of rules
(No change.)

13:46-19.2 [Uneven matches] Approval of boxing match by Commission

[(a) Matchmakers and promoters will be held responsible if they make matches in which one of the principals is out-classed.]

(a) Before approving any boxing bout or match, the Commission will inquire into the relative merits of the contestants, their past records, and whether or not they are suitable opponents. The Commission shall have the right to disapprove any match or bout on the ground that it is not in the best interest of boxing or of the health of either of the contestants.

13:46-19.3 through 19.8
(No change.)

ENERGY

(a)

THE COMMISSIONER

Energy Facility Review Board

Proposed Readoption: N.J.A.C. 14A:8-1

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

Authority: N.J.S.A. 52:27F-11q and 52:27F-15c.

Docket No: DOE 012-84-08.

Interested persons may present in writing, statements or arguments relevant to the proposal on or before September 19, 1984. These submissions and any inquiries about submissions should be addressed to:

Linda M. Scuorzo, Esq.
Office of Regulatory Affairs
Department of Energy
101 Commerce Street
Newark, New Jersey 07102

The Department may thereafter adopt this proposal without further notice and with minor changes not in violation of N.J.A.C. 1:30-3.5. Pursuant to Executive Order No. 66 (1978), these rules would otherwise expire on December 31, 1984. The re-adoption of these rules becomes effective upon acceptance for filing by the Office of Administrative Law of a notice of re-adoption.

This proposal is known as PRN 1984-447.

The agency proposal follows:

Summary

N.J.A.C. 14A:8-1.1 specifies that the scope of the regulations is to govern the procedures of an Energy Facility Review Board.

N.J.A.C. 14A:8-1.2 contains the definitions of certain terms used in the regulations.

N.J.A.C. 14A:8-1.3 explains the function of the Energy Facility Review Board. In essence, the Board is an ad hoc body which is convened when a State instrumentality having the power to approve the siting application for an energy facility, and the Department of Energy disagree as to whether the facility should be sited. The Board, is composed of a chairman, who is a designee of the Governor, the Director of the Division of Energy Planning and Conservation of the Department of Energy, and the Director (or chief executive officer) of the State instrumentality with the power of approval over the siting application, N.J.A.C. 14A:8-1.4. Pursuant to N.J.A.C. 14A:8-1.7 the Board is required to conduct its meetings in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, and to keep minutes of such meetings (N.J.A.C. 14A:8-1.8). The function of the Board is to review the record compiled for the particular siting application (N.J.A.C. 14A:8-1.9) and to render a final decision with respect to the application (N.J.A.C. 14A:8-1.10). The Board may seek the assistance of the Department of Energy as it deems necessary to carry out its duties (N.J.A.C. 14A:8-1.5).

Miscellaneous provisions indicate where correspondence with the Board should be sent (N.J.A.C. 14A:8-1.6) and that the Department of Energy may conclude memoranda of understanding with other State instrumentalities to establish procedures governing the review of particular categories of siting applications (N.J.A.C. 14A:8-1.11).

To date, the Board has not been convened pursuant to N.J.A.C. 14A:8-1. Nevertheless the department considers re-adoption of the regulations to be necessary in order to regulate the conduct of such a Board, should it be necessary as a dispute-resolving mechanism in the future. In addition, N.J.S.A. 52:27F-15c, the Department of Energy Act, mandates that an Energy Facility Review Board be convened whenever it is not possible for the Department of Energy, which conducts Statewide energy planning, and the State instrumentality which has final approval over the siting of the particular facility, disagree on the siting application. Because the department is given coextensive jurisdiction with other State instrumentalities with respect to the siting of energy

facilities (see N.J.S.A. 52:27F-15c) the Board provides a method by which inter-agency differences may be resolved with certainty and finality.

Social Impact

The regulations explain the mechanism in N.J.S.A. 52:27F-15c for rendering a final decision on the siting of energy facilities, where the Department of Energy exercises concurrent jurisdiction with another State instrumentality over the application. Since the Energy Facility Review Board is convened on an ad hoc basis, the regulations governing operation of the Board will not have any direct social impact beyond the particular application at issue. However, in the event that the Board must be convened to resolve a particular siting application dispute, the regulations will provide certainty with respect to the procedural framework that will govern the Board's decisionmaking process.

Economic Impact

Since the regulations are intended only to regulate the procedure used by the Energy Facility Review Board once it is convened to review a disputed siting application, the regulations will have no economic impact except with respect to the particular application under review. When the Board is constituted it should have a positive economic effect by centralizing the ultimate decisionmaking responsibility of a number of State instrumentalities, thereby reducing the time and expense of application review.

Full text of the proposed re-adoption appears in the New Jersey Administrative Code at N.J.A.C. 14A:8-1.

(a)

THE COMMISSIONER

Reporting of Energy Information Suppliers of Home Heating Oil

Proposed Re-adoption with Amendments: N.J.A.C. 14A:11-2

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

Authority: N.J.S.A. 52:27F-18.

DOE Docket No: 013-84-08.

Interested persons may present in writing, statements or arguments relevant to the proposal on or before September 19, 1984. These submissions and any inquiries about submissions should be addressed to:

Linda M. Scuorzo, Esq.
Office of Regulatory Affairs
Department of Energy
101 Commerce Street
Newark, New Jersey 07102

The Department may thereafter adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), this rule would otherwise expire on January 14, 1985.

This proposal is known as PRN 1984-448.

The agency proposal follows:

Summary

In accordance with the "sunset" provisions of Executive Order No. 66(1978), the Department proposes to readopt N.J.A.C. 14A:11-2. In reviewing N.J.A.C. 14A:11-2, the Department has considered the need for each section. The re-adoption recommends that the reporting requirements for home heating oil dealers be retained, with a minor technical change in the name of the office to which the information should be sent (N.J.A.C. 14A:11-2.3(d), Data Center).

The regulations were developed after New Jersey's experiences with the oil crises in order to ensure that information for home heating oil is available to the Department. The reporting requirements were considered to be a necessary tool for tracking product levels in the State. In view of the Department's statutory mandate to collect and analyze data concerning energy demand and prices (N.J.S.A. 52:27F-11 b and i), the reporting requirements are still considered a necessary, adequate and responsive means of carrying out the Department objectives and obligations.

Social Impact

The proposed readoption will enable the Department to collect from home heating oil dealers information necessary to monitor changes in the price of heating oil within the State. The price change information is used as an indicator of potential supply disruptions or other problems. Without such information, it is difficult for the Department to predict the occurrence of shortages or to take steps to mitigate the adverse effects thereof.

Economic Impact

The reporting requirements do place a slight burden on the regulated entities to provide price information in a timely fashion. However, the data is essential if the Department is to discharge its statutory mandates with respect to short-term, long-term energy and emergency planning. As such the Department considers the economic burden to the regulated entities to be outweighed by the public interest in having such data available for energy planning purposes.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 14A:11-2, as amended in the New Jersey Register.

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

14A:11-2.3

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

Department of Energy
101 Commerce Street
Newark, New Jersey 07102
Attention: [Gene Owen, Supervising Energy Analyst]
Data Center

(a)

THE COMMISSIONER

**Shared Energy Cost-Savings Methodology
Schools Buildings**

Proposed Amendment: N.J.A.C. 14A:12-1

Authorized By: Leonard S. Coleman, Jr., Commissioner, Department of Energy
Authority: P.L. 1984, c. 49.
DOE Docket No: 014-84-08.

Interested persons may present in writing, statements or arguments relevant to the proposal on or before September 19, 1984. These submissions and any inquiries about submissions should be addressed to:

Linda M. Scurzo, Esq.
Office of Regulatory Affairs
Department of Energy
101 Commerce Street
Newark, New Jersey 07102

The Department may thereafter adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5).

This proposal is known as PRN 1984-449.

The agency proposal follows:

Summary

P.L. 1984, c. 49 amended the Public School Contracts Law to allow boards of education to conclude, what are generically referred to as energy service or shared-savings contracts, in accordance with a methodology established by the department. This financing arrangement enables a user to obtain energy conservation renovations and to pay for them with a portion or percentage of the dollars saved from the reduction in the user's energy consumption.

The department now proposes to amend N.J.A.C. 14A:12-1, which establishes a shared-savings methodology for municipalities and counties, in order to include boards of education. The scope and purpose section, N.J.A.C. 14A:12-1.1 and 1.2 have been altered accordingly. In the definition section, N.J.A.C. 14A:12-1.3, the term "user" has been expanded to include school boards as well as municipalities and counties. In addition, the methodology for concluding shared-savings contracts contained in N.J.A.C. 14A:12-1.5 will apply equally to school boards and municipalities and counties. The actual methodology itself (which specifies, inter alia, procedures for measuring and calculating energy consumption and savings) has not been changed. Since the legislative history of the Public School Contracts Law indicates that it is modeled after the Public Contracts Law, the department has decided to apply the same methodology to school boards as well as municipalities and counties.

The only section in the existing regulations that will apply solely to municipalities and counties is N.J.A.C. 14A:12-1.4. The Public Contracts Law requires municipalities and counties to meet certain procedural requirements prior to awarding a contract. The procedures by which school boards conclude shared-savings contracts is different, and is governed by Title 18A as amended. For this reason school boards were specifically excepted from N.J.A.C. 14A:12-1.4.

Social Impact

The proposed amendments implement the requirements of P.L. 1984, c. 49. The amendments will enable boards of education to conclude contracts for energy conservation renovations and pay for them out of the resultant energy savings. This approach relieves school boards of having to pay for renovations "up front". By providing a framework in which to conclude shared-savings contracts for the purchase of energy conservation renovations, it is expected that the regulations will both educate users who are unfamiliar with the particular financing approach and foster an awareness of the energy conservation opportunities that exist in school buildings.

Economic Impact

Energy conservation renovations formerly available to school boards only through outright purchase will now be obtainable through shared-savings financing. The regulations will provide a positive economic benefit to boards of education by enabling them to take advantage of energy conservation opportunities formerly foreclosed due to their high "up front" cost.

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

CHAPTER 12

ENERGY CONSERVATION MEASURES FINANCING

SUBCHAPTER 1. METHODOLOGY FOR COMPUTING ENERGY COST SAVINGS

14A:12-1.1 Scope

(a) This subchapter shall apply to all contracts [for, **the entire price of which is established as a percentage of the resulting energy savings, and which involve** the performance of work or services or the furnishing of materials [or], supplies **or equipment** for the purpose of conserving energy in [buildings] **the following:**

1. Buildings owned or operations conducted by those entities subject to the provisions of the Local Public Contracts Law, P.L. 1971, c. 198 (N.J.S.A. 40A:11-15), as amended by P.L. 1981, c. 551 [, the entire price of which contracts is established as a percentage of the resulting energy cost savings.] ; **and**

2. Buildings owned by any board of education subject to the provisions of N.J.S.A. 18A:18A-5 and 18A:18A-42, as amended by P.L. 1984, c. 49.

14A:12-1.2 Purpose

This subchapter fulfills the requirements of section 15(12) of P.L. 1981, c. 551, **and of N.J.S.A. 18A:18A-5 and 18A:18A-42 as amended by section 1j and section 2a(16) of P.L. 1984, c.49,** by establishing a methodology for computing the energy cost savings associated with contracts for the fur-

nishing of energy conserving renovations on a shared-savings or guaranteed-savings basis.

14A:12-1.3 Definitions

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

"User" means a municipality, county or other entity subject to the provisions of P.L. 1971, c. 198 (N.J.S.A. 40A:11-15), as amended by P.L. 1981, c. 551, **and a board of education subject to the provisions of N.J.S.A. 18A:18A-5 and 18A:18A-42 as amended by P.L. 1984, c. 49, which enters** [entering] into a shared-savings or guaranteed-savings contract with a firm.

14A:12-1.4 Pre-contract phase

(a) **In this section "user" shall mean only municipalities, counties and other entities subject to the provisions of P.L. 1971, c. 1978 (N.J.S.A. 40A:11-15), as amended by P.L. 1981, c. 551.**

Redesignate (a) as (b) (No change in text.)

14A:12-1.5 Contract phase

(a) All contracts and modifications thereof [for the furnishing of energy conserving renovations] **subject to the provisions of this subchapter** shall meet, in addition to the requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. **or the Local School Contracts Law, N.J.S.A. 18A:18A-1 et seq.,** and regulations promulgated thereunder, the minimum requirements stated below. The firm and user may agree to any additional terms or conditions which do not limit, contradict or abrogate the said minimum requirements and which comply with the applicable provisions of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. **or the Local School Contracts Law, N.J.S.A. 18A:18A-1 et seq.,** and regulations promulgated thereunder. **At a minimum the contracts and modifications shall:**

1.-20. (No change in text.)

14A:12-1.6 Technical assistance

(No change in text.)

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(a)

ELECTION LAW ENFORCEMENT COMMISSION

Establishment of Campaign Depository by Designated Continuing Political Committee

Proposed Amendment: N.J.A.C. 19:25-9.2

Authorized By: Election Law Enforcement Commission, Frederick M. Herrmann, Executive Director.
Authority: N.J.S.A. 19:44A-6.

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Interested persons may submit in writing, data, views or arguments relevant to the proposed rule on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Gregory E. Nagy, Esq.
Staff Counsel
Election Law Enforcement Commission
28 West State Street — Suite 1215
Trenton, New Jersey 08608

The Election Law Enforcement Commission may thereafter adopt this proposal without further notice (see N.J.A.C. 1:30.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-459.

The agency proposal follows:

Summary

Under regulations enacted by the Election Law Enforcement Commission (hereafter, the Commission) and published in the August 6, 1984 edition of the New Jersey Register, a candidate for a public office may authorize a continuing political committee to file campaign reports on his or her behalf. All of the contributions and expenditures on behalf of the candidate must be received or expended by the continuing political committee (CPC). N.J.A.C. 19:25-9.2(c). However, CPC's are required to maintain an organizational depository (N.J.A.C. 19:25-5.5) and to file quarterly reports reflecting activity of the organizational depository. N.J.S.A. 19:44A-8(b). When a CPC is designated by a candidate as the candidate's sole campaign depository, the CPC must file campaign reports on behalf of the candidate in addition to its organizational reports. N.J.A.C. 19:25-9.2(d).

The Commission believes that where a CPC is designated by a candidate to file campaign reports, the CPC must establish a separate campaign depository account for the purpose of segregating contributions it receives and expenditures it makes for a candidate. The campaign contributions and expenditures must be reported on the campaign reports. The continuing organizational expenses of the CPC such as rents and salaries, must be reported on the quarterly reports. In order to insure that the candidate-related contributions and expenditures are promptly disclosed in campaign reports, the Commission proposes an amendment requiring any CPC that is designated by a candidate as its sole campaign vehicle to establish a separate bank account for that purpose.

Social Impact

The proposed amendment does not create a significant hardship for any continuing political committee that is designated by a candidate as the candidate's sole campaign depository and may even prove advantageous. The CPC can open a separate bank account prior to an election by making a transfer of funds from its organizational depository. Thereafter, the CPC must segregate its campaign depository from its organizational depository. At the close of a campaign, if there is any remaining balance in the campaign depository, the CPC may file a final report winding up the business of the campaign depository and transferring the remaining balance into the organizational account of the CPC. Contributions

that are received and expenditures that are made to promote the candidacy of the candidate should be passed through the campaign depository, and campaign reports must be filed for that depository.

Economic Impact

The proposed amendment should not result in any significant increase in costs to continuing political committees. They will incur some incidental costs in connection with opening and maintaining a separate bank account. However, those incidental costs are justified in the opinion of the Commission by the goal of clearly delineating the contributions and expenditures that become subject to campaign reporting (as opposed to quarterly reporting) when a continuing political committee is designated by a candidate as the candidate's sole campaign depository.

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

19:25-9.2 Designation of joint campaign fund (Form SR-1)

(a) Where all of the contributions and expenditures on behalf of a candidate are received or expended by a political committee, which committee is required to file campaign reports under N.J.S.A. 19:44A-8(a), the candidate may authorize that committee to be his or her agent with respect to reporting those contributions and expenditures by filing with the commission a certification of that authorization on a form prescribed by the commission (Form SR-1).

(b) Upon the filing of the certification under (a) above, and until the authorization is revoked in writing, and filed, with the commission by the candidate, the political committee shall file the reports which the campaign treasurer of the candidate would otherwise be required to file.

(c) Where all of the contributions and expenditures on behalf of a candidate are received or expended by a continuing political committee, which committee is required to file quarterly reports pursuant to N.J.S.A. 19:44A-8(b), the candidate may authorize that continuing political committee to be his or her agent with respect to reporting those contributions and expenditures provided that:

1. The candidate files with the commission a certification of that authorization on a form prescribed by the commission (Form SR-1)[.]; **and**

2. **The designated continuing political committee establishes a campaign depository pursuant to N.J.A.C. 19:25-5.3, which campaign depository shall be maintained separately from its organizational depository.**

(d) **A continuing political committee designated pursuant to (c) above shall file with the commission campaign reports pursuant to N.J.S.A. 19:44A-8(a) on behalf of its campaign depository in addition to quarterly reports on behalf of its organizational account.**

(e) **A certification filed under this section shall provide for designation by the candidate of the treasurer of the political committee, or continuing political committee, as the campaign treasurer of the candidate, and shall be signed by the candidate and the treasurer of the designated political committee, or treasurer of the continuing political committee.**

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Reporting By National Political Action Committees (PAC's)

Proposed Amendments: N.J.A.C. 19:25-11.4 and 12.4

Authorized By: Election Law Enforcement Commission, Frederick M. Herrmann, Executive Director.
Authority: N.J.S.A. 19:44A-6.

Interested persons may submit in writing, data, views or arguments relevant to the proposed rule on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Gregory E. Nagy, Esq.
Staff Counsel
Election Law Enforcement Commission
28 West State Street-Suit 1215
Trenton, New Jersey 08608

The Election Law Enforcement Commission may thereafter 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 1984-460.

The agency proposal follows:

Summary

Under regulations enacted by the Election Law Enforcement Commission (hereafter, the Commission) and published in the August 6, 1984 edition of the New Jersey Register, the term "continuing political committee" (hereafter, CPC) is defined to include, among other entities, political action committees which in any calendar year contribute or expect to contribute, at least \$2,500 to aid or promote State or local New Jersey candidates or New Jersey public questions. N.J.A.C. 19:25-1.7. CPC's are classified as major purpose, multi-purpose or peripheral purpose. N.J.A.C. 19:25-4.5. Political action committees (or PAC's) that are contributing to Federal candidates are required to file reports under the Federal Election Campaign Act. 2 U.S.C.A. § 441b. The Commission anticipates that in all likelihood almost all such PAC's filing reports under the Federal Election Campaign Act will, if they are also contributing to New Jersey candidates, be classified as peripheral continuing political committees pursuant to N.J.A.C. 19:25-4.5. This classification results because the total expenditures of such entities for New Jersey candidates or public questions will normally be less than twenty percent of the PAC's total expenditures.

Under existing regulations, peripheral CPC's are not required to disclose contributions they received unless the contributions are earmarked specifically for New Jersey candidates or public questions. N.J.A.C. 19:25-11.4(e). Also, peripheral CPC's are not required to disclose expenditures made for the purpose of contributing to New Jersey candidates or public questions unless the entity is engaged in fund raising and solicitation expenses in New Jersey, or the amount

of contributions by the entity in a calendar year exceeds \$10,000. N.J.A.C. 19:25-12.4(b)(4).

The Commission believes that peripheral CPC's that are also national PAC's should be required to disclose in quarterly reports the identity of New Jersey contributors who contribute more than \$100.00 in a calendar year to the entity, and should be required to report expenditures made for the purpose of contributing to New Jersey candidates or public questions. The reporting requirements designed for peripheral CPC's are principally intended for predominantly civic, social, or charitable groups that expend less than twenty percent of their calendar year expenditures for the purposes of making contributions to and expenditures on behalf of candidates or public questions in this State. National PAC's fall into this classification not because their principal purposes are other than political, but only because less than twenty percent of their total expenditures is dedicated to New Jersey candidates or public questions while the remainder is expended for candidates on the Federal level and in other states. The Commission perceives a distinction in the organizational purposes and the fund raising capacity of national PAC's that requires a degree of public disclosure not necessary for organizations that are predominately social, civic, or charitable. The Commission believes that the public purposes of the Campaign Contributions and Expenditures Reporting Act (hereafter, the Act), as recently amended by Chapter 579 of the Laws of 1983, which amendment established CPC's and quarterly filing requirements, demands that the identity of the New Jersey contributors in amounts exceeding \$100.00 in a calendar year be disclosed. Similarly, such entities should disclose in their quarterly reports disbursements that they make for the purposes of contributing to New Jersey candidates or public questions.

A national PAC that spends less than \$2,500 for the purpose of making contributions in a calendar year to New Jersey candidates or public questions does not meet the definition of a CPC. However, if such an entity expends more than \$1,000 in any New Jersey election, it is required to file campaign (not quarterly) reports pursuant to N.J.S.A. 19:44A-8(a).

Social Impact

The proposed amendments seek to implement the public policy underlying the statutory requirement that continuing political committees, particularly national PAC's, file quarterly reports while recognizing that the Federal and out-of-state activity of such national PAC's are not sufficiently pertinent to New Jersey elections to require reporting of such activities.

The Commission believes that if national PAC's file quarterly reports containing the identity of out-of-state contributors as well as New Jersey contributors, or disclose all expenditures whether or not related to New Jersey elections, such quarterly reports would prove to be counterproductive because of their length and complexity. Therefore, such national PAC's under these proposed amendments will be required to separate and report only those contributions and expenditures that are pertinent to New Jersey elections.

Economic Impact

The proposed amendments will result in a modest cost to national PAC's. Rather than filing quarterly reports containing comprehensive listings of all contributors and all expenditures, such national PAC's will be required to select contributions and expenditures that are relevant to New Jersey elections.

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

19:25-11.4 Computation of contributions: continuing political committees

(a) The computation of contributions to a continuing political committee shall include, without limitation, contributions, loans, rental, investment or other income or membership fees, assessments or dues made to the committee which relate to election activity as described in N.J.A.C. 19:25-1.7 and may be reportable depending on the nature of the continuing political committee to which the contribution is made.

(b) If the committee is a political party committee, the contributions are reportable in full, along with the name and address of contributors whose contributions aggregate more than \$100.00 during the calendar year.

(c) If the committee is a major purpose continuing political committee, the contributions are reportable in full, along with the name and address of contributors whose contributions aggregate more than \$100.00 during the calendar year.

(d) If the committee is a multi-purpose continuing political committee, the contributions are reportable in the same proportion as the activities of the committee are related to election activity, along with the name and address of contributors whose contributions allocated as outlined above aggregate more than \$100.00 during the calendar year.

(e) If the committee is a peripheral continuing political committee, contributions are not reportable, unless:

1. The contribution is earmarked for election-related activity, in which case it is reportable in full[.]; or

2. **The continuing political committee has filed or is required to file reports as a separate segregated fund pursuant to 2 U.S.C. § 441b (Federal Election Campaign Act Amendments of 1976, P.L. 94-283) in a calendar year, in which case contributions received from New Jersey contributors are reportable in full, along with the name and address of New Jersey contributors whose contributions aggregate more than \$100.00 during the calendar year.**

19:25-12.4 Computation of expenditures by continuing political committees

(a) The calculation of expenditures by a continuing political committee shall include all expenditures as defined in the act and this chapter, and shall include all contributions including in-kind contributions made for election purposes.

(b) Expenditures shall be reported as follows:

1. If the committee is a political party committee as defined in this chapter, every expenditure is determined to be an expenditure for election related-activity as described in N.J.A.C. 19:25-12.1 and is reportable in full;

2. If the committee is a major purpose continuing political committee as defined in this chapter, every expenditure is determined to be an expenditure for election-related activity as described in N.J.A.C. 19:25-12.1 and is reportable in full;

3. If the committee is a multi-purpose continuing political committee as defined in this chapter, the following expenditures shall be reported:

i. All contributions, including in-kind contributions, made with respect to a candidate or public question; and

ii. All expenditures which are reasonably related to election activity for:

(1) Fund raising and solicitation expenses incurred in whole or in part for election-related activities; and,

(2) A prorated portion of general organizational and administration expenses incurred for election-related activity.

4. If the committee is a peripheral continuing political committee, no reporting shall be required with respect to expenditures, including contributions and in-kind contributions, unless:

i. The committee is engaged in fund raising and solicitation expenses with respect to election-related activity; or,

ii. The amount of contributions by such committee for any calendar year exceeds \$10,000. In such cases, the activity is reportable in full[.]; or,

iii. **The continuing political committee has filed or is required to file reports as a separate segregated fund pursuant to 2 U.S.C. § 441b (Federal Election Campaign Act Amendment of 1976, P.L. 94-283) in a calendar year, in which case expenditures made to aid or promote candidates for public office in New Jersey or for the passage or defeat of a public question in New Jersey are reportable in full.**

5. Nothing in 4 above shall be construed so as to permit the nonreporting of earmarked contributions, as described in N.J.A.C. 19:25-7.6, received or made by a continuing political committee.

6. Any group of two or more persons which is not required to file quarterly reports as a continuing political committee by virtue of the operation of the act or of this chapter may nevertheless have preelection and post-election reporting obligation as a political committee with respect to any election as to which it becomes:

i. An independent political committee contributing or expending more than \$1,000; or

ii. Is a political committee which is not independent contributing or expending any amount, by virtue of election-related activity including fund raising, with respect to a candidate or public question.

(a)

CASINO CONTROL COMMISSION

General Provisions

Proposed Reoption with Amendments: N.J.A.C. 19:40

Authorized By: Casino Control Commission, Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-69(a) and N.J.S.A. 52:14B-3(1).

Interested persons may submit in writing data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Richard Dana Krebs, Assistant Control
Legal Division
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN 208
Trenton, N.J. 08625

At the close of the period for comments, the Casino Control Commission may readopt this proposal, with any minor

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changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Pursuant to Executive Order No. 66 (1978), these rules would otherwise expire on September 26, 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. These amendments to the existing rules become effective upon publication in the Register of a notice of their adoption.

This proposal is known as PRN 1984-457.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Casino Control Commission proposes to readopt N.J.A.C. 19:40 concerning general provisions. More specifically, this chapter explains the practices and procedures of the Commission respecting its general operations, including the receipt, review and maintenance of confidential information.

N.J.A.C. 19:40 was originally filed with the (then) Division of Administrative Procedure and became effective on October 21, 1977. These rules are due to expire on September 26, 1984. The rules were promulgated in order to implement the provisions of N.J.S.A. 5:12-69(a) empowering the Commission to adopt rules "necessary or desirable for the public interest in carrying out the provisions" of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). The rules are also responsive to the mandate of the Administrative Procedure Act authorizing the appropriate administrative agencies to adopt rules "stating the general course and method of [their] operations and the methods whereby the public may obtain information or make submissions or requests." See N.J.S.A. 52:14B-3(1).

Amendments are being proposed to the following sections for the following reasons:

1. N.J.A.C. 19:40-1.2 ("Definitions"): Amendments to this section are being proposed to provide consistency with amendments which have been made and new definitions which have been added to the Casino Control Act, N.J.S.A. 5:12-1 et seq.

2. N.J.S.A. 19:40-1.5 ("Meeting; order of business"): Amendments to this section are being proposed to more accurately reflect current Commission practice concerning the organization of the agenda.

3. N.J.A.C. 19:40-1.6 ("Quorum; votes"): An amendment to this section provides that Commission votes shall be taken in a manner to be determined by the Commission rather than, in all cases, by "yeas and nays."

4. N.J.A.C. 19:40-1.7 ("Resolutions"): Amendments to this section explain the requirements for the preparation of an appropriate resolution and for the proper recordation in the minutes of all Commission votes.

5. N.J.A.C. 19:40-1.8 ("Officers"): Amendments to this section (1) delete the language authorizing the chairman of the Commission to issue casino hotel employee licenses pursuant to section 91 of the Casino Control Act and the Commission's rules; and (2) delete the requirement that the Executive Secretary of the Commission attend all meetings and act as recording secretary thereof. The former authority no longer exists, by statute, and the latter requirement is considered to be unnecessary.

6. N.J.A.C. 19:40-1.9 ("Offices; hours"): Changes to this section amend the address of the Commission to include the present address of the main offices as well as the addresses of the other Commission offices.

7. N.J.A.C. 19:40-1.10 ("Official records; fees for copies"): Amendments to this section comply with the current legal requirements concerning fees for copies (see N.J.S.A. 47:1A-2) and the requirement that checks for fees, deposits and charges due the Commission be made payable to "Casino Control Fund."

8. N.J.A.C. 19:40-2 (Child Labor Violations): This subchapter, establishing as an offense under the Casino Control Act and providing sanctions for child labor violations committed by casino licensees, is proposed for repeal in response to *State v. Resorts Int'l Hotel, Inc.*, 173 N.J. Super. 290 (App. Div. 1980), certif. den., 84 N.J. 466 (1980). This subchapter was originally adopted as the result of a lower court decision which had held that the Casino Control Act preempted the child labor laws with regard to casino licensees. It was adopted for the sole purpose of assuring that casino licensees would be held accountable for violations of the Child Labor Law, N.J.S.A. 34:2-21.1 et seq. Since the Appellate Division has subsequently held that the Casino Control Act does not preempt the enforcement of the Child Labor Laws against casino licensees, N.J.A.C. 19:40-2 is no longer necessary.

Social Impact

The readoption of these rules, with the proposed amendments, will assist the Commission in fulfilling its duty to afford the public the information necessary to an understanding of the general practices and procedures employed by the Commission both in its own internal administrative operations and as the Commission relates to the general public. See N.J.S.A. 52:14B-3(1). The proposed amendments to sections 1.2, 1.8(b), 1.10(f) and repeal of subchapter 2 will assist the public by eliminating any confusion between statutory and regulatory provisions concerning these subjects. The readoption of subchapter 3, concerning confidential information, will assure that information that is considered confidential will be received, processed and maintained in a confidential manner. The formal declaration of safeguarding procedures should allay any fears of actual or would-be applicants that confidential information submitted to the Commission would be improperly revealed.

Economic Impact

Because these rules are essentially administrative, procedural and organizational in nature, they impose upon the Commission certain unquantifiable costs in their implementation. It is not anticipated that the proposed amendments will have any significant impact upon the already existing costs associated with their enforcement.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 19:40-1 and 3.

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

19:40-1.2 Definitions

"Authorized game" or "authorized gambling game" means roulette, baccarat, blackjack, craps, big six wheel [and] slot machines[.], **and any variations or composites of such games, provided that such variations or composites are found by the Commission suitable for casino use after an appropriate test or experimental period under such terms and conditions as the Commission may deem appropriate.**

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“Casino employee” means any natural person employed in the operation of a licensed casino, including, without limitation, boxmen; dealers or croupiers; floormen; machine mechanics; **casino security employees** and bartenders, waiters and waitresses or other persons whose employment duties require or authorize access to the casino but who are not included in the definition of casino hotel employee, casino key employee, [casino security employee,] or principal employee as hereinafter stated.

“Casino service industry” means any form of enterprise which provides casinos with goods or services on a regular or continuing basis, including, without limitation, security businesses, gaming schools, manufacturers, distributors and services of gaming devices or equipment, garbage haulers, maintenance companies, food purveyors, or any other enterprise which does business with licensed casinos on a regular or continuing basis. **Notwithstanding the foregoing, any form of enterprise engaged in the manufacture, sale, distribution or repair of slot machines within New Jersey, other than antique slot machines as defined in N.J.S.A. 2C:37-7, shall be considered a casino service industry for the purposes of the Casino Control Act regardless of the nature of its business relationship, if any, with licensed casinos in this State.**

“Complimentary service” or “item” means a service or item provided at no cost or at a reduced price. **The furnishing of a complimentary service or item by a casino licensee shall be deemed to constitute the indirect payment for the service or item by the casino licensee, and shall be valued in an amount based upon the retail price normally charged by the casino licensee for the service or item. The value of complimentary service or item not normally offered for sale by a casino licensee or provided by a third party on behalf of a casino licensee shall be the cost to the casino licensee of providing the service or item as determined in accordance with the rules of the Commission.**

“Game” or “gambling game” means any banking or percentage game located exclusively within the casino played with cards, dice or any **electronic, electrical, or** mechanical device or machine for money, property, or any representative of value.

“Gaming device” or “gaming equipment” means any **electronic, electrical, or** mechanical contrivance or machine used in connection with gaming or any game.

“Gross revenue” means the total of all sums, including checks received by a casino licensee pursuant to section 101 of this Act, whether collected or not, actually received by a casino licensee from gaming operations, less only the total of all sums paid out as winnings to patrons and [an allowance] a **deduction** for [uncollected] **uncollectible** gaming receivables not to exceed the lesser of [such receivables actually uncollected] a **reasonable provision for uncollectible patron checks received from gaming operations** or four [per cent] **percent** of the total of all sums including checks, whether collected or not **less the amount paid out as winnings to patrons.**

“Holding company” means any corporation, association, firm, partnership, trust or other form of business organization not a natural person which, directly or indirectly, owns, has the power or right to control, or has the power to vote [all or] any **significant** part of the outstanding voting securities of a corporation which holds or applies for a casino license. For

the purpose of this section, in addition to any other reasonable meaning of the words used, a “holding company” indirectly has, holds or owns any such power, right or security if it does so through any interest in a subsidiary or successive subsidiaries, however many such subsidiaries may intervene between the holding company and the corporate licensee or applicant.

“Hotel” or “approved hotel” means a single building [under one ownership,] located within the limits of the city of Atlantic City as said limits were defined as of November 2, 1976, and containing not fewer than 500 sleeping units, each of at least 325 square feet measured to the center of perimeter walls, including bathroom and closet space and excluding hallways, balconies and lounges; each containing private bathroom facilities; and each held available and used regularly for the lodging of tourists and convention guests and conforming in all respects to the facilities requirements contained in this Act. For the purpose of exceeding the maximum casino size specified in section 83 of this Act, an approved hotel may, by means of physical connection, annex additional buildings or facilities to **increase the amount of its qualifying meeting, exhibition, dining, entertainment, sports and kitchen support facilities space, but not to increase its number of qualifying sleeping units.** “Physical connection” for the purposes herein means an enclosed permanent pedestrian passageway. In no event shall the main entrance or only access to an approved hotel be through a casino.

“Junket” means [an arrangement or arrangements the primary purpose of which is to induce any person to gamble at a licensed casino hotel and pursuant to which, and as consideration for which, over \$200.00 of the cost of transportation, food, lodging, and entertainment for said person is directly or indirectly paid by a casino licensee or employee or agent thereof. For purposes of this act, the furnishing of any of the above items on a complimentary basis shall be deemed to constitute the indirect payment for such food or lodging in the amount of the retail price normally charged by the licensee.] **an arrangement, the purpose of which is to induce any person, selected or approved for participation therein on the basis of his ability to satisfy a financial qualification obligation related to his ability or willingness to gamble or on any other basis related to his propensity to gamble, to come to a licensed casino hotel for the purpose of gambling and pursuant to which, and as consideration for which, any or all of the cost of transportation, food, lodging, entertainment and other services and items of value for said person is directly or indirectly paid by a casino licensee or employee or agent thereof.**

“Junket enterprise” means any person who employs or otherwise engages the services of a junket representative in connection with a junket to a licensed casino, regardless of whether or not those activities occur within the State of New Jersey.

“Junket representative” means any natural person who negotiates the terms of, engages in the referral, procurement or selection of persons who may participate in, or accompanies for purposes of monitoring or evaluating the participants in, any junket to a licensed casino regardless of whether or not those activities occur within the State of New Jersey; provided, however, that the term shall not include any person who does not receive any direct or indirect compensation from any person for performing those services other than the same complimentary services and items of value provided by a

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casino licensee to other participants pursuant to the terms of the particular junket.

...
 "License" or "registration fee" means any moneys required by law to be paid for the issuance or renewal of a casino license, or any other license or registration required by this Act.

...
 "Party" means the [c]Commission, or any licensee, registrant, or applicant, or any person appearing of record for any licensee, registrant or applicant in any proceeding before the [c]Commission or in any proceeding for judicial review of any action, decision or order of the [c]Commission.

"Publicly traded corporation" means any corporation or other legal entity, except a natural person, which:

1. (No change.)
2. Is an issuer subject to section 15(d) of the Securities Exchange Act of 1934 as amended (15 U.S.C. 780)[.]; or
3. Has one or more classes of securities traded in any open market in any foreign jurisdiction or regulated pursuant to a statute of any foreign jurisdiction which the Commission determines to be substantially similar to either or both of the aforementioned statutes.

...
 "Resident" means any person who occupies a dwelling within the State, has a present intent to remain within the State for a period of time, and manifests the genuineness of that intent by establishing on ongoing physical presence within the State together with indicia that his presence within the State is something other than merely transitory in nature.

- ...
 "Subsidiary" means:
1. Any corporation, [all or] any significant part of whose outstanding equity securities are owned, subject to a power or right of control, or held with power to vote, by a holding company or an intermediary company; or
 2. [Any] A significant interest in any firm, association, partnership, trust or other form of business organization, not a natural person, [or any interest therein,] which is owned, subject to a power or right of control, or held with power to vote, by a holding company or an intermediary company.

"Transfer" means the sale and every other method, direct or indirect, of disposing of or parting with property or with an interest therein, or with the possession thereof, or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, payment, pledge, mortgage, lien, encumbrance, gift, security of otherwise; the retention of a security interest in property delivered to a corporation shall be deemed a transfer suffered by such corporation.

- 19:40-1.5 Meetings; order of business
- (a)-(d) (No change.)
 - (e) [Except when otherwise directed by the chairman or the commission, the order of business at any public meeting of the commission shall be:
 1. Presiding officer's statement of compliance with the New Jersey Open Public Meetings Act;
 2. Roll call;
 3. Approval of minutes of the preceding meeting;
 4. Announcements and communications;
 5. Unfinished business;
 6. Operating report;

7. Other reports;
 8. Motions and resolutions;
 9. Other new business;
 10. Questions and comments from the public;
 11. Adjournment.]
- The Commission may prepare an agenda describing the order of business for public meetings, which agenda shall include, but not be limited to:
1. Presiding officer's statement of compliance with the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.
 2. Roll call;
 3. Ratification of the minutes of prior meetings;
 4. Consideration of applications for licenses;
 5. Consideration of complaints against licensees;
 6. Consideration of petitions for Commission action or approval; and
 7. Questions and comments from the public.

- 19:40-1.6 Quorum; votes
- (a) (No change.)
 - (b) The vote on any matter before the [c]Commission shall be taken [by yeas and nays, and] in a manner to be determined by the Commission. [t]The names of the members voting for or against or abstaining shall be entered in the minutes of the meeting.

- 19:40-1.7 Resolutions and minutes
- [(a) Every resolution of the commission shall begin in the following style: "Now therefore, be it resolved by the New Jersey Casino Control Commission".
- (b) All resolutions of the commission adopted in any one calendar year shall be numbered from one consecutively upwards in the order of their adoption.
- (c) The record of the Commission shall include a minute book and a resolution book. Any resolution of the commission may be set forth in full in the minutes or, after recodation in the minutes of the number, substance, vote and the fact of adoption of a resolution, the resolution may be recorded in the resolution book only.]
- (a) The records of the Commission shall include a minute book and a resolution book. The vote on any matter before the Commission shall be set forth in the minutes in accordance with the requirements of (b) below. If the Commission determines to memorialize the vote on a particular matter by the preparation of a formal resolution, the resolution shall be prepared in accordance with the requirements of (c) below and shall be recorded in the resolution book.
- (b) Every vote of the Commission recorded in the minutes shall include the following information:
1. The substance of the matter considered;
 2. The vote of the Commission, including the names of any commissioners dissenting or abstaining;
 3. If appropriate, reference to the existence of a formal resolution concerning the matter; and
 4. Certification by the Executive Secretary.
- (c) Every formal resolution of the Commission shall include the following information:
1. A concise statement of the issues presented and the relevant procedural history;
 2. The precise statutory authority for the action taken;
 3. A precise statement of the action taken by the Commission, including any terms or conditions attached thereto; and
 4. Certification by the Executive Secretary.

PROPOSALS

OTHER AGENCIES

19:40-1.8 Officers

(a) (No change.)

(b) The chairman, as chief executive officer of the [c]Commission, shall schedule and preside at all meetings of the [c]Commission; shall appoint the members of the [c]Commission to such committees as the [c]Commission may, from time to time, establish; shall have the authority to accept for filing all applications; shall have the authority to incur on behalf of the [c]Commission such expenses as the [c]Commission shall have approved in its operating budget; [shall have the authority to issue casino hotel employee licenses pursuant to section 91 of the act and the rules and regulations of the commission;] shall have general supervision, direction and control of the affairs of the [c]Commission; and shall perform such other duties as are incidental to [his] the office and as may be assigned, from time to time, by the [c]Commission.

(c) (No change.)

(d) The executive secretary shall be appointed by the [c]Commission and shall serve at the pleasure of the [c]Commission. Under the supervision of the chairman, the executive secretary shall be responsible for the conduct of the administrative affairs of the [c]Commission and shall have custody of the [c]Commission's seal and its official records. The executive secretary shall [attend all meetings of the commission and shall act as recording secretary thereof and shall record all votes and shall] keep a record of the proceedings at all meetings of the [c]Commission in a minute book and a resolution book or both, to be kept for the purpose, which shall be open at all reasonable times to inspection by any member of the [c]Commission. He shall cause a verbatim transcript to be made of the public meetings of the [c]Commission, according to law. He shall affix the seal of the [c]Commission to all papers authorized to be executed by the [c]Commission requiring such seal to be affixed. He shall cause copies to be made of the verbatim transcript of the public meetings, and of all minutes, resolutions and other records and shall cause such copies to be filed with the appropriate authorities according to law. He shall give certificates under the seal of the [c]Commission to the effect that such copies are true copies and all persons dealing with the [c]Commission may rely on such certificates. He shall perform such other duties as are incident to his office or as may be assigned, from time to time, by the [c]Commission or by the chairman.

19:40-1.9 Offices; hours

(a) The main offices of the [c]Commission, **including the Offices of the Commissioners, and the Legal, Financial and Administrative divisions of the Commission's staff**, are located at:

[The Inn of Trenton
240 West State Street
Room 1005
Trenton, New Jersey 08625]
**3131 Princeton Pike
Building 5, CN-208
Trenton, NJ 08625**

(b) **The License Division of the Commission's staff maintains an office at:**

**Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401**

(c) The Commission's Affirmative Action and Planning Division, and the Commission's Inspection Unit are located at:

**1300 Atlantic Avenue
Atlantic City, NJ 08401**

(d) [(b)] The offices of the [c]Commission are open for the filing of papers and for other business (except for public inspection of documents) from 9:00 A.M. to 5:00 P.M., Monday through Friday, unless otherwise authorized by the [c]Commission. The offices of the Commission are open for public inspection of documents from 10:00 A.M. to 4:00 P.M., Monday through Friday, unless otherwise authorized by the [c]Commission. The offices of the [c]Commission are closed on legal holidays.

(e) The Division of Gaming Enforcement maintains offices at:

**Richard J. Hughes Justice Complex
CN-047
Trenton, NJ 08625**

19:40-1.10 Official records; fees for copies

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

Renumber (f) as (e) and **(e) as (g)**.

[(g)] **(f)** Copies of official records of the [c]Commission which are required by law to be made available for public inspection shall be made available [at \$0.25 per page] **according to the following of schedule:**

1. First page to 10th page:	\$0.50 per page;
2. Eleventh page to 20th page:	0.25 per page;
3. All pages over 20:	0.10

[(e)] **(g)** All checks for payment of [such] fees, deposits and charges shall be made payable to the order of the "Casino Control [Commission] Fund" and delivered or mailed to the main office of the [c]Commission.

SUBCHAPTER 2. [CHILD LABOR VIOLATIONS] (RESERVED)

19:40-2.1 Violation of Child Labor Law; offense

Pursuant to the authority vested in the Commission by the Casino Control Act, any violation of the Child Labor Law, N.J.S.A. 34:2-21 et seq., by a casino licensee shall also constitute an offense, which may be prosecuted before the Commission in accordance with the regulations of the Commission, N.J.A.C. 19:42-6.1 et seq.

19:40-2.2 Violation of Child Labor Law; sanctions

Upon a finding by the Commission that a licensee has committed acts which violate the Child Labor Law, N.J.S.A. 34:2-21.1 et seq., the Commission shall, pursuant to Section 129 of the Casino Control Act, impose such sanctions as it deems reasonable and necessary to effectuate the policies of the Child Labor Law and the Casino Control Act.]

CASINO CONTROL COMMISSION NOTE: This subchapter formerly contained rules concerning child labor violations which were filed and became effective on September 26, 1979. These rules were repealed in response to State v. Resorts International Hotel, Inc., 173 N.J. Super. 290 (App. Div. 1980), certif. den., 84 N.J. 466 (1980).

RULE ADOPTIONS

BANKING

(a)

DIVISION OF CONSUMER COMPLAINTS LEGAL & ECONOMIC RESEARCH

Finance Charge Rate Regulation Number One

Adopted Repeal: N.J.A.C. 3:22-1

Proposed: October 17, 1983 at 15 N.J.R. 1707(a).
Adopted: August 1, 1984 by Mary Little Parell, Commissioner, Department of Banking.
Filed: August 2, 1984 as R.1984 d.346, **without change**.
Authority: N.J.S.A. 17:16D-10.
Effective Date: August 20, 1984.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the repealed rule may be found in the New Jersey Administrative Code at N.J.A.C. 3:22-1.

(b)

DIVISION OF BANKING

Check Cashing

Adopted New Rule: N.J.A.C. 3:24

Proposed: April 2, 1984 at 16 N.J.R. 186(b).
Adopted: July 31, 1984 by Mary Little Parell, Commissioner of Banking
Filed: August 2, 1984 as R.1984 d.345, **without change**.
Authority: N.J.S.A. 17:15A-1 et seq., specifically N.J.S.A. 17:15A-16.

Effective Date: August 20, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): August 20, 1989.

Summary of Public Comments and Agency Responses:

There was one comment received relative to the proposed new rule (N.J.A.C. 3:24). The letter proposed that there be added to the rule, data concerning demographic factors, economic factors, specific anticipated types of checks to be

cashed and facilities in the area which the applicant believed would generate the need for check cashing services.

It was felt by the Department of Banking that the rule was proposed, namely, N.J.A.C. 3:24-1.3, "Certificate of Merit" contains sufficient authority so as to allow the Commissioner of Banking to designate a form which would indicate the information that is considered to be essential to be submitted with an application so as to make an informed judgment as to the application. The rule as proposed allows the Commissioner of Banking to designate a form indicating the reasons why the applicant believes that the issuance of a check cashing license is economically feasible in the area in which the applicant proposes to locate. Further, the proposed rule at subsection (b) permits the Commissioner to indicate in the Certificate of Merit such other information as may be required in order to make an informed judgment as to the application.

The letter went on to request that there be placed in the rule a statement that the applicant must establish that the granting of a license would not have a negative economic impact on existing check cashing license's ability to do business. It is the position of the Department of Banking that this might be a factor that might be considered under all of the circumstances when weighing a decision as to whether or not to grant an applicant a check cashing license, however, it is the opinion of the Department of Banking that this is more properly a subject of legislative amendment rather than a rule. In addition, it was proposed that there be a rule requiring the applicant to establish that he will be capable of doing sufficient business to justify the issuance of the license. It was felt that the rule as proposed deals sufficiently with this matter (N.J.A.C. 3:24-1.3(a)).

Further, it was requested that the applicant personally notice each licensee in the county in which the applicant intends to do business. It is felt that such notice is adequately dealt with under the proposed new rule, N.J.A.C. 3:34-1.7, "Public Notice," which requires that every applicant for a license shall within ten days from the filing of the application cause to be published a notice of application in a newspaper, designated by the Commissioner, which has a general circulation in the county in which the applicant proposes to do business.

It is the department's position that the requirements of the rule are necessary in order to conform with the letter and intent of N.J.S.A. 17:15A-1 et seq. and specifically 17:15A-16.

Full text of the adopted new rule follows:

CHAPTER 24 CHECK CASHING

SUBCHAPTER 1. APPLICATIONS

3:24-1.1 Application form; information required

(a) Application for a check cashing license shall be made on a form prescribed by the commissioner. In addition the applicant shall file the following as part of its application for each and every person directly or indirectly interested in the business to be licensed:

1. Certificate of Certified Consent for Criminal investigative purposes;
2. Photographs;
3. Fingerprint card (Form, FD-258).

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3:24-1.2 Corporate applications

(a) Corporate applicants shall submit a copy of certificate of incorporation showing the filed or recording stamp of the Secretary of State. Foreign corporations shall submit a Certificate of Authority in addition to corporate certificate.

(b) Individual or partnership applicants using a trade name shall submit a copy of its trade name as filed with the County Clerk showing date of recording.

(c) Corporations using fictitious names shall file a copy of such name, as recorded, as part of its application.

3:24-1.3 Certificate of merit

(a) A certificate of merit on a form designated by the commissioner of Banking shall be filed with the application indicating the reasons why the applicant believes that the issuance of a check cashing license is economically feasible in the area in which the applicant proposes to locate.

(b) The certificate of merit shall indicate such information as the commissioner may require.

3:24-1.4 Demonstration of financial responsibility

An applicant for check cashing license shall demonstrate that it has commitments or agreements with a financial institution which has agreed to provide the applicant with funds sufficient to enable the applicant to conduct the check cashing business.

3:24-1.5 Pro forma income and expense statement

A pro forma statement shall be submitted with the application indicating anticipated income and expense projections for 36 months from the date the application is submitted. The statement should include the basis of the anticipated income and expenses.

3:24-1.6 Physical facilities

An applicant must include in his application a description of the physical facilities which shall include diagrams showing the proposed address, the protective devices to be installed and the anticipated costs associated with such facilities and devices.

3:24-1.7 Public notice

Every applicant for a license shall within 10 days from the filing of the application cause to be published a notice of the application in a newspaper, designated by the commissioner, which has general circulation in the county in which the applicant purposes to do business. The form of notice shall be provided by the Commissioner of Banking.

SUBCHAPTER 2. BOOKS AND RECORDS

3:24-2.1 Books of account and records

Every licensee shall maintain the books, records and information referred to in this subchapter which shall be readily available for inspection by representatives of the Department of Banking.

3:24-2.2 Daily Record of Checks Cashed

(a) A Daily Record of Checks Cashed, shall be kept in which shall clearly be recorded all transactions occurring each day.

(b) The daily record of checks cashed shall include the following information with respect to each check, draft, or money order cashed in the face amount of \$2,000 or more:

1. Date on which check, draft, or money order is cashed;

2. Date of check, draft, or money order;
3. Number of check, draft, or money order;
4. Name and location, or American Bankers Association number, or clearing house number, of the banking institution on which the check, draft, or money order is drawn;
5. Name of the drawer of such check, draft, or money order which is cashed;
6. Name and address of the individual, partnership, or corporation for which such checks, draft, or money order is cashed;
7. Face amount of check, draft, or money order; and
8. The fee collected for cashing each such check, draft, or money order.

(c) When 10 or more payroll checks of any one employer aggregating \$2,000 or more, drawn on the same bank, are cashed during any one day, it will be sufficient for the licensee to:

1. Retain a listing or other record, showing:
 - i. The individual checks and fees charged;
 - ii. The total number of such checks cashed;
 - iii. The name of the drawer;
 - iv. The bank on which they are drawn;
 - v. The total amount of the checks; and
 - vi. The total fees charged.
2. This information need be shown only once in the daily record of checks cashed for each group of such checks cashed.

(d) Except for checks cashed as provided in (a), (b) and (c) above, the licensee shall retain a listing or other record of all checks, drafts, or money orders where the individual face amount is less than \$2,000 showing the face amounts of individual checks, drafts, or money orders, the total amount thereof, and the total fees charged therefor listed on such record. This information need be shown only once in the daily record of checks cashed for each group of such checks, drafts, or money orders cashed, covered by a separate adding machine listing or other equivalent record.

(e) Separate tapes must be maintained for such checks, drafts, or money orders cashed pursuant (a), (b), (c) and (d) above drawn on banks located within this State and for such checks, drafts, or money orders drawn on banks located outside of this State.

(f) When the licensee receives checks, draft or money orders, other than those cashed in the regular course of business, a complete record shall be made of such checks, drafts, or money orders, and the nature of the transaction must also be shown. This requirement applies to checks received in connection with any other business conducted on the same premises.

(g) A viewable photographic record of checks, drafts, or money orders cashed, which sets forth all the information pertaining to said checks, drafts, or money orders required by (a), (b), (c) and (d) above will be acceptable in lieu of the records required by this subchapter.

1. In such event, the photographic film must be processed promptly after each roll of film has been exposed, and the viewable records maintained by the licensee for at least three years after the date of the last photograph on said roll.

2. The licensee shall maintain a log indicating the beginning and ending business days covered by each individual roll of processed photographic records.

3:24-2.3 Summary of Business

A Summary of Business record shall be maintained in which the number of checks, drafts, or money orders cashed, their total face amount, and the aggregate fees received, shall

BANKING

ADOPTIONS

be shown for each business day and totaled for each calendar month. If this information is included in a horizontal form of daily cash reconciliation, such record will be acceptable in lieu of a separate summary of business.

3:24-2.4 Return Items Record

(a) A Return Items Record shall be maintained in which the following information shall be clearly recorded with respect to each check, draft or money order, returned unpaid:

1. Date on which check, draft or money order, was reported unpaid;
2. Issuer of check, draft or money order;
3. Date check, draft or money order, was originally cashed by licensee;
4. Name of drawer of the check, draft, or money order, returned unpaid;
5. Name of payee or last endorser of check, draft, or money order;
6. Amount of check, draft, or money order, returned unpaid;
7. Name of bank on which check, draft, or money order is drawn;
8. Reason for which check, draft, or money order was returned unpaid;
9. Date on which check, draft, or money order was redeposited;
10. Date and manner of payment of check, draft or money order, other than by redeposit, with complete details of the disposition made of it; and
11. A record, kept up to date, showing what efforts and progress are being made to collect unpaid checks, drafts, or money orders, not redeposited or redeemed.

3:24-2.5 Daily Cash Reconciliation

(a) A Daily Cash Reconciliation shall be maintained which shall contain the following information:

1. Cash on hand at opening of business;
2. Checks, drafts, or money orders cashed the previous day, and on hand at opening of business;
3. Cash received during the day showing in detail the source of funds;
4. Total amount of fees received during the day;
5. The sum of items 1. through 4. above;
6. The total deposits made during the day;
7. Other cash paid out during the day showing in detail the nature of the disbursement;
8. The sum of items 6. and 7.
9. Item 5. less item 8. above, representing the cash on hand and the total of undeposited checks, drafts, or money orders, cashed during the day.
10. The total of cash included in item 9 above.

3:24-2.6 Combination of records

The daily record of checks cashed, summary of business, returned items record, and daily cash reconciliation, may be combined into one or more records, provided the required information is kept in such combined record.

3:24-2.7 General Ledger

(a) A General Ledger containing all assets, liability, capital, income, and expense accounts shall be maintained. The General Ledger shall be posted from the daily record of checks cashed, summary of business, or any other records of original entry, at least monthly, and shall be so kept as to facilitate the preparation of an accurate trial balance.

(b) When ownership of two or more licensed premises is vested in the same owner, the licensee may upon obtaining approval with the Department of Banking maintain a combined or consolidated set of books, provided that such books reflect separate figures on activity, income and expense for each location.

3:24-2.8 Journal

A Journal must be maintained showing the full explanation, all opening, closing and adjusted entries.

3:24-2.9 Corporate resolutions

(a) A check cashier shall maintain a file which shall contain a true copy of the corporate resolution duly executed by the appropriate corporate officers wherein said corporation has authorized its officers and employees to present its corporate checks to the licensee for checks cashing.

(b) A check cashier shall not cash a check made payable to a corporate payee unless the person submitting such checks has on file a resolution indicating that the corporation has authorized the presentation of such checks on behalf of the corporate payee.

SUBCHAPTER 3. REPORTS

3:24-3.1 Report requirements

Each licensee shall, when requested by the Department of Banking, file an annual report giving such information as may be required concerning the business and operation during the preceding calendar year of each licensed place of business. Such report on a form prescribed by the Commissioner of Banking shall be made under oath and shall be in the form prescribed. In addition to annual reports the Commissioner may require under oath and in the form prescribed such additional regular or special reports as deemed necessary for the proper supervision of any licensee.

SUBCHAPTER 4. DEPOSIT OF CHECKS

3:24-4.1 Deposit requirements

(a) Except as hereinafter stated, all checks, drafts, and money orders, must be deposited in the licensee's account in an institution in this State situated in the vicinity of the licensed location, not later than the first business day following the day on which they were cashed. Such items must be deposited during regular business hours so as to enable credit for the deposits to the licensee's account on that business day.

(b) When the number of payroll checks cashed amount to 50 or more, the licensee may present such package of checks to the drawee bank or the maker of the checks and receive in exchange a single draft, provided full details of the transaction are recorded.

(c) All checks, drafts, and money orders, cashed on any one day and deposited on the same day or the next business day must be deposited under a separate deposit total and not commingled with any other day's business.

(d) A violation of this section will occur if a licensee instead of depositing all checks, drafts, and money orders as required:

1. Cashes all or any of them at another check cashier;
2. Exchanges all or any of them for another check or checks; or
3. negotiates all or any of them in any manner or for any purpose other than that provided in this section.

ADOPTIONS

3:24-4.2 Dual business deposit requirements

(a) The checks, drafts, money orders or cash of any other business in which the licensee is engaged must not be commingled with other funds in the licensee's bank account or with the cash or checks on hand.

(b) Separate records must be kept for a check cashing business conducted on the same premises where another business is also being operated. In such case the licensee should apportion to the check cashing business its share of expense. Reasonable estimates may be used.

SUBCHAPTER 5. CONDUCT OF BUSINESS

3:24-5.1 Conduct of business

(a) Every licensee shall:

1. Post and at all times display in a conspicuous place on the premises the license and also the schedule of rates to be charged.

2. Pay to every customer tendering any check, draft, or money order to be cashed, the entire face amount of such instrument in cash less any charges permitted by law, on the same date upon which such instrument is presented;

i. In no event shall the licensee make a partial payment on account, on any such instrument.

ii. No check cashier shall cash any check which carries a subsequent endorsement to the payee listed on the face of the check.

3. Indicate on every check, draft, or money order cashed at the time of cashing, the date on which such item was cashed.

4. Maintain continuously for each licensed premises liquid assets of at least \$5,000. In order to determine whether the said sum is continuously available for each licensed premises, each licensee shall compute and include the following in his business records:

i. Add the amount of cash in bank, cash on hand, checks on hand not previously dishonored, governmental transaction fees receivable, the fact amount of public assistance checks pending revalidation, check cashing fees receivable not more than 60 days old, notes receivable payable within six months, the value of unexpired insurance premiums, and marketable securities owned, and

ii. Deduct from their total the amount of any loans payable due in one year or less, including loans payable on demand, and also any accounts payable by the licensee.

5. Be held responsible for any violation of or any infractions of these rules committed by any employee or by anyone directly or indirectly connected with the licensee's check cashing business.

6. Reconcile its bank statement at least monthly.

7. Keep a true copy of each and every report which it shall be called upon to furnish to any agency or department of:

i. The United States Government

ii. The State of New Jersey or

iii. Any municipality of the State of New Jersey

8. Such copies, as mentioned in 7 above together with any work sheets used to assemble the figures and/or facts shown in such report, are to be retained as part of the records of each licensee.

(b) No licensee shall directly or through its agents cash any check, draft, or money order, nor act as intermediary, agent, or in any way assist in the negotiation of any such instrument, at any place other than the premises licensed.

COMMUNITY AFFAIRS

SUBCHAPTER 6. DENIAL, SUSPENSION ON REVOCATION OF LICENSE

3:24-6.1 Review

Wherever the Commissioner of Banking shall deny, suspend or revoke a license in accordance with the provisions of N.J.S.A. 17:15A-1 et seq. and it is determined that such proceeding is designated a contested case, the matter will be heard as a contested case pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1.

SUBCHAPTER 7. VIOLATIONS

3:24-7.1 Penalties

Any violation of these rules will, in addition to any other penalties provided by law, subject the applicant or licensee to the penalties set forth in N.J.S.A. 17:15A-23.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Department Fees

Notice of Correction: N.J.A.C. 5:23-4.20

An error appears in the New Jersey Administrative Code at N.J.A.C. 5:23-4.20(a)1. Paragraph 1, which establishes a "multiplier" of two for all fees charged by Department of Community Affairs as enforcing agency, was repealed by an amendment proposed in the September 7, 1982 New Jersey Register at 14 N.J.R. 943(a) and became effective upon publication in the November 15, 1982 Register at 14 N.J.R. 1300(b).

Full text of the rule should read as follows.

5:23-4.20 Department fees

(a) General:

1. The fee for plan review, computed as a percentage of the fee for a construction permit, shall be paid at the time of application for a permit. The amount of this fee shall then be deducted from the amount of the fee due for a construction permit, when the permit is issued. Plan review fees are not refundable.

2. The fee to be charged for a construction permit will be the sum of the basic construction fee plus all applicable special fees, such as elevator or sign fees. This fee shall be paid before a permit is issued.

ENVIRONMENTAL PROTECTION

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3. The fee to be charged for a certificate of occupancy shall be paid before a certificate is issued. This fee shall be in addition to the construction permit fee.

4. Where the department, pursuant to N.J.A.C. 5:23-4.24, is designated as the plan review agency, or when the department has been requested to provide plan review services by a municipality pursuant to N.J.A.C. 5:23-4.24, or when the department is designated as the local enforcing agency pursuant to N.J.A.C. 5:23-4.3, the following schedule of fees shall pertain.

**ENVIRONMENTAL
PROTECTION**

(a)

OFFICE OF THE COMMISSIONER

Sanitary Landfill Contingency Fund

**Adopted Amendments: N.J.A.C. 7:11-2.2,
3.4, and 3.5**

Proposed: May 7, 1984 at 16 N.J.R. 958(a).
Adopted: July 24, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: August 6, 1984 as R.1984 d.351, **without change**.

Authority: N.J.S.A. 13:1E-100, et seq., specifically N.J.S.A. 13:1E-114.

Effective Date: August 20, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): November 18, 1988.
DEP Docket No. 018-84-04.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted amendments follows.

7:11-2.2 Filing of claim

(a) (No change.)

(b) The claim, as defined in N.J.A.C. 7:11-1.4, once signed and certified under oath, shall be mailed by certified mail, return receipt requested, or delivered by hand to the following:

1. Director, Office of Sanitary Landfill Claims, New Jersey Department of Environmental Protection, Labor & Industry Building, CN 402, Trenton, New Jersey 08625;

(c) The claimant shall serve written notice of the claim by certified mail, return receipt requested, or by actual delivery, upon

i. The owners of the sanitary landfill;
ii. The operators of the sanitary landfill; and
iii. Any other responsible persons alleged by the claimant to have caused the damage.

(d) The notice of claim must be signed by the claimant or by a person acting on his behalf as provided in this Chapter and shall include:

i. The name and post office address of the claimant;

ii. The post-office address to which the person presenting the claim desires notices to be sent;

iii. The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;

iv. A general description of the injury, damage or loss incurred so far as it may be known at the time of presentation of the claim;

v. The name or names of the owner and/or operator and/or any other responsible persons causing the damage; and

vi. The amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective damage, insofar as it may be known at the time of the presentation of the claim together with the basis of computation of the amount claimed.

(e) Any claimant may obtain from the department, upon written request therefor, the names and addresses of the owners and operators of the sanitary landfill.

(f) (No change in text.)

(g) (No change in text.)

7:11-3.4 Investigative hearing

(a) (No change.)

(b) A claimant may request an investigative hearing prior to final agency action on a claim by addressing a written application for such hearing to the Director, Office of Sanitary Landfill Claims, New Jersey Department of Environmental Protection, Labor & Industry Building, CN 402, Trenton, New Jersey 08625.

1. (No change.)

(c)-(i) (No change.)

7:11-3.5 Contested case hearing

(a) A claimant who considers himself aggrieved by the decision of the department rendered pursuant to N.J.A.C. 7:11-2.3(d) or 3.3(d) may, within 15 working days of claimant's receipt of such decision, request a hearing by addressing a written application for such hearing to the Director, Office of Sanitary Landfill Claims, New Jersey Department of Environmental Protection, Labor & Industry Building, CN 402, Trenton, New Jersey 08625.

1. (No change.)

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

(b)

DIVISION OF WATER RESOURCES

**Licensing of Operators of Wastewater and
Water Systems**

Adopted New Rule: N.J.A.C. 7:10-13.15

Proposed: June 18, 1984 at 16 N.J.R. 1423(a).
Adopted: August 6, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

ADOPTIONS

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Filed: August 6, 1984 as R.1984, d.350, **without change.**

Authority: N.J.S.A. 58:11-64 et seq., specifically 58:11-66, 67 and 69; N.J.S.A. 58:10A-1 et seq., and N.J.S.A. 58:12A-1 et seq.

Effective Date: August 20, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): July 2, 1989.

DEP Docket No.: 033-84-05.

Summary of Public Comments and Agency Responses:

1. Comment: The proposed criteria needed to take the examination for each class license is being significantly increased in the number of years operating experience required for each class license and when comparing the experience required with the current experience requirements for the various classifications, it appears that a total increase of as high as 100 percent of the class 4 levels is being required. This increase in experience requirements is apt to discourage operator trainees and/or entrance level water system employees from seeking licenses.

Response: In developing the eligibility criteria for each class of license, the Department determined that the criteria must be stringent enough to ensure that licensed operators are capable of operating the larger and more complex systems. In addition the Department decided to use a classification system similar to one developed by the Association of Boards of Certification for Operating Personnel in Water and Wastewater Utilities. The advantage of this classification system is that it makes New Jersey's classification system comparable with those used by many other States. This means that the Department may establish reciprocity with other States, which will make it easier for licensees to obtain employment.

In order to accomplish both of the above goals, the Department established four classes of licenses rather than the three classes of licenses previously utilized. The Class 4 license, which is the new license and highest class license, was established to provide qualified licensed operators to operate the new large and complex systems. Therefore, the eligibility requirements necessary to obtain the Class 4 license are significantly more stringent than the previous requirements for obtaining the highest class of license. The present Class 3 license corresponds to the license that was the highest class license under the old regulations. An examination of the eligibility requirements for obtaining the present Class 1, 2 and 3 licenses shows that the eligibility requirements have not been made that much more stringent than those in the previous regulations. For the above reasons the Department believes that the new classification system offers operator trainees and entry level employees more opportunity for advancement.

2. Comment: The new eligibility requirements for licenses should be phased in gradually in order to make a fair and reasonable transition from existing to new requirements.

Response: The Department has been discussing the new requirements for licensing with the regulated community for the last three years. As a result the adoption of the new requirements should come as no surprise to the regulated community. The fairest way to implement these new requirements is to make a clean break with the old requirements. By doing this all people seeking licenses will be evaluated pursuant to the same requirements and no group will receive special treatment.

3. Comment: The term "direct responsible charge" should be further elaborated when involving larger treatment systems. Facilities like those operated by an authority can have several employees who could be classified under this description due to operational complexity. Confining the title to a single individual is not reasonable or appropriate in this case.

Response: The Department never intended that only one person at a system could acquire "direct responsible charge" experience. Any person who supervises some employees and who has specific operational and maintenance responsibilities can acquire "direct responsible charge" experience, so long as the person meets the other requirements of the definition.

4. Comment: Requiring an operator to have "direct responsible charge" as a prerequisite to anyone advancing in their career is unreal in the working environment. You are putting restrictions on an item which is uncontrollable by personnel.

Response: Well managed systems will provide training opportunities for their personnel so that their employees may gain the necessary experience. However, there are systems which either will not or cannot provide such training. In those cases an employee who wishes to advance will have to change jobs.

5. Comment: For industrial wastewater treatment system licenses, training performed at the system should be considered the equivalent of the required industrial waste course.

Response: After September 30, 1984 the Department will not accept any applications for site specific licenses for industrial wastewater treatment systems. However, plant specific training does count towards meeting the operating experience requirement for the license classifications of the new industrial wastewater treatment system licenses. Systems wishing to have their plant specific training recognized as equivalent to an approved industrial waste course must submit their curriculum to the Advisory Committee on Water Supply and Wastewater Licensed Operator Training for evaluation.

Full text of the new rule follows.

7:10-13.15 Criteria needed to take the examination for each license

(a) Persons applying to take an examination for any license except an industrial wastewater treatment system license shall meet the following requirements and possess the minimum education and experience requirements for the license applied for found in Table VII in (b) below.

1. Persons applying to take any examination and holding no degree higher than a high school diploma shall have successfully completed an introductory course approved by the department in the subject matter pertaining to the license being sought, prior to applying to take the examination.

2. Any person applying to take an examination for a class 2, 3 or 4 license shall complete an advanced course approved by the department in the subject matter pertaining to the license being sought, prior to applying to take the examination.

3. Either or both of the courses required above may be waived if the applicant submits satisfactory proof of equivalent training to the department.

i. Such proof of equivalent training shall consist of transcripts and descriptions of relevant courses, including textbooks used in the courses, taken by the applicant.

(b) TABLE VII: Minimum requirements applicants for licenses, except industrial wastewater treatment system licenses

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shall meet before being admitted to take an examination for each classification.

Personnel Classification	Education	Operating Experience years ³	Direct Responsible Charge ⁴ Experience years	Total Experience Years
Classification 1	High school Diploma or Equivalency Certificate, Associate Degree ¹	1	0	1
	Bachelor Degree	1	0	1
	Category ²	1	0	1
Classification 2	High school Diploma or Equivalency Certificate, Associate Degree ¹	3	0	3
	Bachelor Degree	2	0	2
	Category ²	1.5	0	1.5
Classification 3	High school Diploma or Equivalency Certificate, Associate Degree ¹	3 plus	3	6
	Bachelor Degree	2 plus	2	4
	Category ²	1.5 plus	1.5	3
Classification 4	High school Diploma or Equivalency Certificate, Associate Degree ¹	6 plus	4	10
	Bachelor Degree	4 plus	3	7
	Category ²	3 plus	2	5

1. "Associate Degree" means successful completion of two years of formal college education resulting in an engineering or relevant science degree or post secondary vocational program acceptable to the department, or a college degree in a field that does not meet the requirements of the Bachelor Degree category.

2. "Bachelor Degree Category" means four years of formal college education resulting in an engineering or a related science degree acceptable to the department.

3. "Operating Experience" means the full time or equivalent time spent in the satisfactory performance of significant operational duties at a system which is acceptable to the Board.

4. "Direct Responsible Charge Experience" means active, daily, on-site supervision, including operation and maintenance responsibilities in a system with a classification no less than one classification lower than the license sought. This experience must be gained while in possession of a license no less than one grade lower than the license sought.

(c) Persons applying to take an examination for an industrial wastewater treatment system license shall meet the following requirements and possess the minimum education and experience requirements for the license applied for, found in Table VIII in (d) below.

1. Persons applying to take any industrial wastewater treatment system license examination shall have successfully completed an industrial waste course approved by the department prior to applying to take the examination. The course requirement may be waived if the applicant submits satisfactory proof of equivalent training to the department.

i. Such proof of equivalent training shall consist of transcripts and descriptions of relevant course, including textbooks used in courses, taken by the applicant.

(d) Table VIII: Minimum requirements applicants for industrial wastewater treatment system licenses shall meet before being admitted to take an examination for each classification.

Personnel Classification	Education	Operating Experience years
Classification 1	High school Diploma or Equivalency Certificate, Associate Degree ¹	1
	Bachelor Degree	1
	Category ²	1
Classification 2	High school Diploma or Equivalency Certificate, Associate Degree ¹	3
	Bachelor Degree	2
	Category ²	1.5
Classification 3	High school Diploma or Equivalency Certificate, Associate Degree ¹	6
	Bachelor Degree	4
	Category ²	3
Classification 4	High school Diploma or Equivalency Certificate, Associate Degree ¹	10
	Bachelor Degree	7
	Category ²	5

1. "Associate Degree" means successful completion of two years of formal college education resulting in an engineering or relevant science degree or post secondary vocational program acceptable to the Department, or a college degree in a field that does not meet the requirements of the Bachelor Degree category.

2. "Bachelor Degree Category" means four years of formal college education resulting in an engineering or a related science degree acceptable to the department.

3. "Operating Experience" means the full time or equivalent time spent in the satisfactory performance of significant operational duties at a system which is acceptable to the Board. Manufacturing and process experience may be acceptable for operating experience.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Disposal and Possession of Dead Deer

Adopted Amendments: N.J.A.C. 7:25-17.1 to 17.4

Proposed: May 21, 1984 at 16 N.J.R. 1148(a).
 Adopted: July 26, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

ADOPTIONS

Filed: August 6, 1984 as R.1984 d.352, **without change.**

Authority: N.J.S.A. 13:1B-3 and N.J.S.A. 23:4-43.

Effective Date: August 20, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): May 2, 1985.

DEP Docket No. 024-84-04.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted amendments follows.

SUBCHAPTER 17. DISPOSAL AND POSSESSION OF DEAD DEER

7:25-17.1 Authorized persons and disposal or possession

Deer found dead on or along any New Jersey public highway shall be disposed of by New Jersey State or municipal police officers or persons authorized by them at a sanitary landfill or other site approved by the Division of Waste Management of the Department of Environmental Protection or the police agency may authorize possession, as conditioned in N.J.A.C. 7:25-17.3(a) below, by a New Jersey resident.

7:25-17.2 Dead deer on private property

Deer found dead on any private property shall be disposed of by State or municipal police officers, or personnel authorized by them, upon request of the property owner in the manner prescribed above. The owner or lessee of cultivated lands who kills deer under permit of the Division of Fish, Game and Wildlife on such property shall dispose of the dead deer as directed by the Division of Fish, Game and Wildlife.

7:25-17.3 Possession of dead deer

(a) New Jersey State or municipal police officers may authorize the possession of accidentally killed deer by a New Jersey resident under the following conditions:

1. The deer was killed by an accidental collision with a motor vehicle and reported to the New Jersey State or municipal police as soon as possible; and

2. A written permit on forms provided by the Division of Fish, Game and Wildlife shall be issued by the police agency to the resident of New Jersey to possess the accidentally killed deer for consumption of or transfer of the deer carcass to another person for consumption.

(b) The permit described in (a) above shall be valid for three months from date of issue.

(c) A deer that has been so severely injured by a collision with a motor vehicle so that it must be killed shall be considered as accidentally killed for the purposes of this subchapter.

7:25-17.4 Information required

(a) Any state or municipal police officer disposing of or authorizing the disposal or possession of accidentally killed deer shall notify the New Jersey Division of Fish, Game and Wildlife on a quarterly basis of the following information on forms provided by the Division of Fish, Game and Wildlife:

1. The location where the deer was killed;
2. The sex of the deer;
3. The date of the accidental deer kill; and
4. The name and address of permittee.

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(a)

COMMISSION ON RADIATION PROTECTION BUREAU OF RADIATION PROTECTION

Medical Exposure to Ionizing Radiation by Radiologic Technologists

Adopted Amendment: N.J.A.C. 7:28-19

Proposed: April 16, at 16 N.J.R. 797(a) by Max M. Weiss, Ph.D., Chairman Commission on Radiation Protection.

Adopted: August 1, 1984 with substantive and technical changes not requiring additional public notice and comment (see: N.J.A.C. 1:30-3.5).

Filed: August 6, 1984 as R.1984 d.349, **with technical and substantive changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 13:1D-7, and 26:2D-7, and specifically 26:2D-24 et seq.

Effective Date: August 20, 1984.

Expiration Date Pursuant to Executive Order No. 66(1978): August 20, 1989.

DEP Docket No. 016-84-03.

Summary of Public Comments and Agency Responses:

The Department of Environmental Protection afforded the public an opportunity from April 16, 1984 through May 16, 1984 to provide written comments on the record concerning the proposal. Only one written comment was received by the Department relating to the proposal from Pascock Valley Hospital's Educational Coordinator. In addition, the Department conducted an in-house review of the proposal and has identified several changes to the proposal that will provide clarification and facilitate program administration. Also changes to N.J.A.C. 7:28-19.4(i) and 7:28-19.5 have been made to conform and reflect statutory provisions.

The only commentator requested a change in sequence of N.J.A.C. 7:28-19.7(a). The agency's response was to agree, and make the requested change.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

SUBCHAPTER 19. MEDICAL EXPOSURE TO IONIZING RADIATION BY RADIOLOGIC TECHNOLOGISTS

7:28-19.1 Purpose and responsibility

(a) The purpose of these rules and regulations is to prohibit and prevent excessive and improper exposure to ionizing radiation as set forth in P.L. 1981, C.295, Radiologic Technologist Act, (N.J.S.A. 26:2D-24).

(b) Any person owning, using or handling sources of radiation directly or indirectly, shall be responsible for compliance with provisions of these rules and regulations.

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7:28-19.2 Definitions

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

“Board” means the Radiologic Technology Board of Examiners created pursuant to N.J.S.A. 26:2D-24 et seq.

“CAHEA” means the Committee on Allied Health Education Accreditation.

“Chest x-ray technologist (LRT(C))” means a person, other than a licensed practitioner, whose practice of radiologic technology is limited to the chest area for diagnostic purposes.

“Commission” means the New Jersey Commission on Radiation Protection.

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

“Dental x-ray technologist (LRT (D))” means a person other than a licensed practitioner, whose practice of radiologic technology is limited to dental radiography for diagnostic purposes.

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

“Diagnostic x-ray technologist, (LRT(R))” means a person, other than a licensed practitioner, whose application of radiation to human beings is for diagnostic purposes.

“JRC/ERT” means Joint Review Committee in Education for Radiologic Technology.

“License” means a certificate issued by the Board authorizing the licensee to operate equipment emitting ionizing radiation on human beings for diagnostic or therapeutic purposes in accordance with the provisions of this subchapter.

“Licensed practitioner” means a person licensed or otherwise authorized by law to practice medicine, dentistry, dental hygiene, podiatry, chiropody, osteopathy or chiropractic.

“Licensed Radiologic Technologist, (LRT)” means any person licensed pursuant to this subchapter.

“Radiation therapy technologist (LRT(T))” means a person, other than a licensed practitioner, whose application of radiation to human beings is for therapeutic purposes.

“Radiologic technologist” means any person who is licensed pursuant to the subchapter, which shall include Chest x-ray technologist (LRT(C)), Dental x-ray technologist (LRT(D)), Diagnostic x-ray technologist (LRT(R)), and Radiation therapy technologist (LRT(T)).

“Radiologic technology” means the use of equipment emitting ionizing radiation on human beings for diagnostic or therapeutic purposes under the supervision of a licensed practitioner.

“Student” shall mean any person who is enrolled in an approved course of study under the Radiologic Technologist Act (N.J.S.A. 26:2D-24 et seq.) or this subchapter.

“Unethical conduct” shall include, but not be limited to:

1. Engaging in the use of medical equipment emitting ionizing radiation or in the performance of any aspect of radiologic technology while in an intoxicated condition or under the influence of narcotic or any drugs which impair consciousness, judgement or behavior.
2. Willful falsification of records, or illegal destruction or theft of property or records relating to the practice of radiologic technology.
3. Failure to exercise due regard for the safety of life or health of the patient.
4. Unauthorized disclosure of information relating to a patient or his records.

5. Discrimination in the practice of radiologic technology against any individual because of race, religion, creed, color or national origin.

7:28-19.3 General provisions

(a) Except as hereinafter provided, no person other than a licensed practitioner or the holder of a license as provided in this subchapter shall use x-rays in such a manner as to expose human beings.

[(a)]* *(b) The Board shall issue a license pursuant to this subchapter provided the applicant for a specific license has met all requirements as prescribed in N.J.A.C. 7:28-19.4.

[(b)]* *(c) No person shall operate equipment emitting ionizing radiation ***[on]* *in such a manner as to expose*** human beings or cause, suffer, allow or permit the use of such equipment ***in such a manner except*** ***[unless it is in a manner]*** as provided in this subchapter.

[(c)]* *(d) No person shall operate equipment emitting ionizing radiation ***[on]* *in such a manner as to expose*** human beings unless such person holds a valid license issued by the Board, pursuant to this subchapter, and unless such use is restricted to the scope of practice defined on the license.

[(d)]* *(e) No person shall operate equipment emitting ionizing radiation ***[on]* *in such a manner as to expose*** human beings unless the equipment complies with all relevant provisions of Chapter 28, Title 7 of the New Jersey Administrative Code (N.J.A.C. 7:28).

[(e)]* *(f) The license of a radiologic technologist may be suspended for a fixed period or may be revoked, or the holder of such a license may be reprimanded or otherwise disciplined in accordance with the provisions and procedures defined in N.J.S.A. 26:2D-24 et seq. and N.J.S.A. 26:2D-57.

[(f)]* *(g) The Board shall establish criteria and standards for programs of diagnostic, radiation therapy, dental or chest x-ray technology and approve these programs upon findings that the standards and criteria have been met.

7:28-19.4 ***[Application for licensure]* *Licensure procedure***

(a) The Board shall admit to examination for licensing any applicant who shall pay to the Department a nonrefundable fee established by rule of the Commission and submit satisfactory evidence, verified by oath or affirmation, that the applicant:

1. At the time of application is at least 18 years of age;
2. Is of good moral character;
3. Has successfully completed a four year course of study in a secondary school approved or recognized by the State Board of Education, or passed an approved equivalency test; and
4. Has complied with the applicable requirements of (b) below.

(b) In addition to the requirements of (a) above, any person seeking to obtain a license in a specific area of radiologic technology must comply with the following applicable requirements:

1. Each applicant for a license as a Diagnostic x-ray technologist (LRT(R)) shall have satisfactorily completed a 24-month course of study in diagnostic x-ray technology approved by the Board or its equivalent as determined by the Board.
2. Each applicant for a license as a Radiation Therapy technologist (LRT(T)) shall have satisfactorily completed a 24-month course in radiation therapy technology approved by

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the Board or the equivalent of such as determined by the Board.

3. Each applicant for a license as a Chest x-ray technologist (LRT(C)) shall have satisfactorily completed the basic curriculum for chest radiography as approved by the Board or its equivalent as determined by the Board.

4. Each applicant for a license as a Dental x-ray technologist (LRT(D)) shall have satisfactorily completed the curriculum for dental radiography as approved by the Board or its equivalent as determined by the Board.

(c) Each applicant for a license shall be required to pass an examination designated and approved by the Board pursuant to *[26:2D-32a.]* ***26:2D-31a***.

(d) The Board may accept in lieu of its own examination, a current certificate of The American Registry of Radiologic Technologists (ARRT), issued on the basis of a Registry examination satisfactory to the Board, or a certification or license as a radiologic technologist issued by another state provided that the standards are at least as stringent as those established by the Board.

(e) The Board may accept in lieu of its own examination for Dental X-Ray Technologist LRT(D):

1. A current certificate of the New Jersey Board of Dentistry issued on the basis of satisfactory completion of the certification examination given by the Certifying Board of the American Dental Assistants' Association and any education requirements as may be prescribed by the New Jersey Board of Dentistry *****, **provided that the above standards are at least as stringent as those established by the Board.***

2. A current certificate issued by the Certifying Board of the American Dental Assistants' Association, provided that the standards of the above are at least as stringent as those established by the Board.

(f) All licenses are renewable as of December 31 of every even numbered year following the year of its issuance. A license shall be renewed by the Board for a period of two years upon payment of a renewal fee in an amount to be determined by rule of the Commission, and complying with any other conditions or requirements established by the Board.

(g) Every radiologic technologist shall carry his license on his person at work. The license shall be displayed on request.

(h) An applicant who fails to pass the examination may reapply for the examination provided the applicant complies with the following:

1. Files a new application;
2. Pays the appropriate nonrefundable fee;
3. Submits the required documentation stated in (a) and (b) above; and
4. Satisfies any additional conditions or requirements set forth by the Board.

(i) Any person whose license or relicense is pending may be issued a temporary license which shall expire 90 days after the date of the next examination if the applicant is required to take same, or if the applicant does not take the examination on the date of the examination. No more than two temporary licenses may be issued to any individual.]

***i. The board may, in its discretion, issue a temporary license to any person whose license or relicense may be pending and in whose case the issuance of a temporary license may be justified by reason of special circumstances. A temporary license shall be issued only if the Board finds that its issuance will not violate the purposes of the act or tend to endanger the public health and safety. A temporary license shall expire 90 days after the date of the next examination if the applicant is**

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required to take the same, or, if the applicant does not take the examination, then on the date of the examination. In all other cases, a temporary license shall expire when the determination is made either to issue or deny the applicant a regular license and in no event shall a temporary license be issued for a period longer than 180 days. No more than two temporary licenses may be issued to any individual.*

7:28-19.5 Proceedings for suspension or revocation

***(a) The license of a radiologic technologist may be suspended for a fixed period, or may be revoked, or the technologist may be censured, reprimanded or otherwise disciplined, in accordance with the provisions and procedures defined in this subchapter, if after due hearing it is determined that he:**

1. Is guilty of any fraud or deceit in his activities as a radiologic technologist or has been guilty of any fraud or deceit in procuring his license;

2. Has been convicted in a court of competent jurisdiction, either within or without this State, of a crime involving moral turpitude, except that if the conviction has been reversed and the holder of the license discharged or acquitted, or if he has been pardoned or his civil rights restored, the license may be restored to him;

3. Is or has been afflicted with any medical problem, disability, or addiction which, in the opinion of the board, would impair his professional competence;

4. Has aided and abetted a person who is not a licensed radiologic technologist or otherwise authorized pursuant to N.J.A.C. 7:28-19.4 in engaging in the activities of a radiologic technologist;

5. Has undertaken or engaged in any practice beyond the scope of the authorized activities of a radiologic technologist pursuant to the act;

6. Has falsely impersonated a duly licensed or former duly licensed radiologic technologist or is engaging in the activities of a radiologic technologist under an assumed name;

7. Has been guilty of unethical conduct as defined by rules promulgated by the commission;

8. Has continued to practice without obtaining a license renewal as required by this act;

9. Has applied ionizing radiation to a human being without the specific direction of a duly licensed practitioner as defined herein; or to any person or part of the human body outside the scope of his specific authorization;

10. Has acted or is acting as an owner, co-owner, or employer in any enterprise engaged in the application of ionizing radiation to human beings for the purpose of diagnostic interpretation, chiropractic analysis, or the treatment of disease;

11. Has expressed to a member of the public an interpretation of a diagnostic X-ray film or fluorescent image;

12. Has used or is using the prefix "Dr.," unless entitled to do so pursuant to a degree granted, the word "doctor" or any suffix or affix to indicate or imply that the radiologic technologist is a duly license practitioner as defined herein when not so licensed;

13. Is or has been guilty of incompetence or negligence in his activities as a radiologic technologist.*

(NOTE: The existing text of (b) has been recodified under 7:28-19.6.)

*[([a]) ***(b)*** Proceedings against any licensed radiologic technologist under this section shall be instituted by filing

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with the Board a written charge or charges in the form of a petition under oath against such licensed radiologic technologist.

1. The charges may be *[preferred]* ***proffered*** by any person, corporation, association or public officer, or by the Department in the first instance.

2. A copy of the charges, together with a report of such investigation as the Department shall deem proper, shall be referred to the Board for its recommendation to the Commissioner.

[(b)] *** (c) *** If the Commissioner determines the matter to be a contested case, he shall either designate three or more of the Board as a committee to hear and report on the charges and shall set a time and place for the hearing or shall refer the matter to the Office of Administrative Law for hearing before an administrative law judge, pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (N.J.S.A. 52:14B-1), as amended and supplemented. ***For the purpose of this section, the Board, its committee or the administrative law judge shall have power to issue subpoenas for the appearance of witnesses, and to take testimony under oath.***

[(c)] *** (d) *** Upon the conclusion of the hearing, the hearing officer shall make a written report of his findings and conclusions and shall transmit them together with his recommendation, to the Commissioner.

1. If the accused is found not guilty by the Commissioner, he shall order the charges dismissed.

2. If the accused is found guilty of the charges, the Commissioner shall, in his discretion, issue an order suspending, revoking or annulling the license or registration of the accused, or otherwise disciplining him.

[(d)] *** (e) *** Where the license of any person has been revoked or annulled, under (c)2 above, the Board may after the expiration of two years accept an application for restoration of such license or registration.

7:28-19.6 Practice of radiologic technology

(a) The practice of diagnostic radiologic technology shall include: patient *[calibration;]* ***measurement,*** proper positioning for varied procedures, selecting adequate technique factors on control panel, *[making x-ray exposures],* demonstrating anatomy as requested by physician, selecting proper distance and exercising proper principles of radiation protection ***and making x-ray exposures.***

(b) The practice of radiation therapy technology shall include setting up the treatment position, delivering the required daily dose prescribed by the physician, certifying the record of the technical details of the treatment, selecting the required filter and treatment distance, making beam directional shells and molds, using diagnostic x-ray equipment for localization, assisting the physicist in calibration procedure, assisting in treatment planning procedures and exercising proper principles of radiation protection.

(c) The practice of dental x-ray technology shall include application of x-rays *[on]* ***to*** human beings to dental radiography for routine diagnostic purposes and exercising proper principles of radiation protection.

(d) The practice of chest x-ray technology shall include the application of x-rays *[on]* ***to*** human beings restricted to the chest areas which shall be limited to posterior-anterior, anterior-posterior, oblique, lateral, decubitus and apical *[eardotic]* ***[lordotic]** views of the chest for diagnostic purposes only, and exercising proper principles of radiation protection. It shall not include bronchograms, angiograms, cardiac catheterization procedures, tomography and similar procedures.

7:28-19.7 Supervision by a licensed practitioner

(a) Supervision of a Licensed Radiologic Technologist by a licensed practitioner shall require that such licensed practitioner, acting within the limits specified in the laws under which the practitioner is licensed shall determine that an x-ray exposure of a patient should be made and the part or parts of that patient's body which should be exposed, before a Licensed Radiologic Technologist may apply x-rays to a human being. Such supervision shall also require that only a licensed practitioner shall receive exposed and processed x-ray film for the purpose of diagnostic interpretation.

(b) Supervision by a licensed practitioner shall not require that a licensed practitioner oversee the Licensed Radiologic Technologist who is performing within the scope of his/her license as provided in N.J.A.C. 7:28-19.6.

(c) Nothing in this section shall be construed to apply to students where use of radiation is governed under any *[previous]* ***other*** sections of this subchapter.

7:28-19.8 Students

(NOTE: The existing text of (d) and (e) has been recodified under 7:28-19.9 as (p) and (q).)

(a) Candidates for admission to an educational program approved pursuant to N.J.S.A. 26:2D-24 shall satisfy the following minimum requirements:

1. Be of good moral character; and

2. Have successfully completed a four-year course of study in a secondary school approved by the State Board of Education or passed an approved equivalency test.

(b) All candidates for admission shall be required to submit a formal application. Candidates' high school and other credentials shall be obtained prior to selection. For accepted students these shall be kept on file at the sponsoring institution.

(c) A sponsoring institution shall report in writing to the Department the name and address of each new student enrolled within 30 days and each student who has successfully completed the course of study within 30 days.

(d) A sponsoring institution shall so limit the number of students enrolled that the ratio of students to full time Licensed Radiologic Technologists engaged in clinical instruction, both diagnostic or therapeutic at the clinical facilities shall be appropriate as determined by the Board.

(e) All students shall be provided with a personal radiation monitoring service, such as dosimeter or badge, during their period of attendance. Student exposure to radiation shall be within the occupational limits prescribed by N.J.A.C. 7:28-6.

1. Students shall routinely be informed of their most recent exposure readings and an attempt shall be made to find the cause and prevent recurrence of exposure which is deemed to be unnecessary.

2. Students shall not be permitted to be in the primary beam to hold patients during exposure, remain unnecessarily or unprotected in the x-ray room outside the control booth during exposure, or engaged in any other practices likely to result in a continuous and/or excessive exposures radiation.

(f) A sponsoring institution shall issue to each student who satisfactorily completes the course of study a formal certificate.

(g) A sponsoring institution shall issue to each candidate prior to admission a currently dated course catalog, bulletin, or other written statement, which shall describe the curriculum as a whole and the detailed course offered, list the faculty members with information regarding their qualifications, and inform each candidate of the amount and terms for payment

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of any tuition or other fees or expenses to be incurred. The policies relating to refund of fees, hours of attendance, vacation, holidays, absence, probation, uniforms, laundry, meals, stipends, rooms, transportation, and all requirements for satisfactory completion of the course of study shall be set forth clearly.

(h) All students shall have on them at all times while undergoing classroom or clinical education readily identifiable uniform marking or coloration or identification name plates indicative that they are students and not Licensed Radiologic Technologists. Inasmuch as schools differ, a variety of identification of students will be allowed, provided, however, that each school adopt and use a standard method of student identification approved by the Board of Examiners and registered with the Board.

7:28-19.9 Program approval

(a) The program in diagnostic x-ray technology shall be at least a 24-month course or its equivalent as determined by the Board. The Board may approve a program in diagnostic x-ray technology if it complies with the standards and criteria established by the Board. The curriculum for this course may follow CAHEA standards provided that the standards are not in conflict with Board policies.

(b) Accreditation Status Categories for Radiography and Radiation Therapy Programs shall be established by the Board and distributed to each program.

(c) The program of radiation therapy technology shall be at least a 24-month course of study or its equivalent as determined by the Board. The Board may approve a program of radiation therapy technology if it complies with the standards and criteria established by the Board. The curriculum for the course may follow CAHEA standards provided that the standards are not in conflict with the Board policies.

(d) The Board shall establish criteria and standards for programs of chest radiography and dental radiography and approve such programs upon finding that the standards and criteria have been met.

(e) All applications for program approval and accreditation shall be made to the Board on forms provided by the Department.

(f) A sponsoring institution applying for program approval shall supply all data necessary for a complete evaluation of its administration organization, faculty, physical facilities, student policies, curriculum and instruction and such other information and records as the Board may require.

(g) A site inspection of a sponsoring institution and its affiliates shall be made by an appointee of the Board or employee of the Department, except the Board may, in its discretion accept approval by the Joint Review Committee (JRC/ERT) in Education for Radiologic Technology and enter into a joint agreement with JRC/ERT to perform site inspections, in lieu of a separate State inspection.

(h) The Board may grant provisional accreditation based upon an agreement by a sponsoring institution to correct specified deficiencies within a period of time agreed to by the Board.

1. A sponsoring institution operating under a provisional accreditation shall within 15 days notify all enrolled students via certified mail of the institution's accreditation status.

2. All future correspondence and catalogs dispensed by such institutions regarding its programs shall include a statement regarding its provisional accreditation status.

(i) Accreditation and slash or Provisional accreditation may be withheld or withdrawn, for failure to correct specified

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deficiencies and where the department has determined that the institution is engaging in practices that are not consistent with acceptable standards for the operation of an educational institution. The sponsoring institution shall be notified in writing of the violation or violations resulting in withholding of accreditation or of the intent to withdraw accreditation and may within 30 days of said notification, petition the department in writing for a review thereof, and shall thereupon be given the opportunity to be heard on the violations by the Commissioner of Environmental Protection or *[his authorized representative.]* ***or shall be referred to the Office of Administrative Law.***

(j) A sponsoring institution and its affiliates may be required at anytime to submit or make available to the Department such information or records as the department ***or its authorized officers, employees or representatives*** requests and shall permit an authorized officer, employee or representative of the Department to perform site inspections. Failure to so perform shall be considered a violation of this section.

(k) A sponsoring institution whose accreditation has been withdrawn shall not be eligible for reaccreditation until such time as the deficiencies have been corrected.

(l) Accreditation may be withdrawn if the sponsoring institution does not have any students for a period of two successive years.

(m) A list of accredited programs and the criteria and standards as established by the Board will be available from the Department.

(n) To maintain accreditation, programs will be periodically reviewed by the Board to determine compliance with the standards and criteria as established by the Board. The Board may, at its discretion enter into agreement of settlement regarding its findings.

(o) Any violations of the standards may affect the program's accreditation status notwithstanding any other remedy available to the Department.

(p) The sponsoring institution shall prepare in satisfactory written form and make use of detailed curriculum, a course outline for each required subject, and adequate lesson plans for classroom instruction. These materials shall be on file at the sponsoring institution and shall be accessible to any authorized officer, employee or representative of the Department.

(q) The sponsoring institution shall schedule classroom sessions in advance and give students sufficient notice thereof.

7:28-19.10 Use of medical ionizing equipment by students

(a) Students enrolled in and attending a Board approved program of radiologic technology may utilize the equipment emitting ionizing radiation ***[on]* *in such a manner as to expose*** human beings for diagnostic or therapeutic purposes under the supervision of a licensed physician or a licensed radiologic technologist.

(b) Students enrolled in and attending a Board approved diagnostic, chest or dental radiologic technology program may apply radiation to a human being for necessary diagnostic purposes only at the approved clinical facilities of the sponsoring institutions.

1. The operation of the x-ray equipment by a student shall be for the purpose of clinical experience in radiologic procedures and shall occur under the direct supervision of a licensed radiologic technologist or a licensed practitioner.

2. Clinical supervision of the students shall be in accordance with Board policy.

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(c) Students enrolled in and attending a New Jersey State approved school or college of medicine, osteopathy, dentistry, podiatry, or chiropractic may apply radiation to a human being for diagnostic purposes under the direct supervision of a licensed practitioner.

(d) Students enrolled in and attending an approved program of radiation therapy technology may apply radiation to a human being for necessary diagnostic (simulation) and therapeutic procedures at the clinical facilities of such school and college for the purpose of clinical experience in the use of radiation therapy equipment. Clinical supervision of the students shall be in accordance with Board policy.

(e) The maximum hours of clinical and academic involvement for any student enrolled in an approved school of radiation therapy technology or diagnostic x-ray technology in New Jersey shall not exceed a total of 40 hours per week.

7:28-19.11 Criteria and Standards

The Board will establish criteria and standards for educational programs in each licensing category. These standards will be printed and available from the Department of Environmental Protection *, **Bureau of Radiation Protection, Trenton, New Jersey 08625.***

(a)

DIVISION OF ENVIRONMENTAL QUALITY

**Analytical X-ray Installations
Equipment Safety Requirements**

Readoption: N.J.A.C. 7:28-21.1-21.6

Proposed: June 4, 1984 at 16 N.J.R. 1310(a).
Adopted: August 1, 1984 by Max Weiss, Chairman,
Commission for Radiation Protection.
Filed: August 6, 1984 as R.1984 d.353, **without change**.
Authority: N.J.S.A. 13:1D-1 et seq. and 26:2D-1 et seq.

**Summary of Public Comments and Agency Responses:
No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:28-21.

HEALTH

(b)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**Standards; All Health Care Facilities
Ownership and Operation; Convicted
Persons**

Readoption: N.J.A.C. 8:31-26.1

Proposed: June 18, 1984 at 16 N.J.R. 1425(b).
Adopted: August 2, 1984 by J. Richard Goldstein,
M.D., Commissioner, Department of Health (with
approval of Health Care Administration Board).
Filed: August 6, 1984 as R.1984 d.365, **without change**.

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

**Summary of Public Comments and Department Responses:
No comments were received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:31-26.1.

(c)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**Standards: All Health Care Facilities
Employees Physical Examinations (Health
Divisions)**

Readoption: N.J.A.C. 8:31-26.3

Proposed: June 18, 1984 at 16 N.J.R. 1426(a).
Adopted: August 2, 1984 by J. Richard Goldstein,
M.D., Commissioner, Department of Health (with
approval of Health Care Administration Board).
Filed: August 6, 1984 as R.1984 d.361, **without change**.

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

Summary of Public Comments and Department Responses:

The Department received five letters of comment regarding the readoption of N.J.A.C. 8:31-26.3. The comments were submitted by the Chest and Health Association of Southern New Jersey, the Headquarters of the Emphysema Control

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Campaign, the Monmouth County Tuberculosis Control Program, the New Jersey Health Officers Association, and the New Jersey State Office of the Ombudsman for the Institutionalized Elderly. In each case the commentor recommended that N.J.A.C. 8:31-26.3(a)1 be extended to require Mantoux tuberculin skin testing in other types of health care facilities in addition to general hospitals and special hospitals which are currently required to perform this test. All commentors recommended that N.J.A.C. 8:31-26.3(a)1 be revised to require Mantoux tuberculin skin testing in long-term care facilities; one commentor recommended that the rule also include home health agencies; one commentor recommended that the rule also include residential health care facilities; and two commentors recommended that the rule require Mantoux tuberculin skin testing in all health care facilities.

The reasons given by the commentors for their recommendations included the following:

“Infection of any kind can touch off the pneumonic-influenza syndrome among older patients.”

“Surely the debilitated patients in long term care facilities and their care givers are as deserving of the protection described in the paragraphs on Social Impact (16 N.J.R. 1427) as are those in general and special hospitals. As a matter of fact, the prolonged, intimate contact between long term care patients and their care givers probably places them at greater risk than their counterparts in hospitals.”

“The cost of providing tuberculin testing for new employees is a negotiable expense when compared to the cost in both health and money of tracking contacts and treating new cases in these facilities which develop because of a needless exposure to tuberculosis.”

“The proposal, by continuing the policy of not requiring tuberculin testing of employees of those health care facilities in which the frail and susceptible elderly of our State live is completely inconsistent with the Department’s above-stated policy to safeguard the elderly.”

“Further, those patients are the debilitated patients, most susceptible to acquiring infection from one of the facility’s care-givers.”

The Department responded by letter to each commentor as follows:

The Department responded that the rule, as noted, does not require tuberculin testing of employees of all types of health care facilities but only of employees of general hospitals and special hospitals.

The Department has decided, on the basis of information provided by the Department’s Communicable Disease Control Services, not to revise the rule in the manner requested. This decision rests primarily upon the following considerations:

(1) Since the majority of instances of tuberculosis seem to involve people residing in the community and are diagnosed in hospitals, the suggested revision appears to lack clearly demonstrated empirical justifications.

(2) Departmental investigations of instances of tuberculosis in long-term care facilities of which the Department is aware do not usually reveal “significant numbers of previously undiagnosed cases.”

(3) Literature suggests that the transmission of tuberculosis in health care facilities can be controlled through such methods as the development and implementation of effective infection control policies and procedures.

(4) In 1983, the tuberculosis rates in Essex County and Sussex County were 27.5 new cases per 100,000 and 1.7 new cases per 100,000, respectively. Since the prevalence of tuber-

culosis in New Jersey varies dramatically as a function of geography, a geographically-invariant requirement appears to be unwarranted.

For these reasons, the Department contends that tuberculin testing of employees of health care facilities other than general hospitals or special hospitals should not be required by state regulation at the present time. N.J.A.C. 8:31-26.3, however, does not prohibit any facility from requiring its employees or patients to undergo tuberculin tests.

The letters of comment have been forwarded to Dr. David R. Cundiff, who is the Assistant Director of the Department’s Communicable Disease Control Services. The commentors were advised that they could obtain additional technical information regarding the Department’s position on mandatory tuberculin testing by calling Dr. Cundiff at (609) 292-7100.

Full text of the readoption can be found in the New Administrative Code at N.J.A.C. 8:31-26.3.

Full text of the adopted amendments to the readoption follows.

8:31-26.3 Employee physical examinations (health evaluations)

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

(c) Paragraph (a)2 above shall not apply to the following health care facilities:

1. Long-term care facilities;
2. Non-residential medical day care facilities;
3. Residential health care facilities.

(a)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**Standards; All Health Care Facilities
Child Abuse and Neglect**

Readoption: N.J.A.C. 8:31-26.4

Proposed: June 18, 1984 at 16 N.J.R. 1428(a)

Adopted: August 2, 1984 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).

Filed: August 6, 1984 as R.1984 d.357, **without change**.

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

Summary of Public Comments and Department Responses:

The Department received one comment from the Association for Children of New Jersey supporting the proposed readoption. The Department acknowledged receipt of the comment.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:31-26.4.

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Full text of the adopted amendment to the readoption follows.

8:31-26.4 Child abuse and neglect

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

(c) The standards herein shall not apply to the following health care facilities:

1. Long-Term Care Facilities;
2. Non-Residential Medical Day Care Facilities;
3. Residential Health Care Facilities;
4. Drug Treatment Facilities.

¹ Copies of the Law can be obtained from the local district office of Division of Youth and Family Services (DYFS) or from the Office of Program Support, Division of Youth and Family Services, Trenton, New Jersey 08625.

(a)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**Standards; All Health Care Facilities
Licensure Fees**

Readoption: N.J.A.C. 8:31-26.5

Proposed: June 18, 1984 at 16 N.J.R. 1430(a).
Adopted: August 2, 1984 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).
Filed: August 6, 1984 as R.1984 d.364, **without change**.

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

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:31-26.5. Also, see adopted amendment in this Register.

(b)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**Standards for Licensure of Hospital Facilities
Licensure Fees**

**Adopted Amendments: N.J.A.C. 8:31-26.5
and 8:43B-1.7**

Adopted New Rule: N.J.A.C. 8:43B-1.8

Proposed: April 16, 1984 at 16 N.J.R. 802(a).

Adopted: August 2, 1984, by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: August 6, 1984 as R.1984 d.358 **without change**.

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

Effective Date: August 20, 1984.

Summary of Public Comments and Agency Responses:

One written letter of comment was received during the comment period from Bridgeton Hospital. No changes were made in the regulations.

Comment: "If the Department of Health is going to increase their revenue by imposing additional fees on hospitals, I think the department has an obligation to add to the regulation a requirement that the Rate Setting Agency must add these fees to the hospital rates."

Response: In the past, the Department has taken licensure rules into account in the determination of reimbursement rates and will continue to take licensure rules into account in the future.

Comment: "I do not feel it is proper for the department to have item #10 at this point in time. If the department intends to charge additional fees for other services, it should then at that time publish these other services in the State Register for public comment."

Response: In answer to this comment regarding N.J.A.C. 8:43B-1.8(a)10, "other services to be designated by the Department," this rule is necessary for the Department since the organization of individual facilities will vary and individual facilities may use different terminology for similar services. Furthermore, the regulation does not give the Department "the right to add fees at will" since the regulation states that the total fee shall not exceed \$2,000.00. The maximum fee of \$2,000.00 has been established by law, Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto.

Full text of the adopted amendments and new rule follows. See also readoption, this Register.

8:31-26.5 Licensure fees

(a) The department shall charge a nonrefundable fee for the filing of an application for licensure of a health care facility and for the annual renewal of the license in accordance with the following:

1. All inpatient health care facilities, except hospitals, shall pay a fee based on the number of beds in the facility as follows:

Number of Beds	Fees
1- 99	\$100.00
100-199	200.00
200-299	300.00
300-399	400.00
400-999	500.00

"Hospital" is defined in N.J.A.C. 8:43B-1. Facilities referred to as "satellites" shall be included among those referred to as "hospitals" in N.J.A.C. 8:31-26.5 for the purposes of issuance of licenses and assessment of licensure fees.

2. All other health care facilities, except hospitals, shall pay a fee of \$100.00.

(b) (No change.)

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8:43B-1.7 License
(a)-(e) (No change.)

8:43B-1.8 Fees
(a) The department shall charge a nonrefundable fee of \$500.00 for the filing of an application for licensure of a hospital† and for the annual renewal of the license, and an additional nonrefundable fee of \$150.00 for each of the following services. The total fee for the filing of an application for licensure of a hospital and for the annual renewal of the license shall not exceed \$2,000.00.

1. Obstetric and newborn services;
2. Psychiatric services;
3. Pediatric services;
4. Long-term care unit;
5. Inpatient renal dialysis services;
6. Cardiac diagnostic and/or surgical services;
7. Alcohol abuse treatment services;
8. Inpatient drug abuse treatment services;
9. Intensive care unit/coronary care unit; and
10. Other services to be designated by the Department.

†“Hospital” is defined in this subchapter. Facilities referred to as “satellites” shall be included among those referred to as “hospitals” in N.J.A.C. 8:43B-1.8 for the purposes of issuance of licenses and assessment of licensure fees.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Standards for All Health Care Facilities Reporting Information to the Board of Medical Examiners

Adopted New Rule: N.J.A.C. 8:31-26.6

Proposed: April 16, 1984 at 16 N.J.R. 804(a).
Adopted: August 2, 1984, by J. Richard Goldstein,
M.D., Commissioner, Department of Health (with
approval of Health Care Administration Board).
Filed: August 6, 1984 as R.1984 d.359, **without change**.

Authority: N.J.S.A. 26:2H-1 et seq., specifically
26:2H-5 and P.L. 1983 C. 247.

Effective Date: August 20, 1984.

Summary of Public Comments and Agency Responses:

The Department received eight letters of comment regarding N.J.A.C. 8:31-26.6 Reporting information to the State Board of Medical Examiners. Seven letters were from hospitals: Bridgeton Hospital, Cooper Hospital/University Medical Center, East Orange General Hospital, Middlesex General-University Hospital, Palisades General Hospital, St. Elizabeth Hospital, and The Northern Ocean Hospital System, Inc. The eighth letter was from the New Jersey Hospital Association. Recommendations for change were not accepted and no changes were made in the rule.

The following two comments indicated support of the rules: “Concerning the proposed regulations, I wish to suggest that not only the Board of Medical Examiners but also each hospital in the State has the responsibility of assuring the public of greater protection and safety.” “We are supportive of the need to assist the Board of Medical Examiners as outlined in monitoring the practice of medicine in New Jersey.”

Three commentors inquired about reporting to the New Jersey State Board of Medical Examiners a temporary suspension of privileges of a physician or surgeon because of his or her incomplete medical records. The Department responded that, based on a telephone conversation with a representative of the Board, it is the Department’s understanding that the Board’s interpretation of proposed N.J.A.C. 8:31-26.6 excludes reporting of temporary suspension of privileges under such circumstances since this is considered an administrative function rather than a governing body action. The commentors were advised to contact the New Jersey State Board of Medical Examiners directly if they had further questions regarding this matter.

Three commentors offered comments regarding N.J.A.C. 8:31-26.6(a)2 which requires a health care facility to report to the state Board of Medical Examiners “A medical malpractice liability insurance claim settlement, judgment or arbitration award in which the facility is involved.” One commentor stated: “The requirement of reporting any malpractice settlement, judgment or arbitration award does not serve either to protect the public or to assist the State Board of Medical Examiners in its monitoring function. A malpractice settlement does not constitute an admission of wrong doing; in fact, settlements are often entered into purely because of the economic realities facing the insurance carrier, often without the explicit consent of the physician himself. Therefore, I urge you to withdraw Section 2, i-vi, from the new rule.” The second commentor stated: “I would like to offer the following comment with respect to the reporting of malpractice liability insurance settlements. Except in the minority of medical liability cases, hospitals are unaware of the details of settlements made by physicians’ insurance carriers. Relying on hospitals as the source of this information will yield inconsistent and spotty reporting and I feel that this section of the proposed rule should be closely reviewed. Would it not be preferable, in the interest of fairer reporting, to obtain malpractice information from the doctors themselves on a voluntary basis, perhaps through the licensing process as hospitals have done as part of the credentialing and reappointment process?” The third commentor stated: “Hospitals do not always know of medical malpractice liability claim settlements as it relates to the physician. I understand the regulation does not expect us to report information of which we may not have knowledge. However, you do state we must report any settlement in which we are involved. You need to further define involved. Many times in the past hospitals may have initially been involved with a claim but later released. I feel we cannot be expected to report any settlement since we, in fact, do not have any knowledge after we have been released from a claim.”

The Department responded that Public Law 1983, Chapter 247, the law upon which the proposed new rule is based, requires that health care facilities notify the New Jersey State Board of Medical Examiners of “any medical malpractice liability insurance claim settlement, judgment or arbitration award to which the health care facility is a party.” The intent of the proposed new rule is that the health care facility will report to the Board settlements, judgments, or arbitration

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awards made by the facility's insurance carrier, not by the physician's insurance carrier or by the physician. Another section of Public Law 1983, Chapter 247, which is beyond the jurisdiction of the New Jersey State Department of Health, requires that the insurance companies notify the New Jersey State Board of Medical Examiners "of any medical malpractice claim settlement, judgment or arbitration award for over \$25,000.00, involving any physician or surgeon licensed by the board and insured by the insurer or insurance association." The law further states that "Any physician or surgeon licensed by the board who is not covered by medical malpractice liability insurance shall notify the board in writing of any medical malpractice judgment or arbitration award for over \$25,000.00, to which the physician or surgeon is a party."

The Department agrees that a malpractice liability insurance claim settlement, judgment or arbitration award does not in itself indicate guilt. Public Law 1983, Chapter 247 states that "The board shall not presume that the settlement, judgment or award is conclusive evidence in any disciplinary proceeding."

The Department cannot withdraw N.J.A.C. 8:31-26.6(a)2, as requested, since Public Law 1983, Chapter 247, requires that health care facilities report this information to the New Jersey State Board of Medical Examiners. Furthermore, the specific information included in N.J.A.C. 8:31-26.6(a)2 was delineated by a committee established by the Department of Health consisting of representatives of the New Jersey Hospital Association, the Medical Society of New Jersey, and the New Jersey State Board of Medical Examiners.

In response to the comment that a facility may initially be involved with a claim and later released, if the facility has already reported information to the New Jersey State Board of Medical Examiners, the facility should notify the Board by letter that the facility has been released from the claim.

Two letters of comment included recommendations regarding the activities of the New Jersey State Board of Medical Examiners. The commentors recommended that the Board provide information to health care facilities to assist the facilities in their evaluation of physicians' credentials and notify the facilities of Board action against a physician or surgeon.

The Department responded that it is the Department's understanding that the Board sends notification of action against a physician or surgeon to the Medical Society of New Jersey and to the New Jersey Hospital Association. The Board is not required by law to function as a central source of information regarding the physicians and surgeons licensed in New Jersey. The information that the Board receives is not made public until the Board files a claim or takes action against a licensee. The Department indicated that the activities and functions of the New Jersey State Board of Medical Examiners are beyond the purview of the New Jersey Department of Health.

One commentor stated that N.J.A.C. 8:31-26.6(a)1vi and 8:31-26.6(a)2vi is "a vague open ended clause that will create hardships for reporting purposes in the future as 'other information' is defined." Another commentor indicated that they "never agreed to include 'other information' is defined." Another commentor indicated that they "never agreed to include 'other information required by the Board.'" This statement is ambiguous, permissive, and not required by law and should therefore be stricken." The Department responded that this provision of the proposed new rule cannot be deleted, as recommended, since Public Law 1983, Chapter 247, the law upon which the proposed new rule is based, requires that a health care facility "provide such other information

relating to the proceeding or action as may be requested by the board." The law further states that "A health care facility which fails to provide such notice or shall fail to cooperate with such request for information by the board, shall be subject to such penalties as the State Department of Health may determine pursuant to section 13 of P.L. 1971, c. 136 (C. 26:2H-13)."

One commentor stated that "the threshold reporting requirement for malpractice settlements has been eliminated thus expanding the statute." The Department's response indicated that the interpretation of "threshold" is a dollar amount below which the facility would not be required to report a medical malpractice liability claim settlement, judgment or arbitration award to the New Jersey State Board of Medical Examiners and that Public Law 1983, Chapter 247 does *not* contain such a provision regarding reporting by health care facilities to the New Jersey State Board of Medical Examiners. The law *does* contain such a provision which is applicable to an insurer or insurance association reporting to the Board. Therefore, such a provision was not "eliminated" since it was not included in the portion of the law upon which the proposed new rule was based.

Full text of the adopted new rule follows.

8:31-26.6 Reporting information to the State Board of Medical Examiners

(a) The facility shall establish and implement written policies and procedures for reporting to the State Board of Medical Examiners in writing on forms provided by the Department, within 30 days of the proceeding or action, request, settlement, judgment or award, information in compliance with P.L. 1983, Chapter 247.¹ The information reported shall include, but not be limited to, the following:

1. A disciplinary proceeding or action taken by the governing body against any physician or surgeon licensed by the board when the proceeding or action results in a physician's or surgeon's reduction or suspension of privileges or removal or resignation from the medical staff, including:

- i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was the subject of governing body action which resulted in the reduction or suspension of privileges, or the removal or resignation of the physician or surgeon from the medical staff;
- ii. Nature and grounds of proceedings;
- iii. Date(s) of precipitating event(s) and of official action taken;
- iv. Name, title and telephone number of facility official(s) having knowledge of existence and location of pertinent records or persons familiar with the matter;
- v. Pendency of any appeal; and
- vi. Other information relating to the proceeding or action as may be requested by the Board;

2. A medical malpractice liability insurance claim settlement, judgment or arbitration award in which the facility is involved, including:

- i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was involved in the medical malpractice liability insurance claim settlement, judgment or arbitration award;
- ii. Nature and grounds of proceedings;
- iii. Date(s) of precipitating event(s), and of official action taken;
- iv. Name, title and telephone number of facility official(s) having knowledge of the existence and location of pertinent records or persons familiar with the matter;

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v. A copy of the complaint, response, and settlement order, judgment or award; and

vi. Other information relating to the settlement, judgment, or arbitration award as may be required by the Board.

¹ Submit forms to the New Jersey State Board of Medical Examiners, 28 West State Street, Trenton, NJ 08608. If you have questions, you may contact the Board office at (609) 292-4843.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need and Designation: Perinatal Services Standards and General Criteria

Readoption with Amendments: N.J.A.C. 8:33C

Proposed: June 18, 1984 at 16 N.J.R. 1431(a).
Adopted: August 3, 1984, J. Richard Goldstein, M.D.,
Commissioner, Department of Health (with approval
of the Health Care Administration Board).
Filed: August 6, 1984 as R.1984 d.360 **without change**.

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

Effective Date of Readoption: August 6, 1984.
Effective Date of Amendments: August 20, 1984.
Expiration Date pursuant to Executive Order 66(1978):
August 6, 1989.

Summary of Public Comments and Department Responses:

Comments were received during the public comment period from the following:

- University of Medicine and Dentistry of New Jersey
 - Department of Pediatrics
 - Statewide Perinatal Services and Research Center
- Overlook Hospital
- New Jersey State Nurses Association

General Criteria:

Comment: The New Jersey State Nurses Association commented that the Department of Health has not been able to evaluate reasonableness of costs in the perinatal system, and that the onus should not be placed on applicants to fulfill this function in the designation process. The Association further commented that the proposed rule limiting reimbursement to facilities at their designated level of service would further preclude adequate reimbursement necessary to meet the mandated standards of care.

Response: The proposed rule regarding reasonableness of costs is intended to be a guideline in measuring whether facilities are appropriately and efficiently delivering perinatal care in terms of comparing costs of peer group hospitals. While neither the Department nor the Hospital Research and Educational Trust have been able to secure funding to fully evaluate the impact of the perinatal regionalization demonstration on the costs of the health care system, the review of individual hospital designation or Certificate of Need applications by law must incorporate an analysis of the costs of the proposed services.

Limitations on reimbursement of hospitals according to their level of care is necessary to the effective implementation of perinatal regionalization. The Department intends to more closely address reimbursement issues through both further internal analysis and by obtaining the recommendations of the Perinatal Technical Advisory Committee.

Comment: The Statewide Perinatal Services and Research Center commented on behalf of nursing leaders and educators from Level III Hospitals who reviewed the proposed rules as a group in a recent workshop session. The Center commented that the functions of Level II Centers, as described in 1.2(b)l.iv., should be modified in order to clarify in (A) what the term "prolonged ventilator assistance" meant. Under Level III functions, it was further suggested that the "transfer agreements and arrangements" be more specifically defined. It was also recommended that "consultation services to the region" be required in addition to the continuing educational services.

Response: The planning standards contained in these rules are intended to guide reviewing bodies in determining whether hospitals can meet or exceed the general levels of care as described in the sections related to functions of Levels I, II, and III. The Department is preparing detailed licensure standards to govern all levels of care which would more appropriately address these and other recommendations for specific operational standards.

Comment: Overlook Hospital submitted comments developed by its Director of Neonatology and Director of Obstetrics and Gynecology. They commented generally that the rules should be substantially revised to reflect the considerable changes in the field that have transpired over the last ten years. It was indicated that recent trends on a national level suggest that perinatal regionalization is no longer a valid concept. Many areas where regionalization was instituted have returned to a system emphasizing the role of the community hospital in providing Level II care with a wider and more sophisticated range of services. The availability of obstetricians with board certifications in neonatology or nurses who have now received specialized education in neonatal care suggests that the previous need to ration tertiary care through regionalization is no longer necessary. They emphasized that personnel, not equipment, is the key element in regionalization.

The 1983 edition of the *Guidelines for Perinatal Care*, published cooperatively by the American Academy of Pediatrics, the American College of Obstetrics and Gynecology, as well as the March of Dimes, is cited as being supportive of this trend in the perinatal system. The commentators further suggest that the latest concept of regional care would be a "self-designated network of coordinated professional services and institutional resources."

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Response: The Department recognizes that there are continuing changes in the perinatal delivery system. These are complex in nature and require further study and assessment prior to proposing significant changes to the New Jersey perinatal designation system, which was implemented only three years ago. The Commissioner's Perinatal Technical Advisory Committee will be established for the very purpose of providing the Department with informed advice such as this on future directions for the regionalization program. Any modifications to the designation system resulting from these deliberations will be proposed as amendments to these rules prior to the re-designation process.

Comments on Appendix A

Comment: The University of Medicine and Dentistry of New Jersey suggested that the Department modify current requirements that Clinical Nurse Coordinators, Supervisors, or Head Nurses, as delineated in Level I, II, and III standards, be eligible for American Nursing Association (ANA) Board certification in maternal-fetal nursing through completion of ANA approved courses. This comment was also made by the Statewide Perinatal Services and Research Center on behalf of Level III nurses. The commentors indicated that ANA approved courses are infrequently available and are often given in inconvenient and distant locations. Thus, the requirement presents an unreasonable hardship on all nurses in such positions.

It was suggested that a more appropriate alternative would be to substitute continuing education courses in maternal-fetal nursing accredited by the Nursing Association of the American College of Obstetricians and Gynecologists (NAACOG), which accepts programs offered through the ANA, the National League of Nursing, State Nurses Associations or Boards, and several other national or regional bodies. The commentors also suggested the requirement be effective within one year of employment "rather than within one year of certification or designation as a Level I" (or II, or III).

Response: The Department concurs with these suggestions and will propose the substitution of NAACOG accreditation and "within one year of employment" as an amendment to these rules at a future date.

Comment: The Statewide Perinatal Services and Research Center commented on numerous technical and operational standards in Appendix A. These included clarification of services and equipment offered at all levels of care; modifications to nursing staffing patterns in all levels of care; and changes to transport system requirements for Level III centers.

Response: The Department feels many of the suggested modifications have merit and should be implemented. In that Licensure standards for all levels are currently under development, it is felt more appropriate for specific operational standards to be incorporated into the Manual of Licensure Standards rather than in planning criteria. The suggestions by the commentors will be forwarded to the Standards Development Unit of the Division of Health Facilities Evaluation for consideration.

Comment: The New Jersey State Nurses Association commented that two of the proposed additions to Level III standards (G—Perinatal Outreach Education; H—High Risk Infant Follow-up Services) were worthy but funding is limited and the requirements cannot be implemented effectively. Proposed additions on Regional Organizational Management and Uniform Patient Charting were supported.

Response: As the commentor noted, all Level III centers currently are funded by the Department's Maternal and Child Health Services for High-Risk Infant Follow-up Services and all are involved with Perinatal Outreach Education. As the impetus for proposing these additions came from existing Level III centers, and in that no detailed programmatic requirements have been mandated requiring significant expenditures of funds, the Department believes these changes to be reasonable and an integral part of a Level III's responsibilities and functions.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:33C-1.

Full text of the adopted amendments to the readoption follows.

SUBCHAPTER 1. STANDARDS AND GENERAL CRITERIA

8:33C-1.1 Introduction

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

(c) In 1974, the maternal and child health program of the New Jersey Department of Health surveyed all hospitals in the State offering obstetrical care. Their survey suggests that existing referral patterns for perinatal services are compatible with the boundary designations of each New Jersey's five health system agencies (HSAs). As a result, the HSAs are in an advantageous position to plan system-wide perinatal services for primarily self-contained perinatal service areas.

(d)-(g) (No change.)

(h) Review of 1982 data on New Jersey's 71 hospitals providing obstetrical services indicates that over one-third (24) had fewer than 1,000 annual deliveries. Despite the low numbers of deliveries, these units must be fully staffed with the nursing and other personnel necessary to care properly for the mothers and infants. This has resulted in the underutilization of the time and talents of highly skilled personnel, lending credence to the need for regionalizing these services.

(i) For purposes of implementing this regulation, the Certificate of Need (Certification) process continues to apply to any hospital beginning an obstetrical service for the first time or which proposes any change in their obstetrical service; for those hospitals which proposed only to maintain their existing level of obstetrical care, the Department of Health has implemented, in concert with the HSAs, a designation procedure which included the submission of a designation application. Designation or certification at a particular level of care, appropriate to the needs of the community, is required for reimbursement through the Department's rate-setting mechanism.

8:33C-1.2 Standards and general criteria

(a) The Maternal and Infant Care Services (MICS) Committee prepared "Levels of Care Criteria for the Regionalization of Maternal and Neonatal Services in New Jersey." The full text of the MICS committee's standards and criteria appears as appendix A of this regulation.

(b) The State of New Jersey adopts the "Levels of Care Criteria for the Regionalization of Maternal and Neonatal Services in New Jersey" for purposes of planning, certification of need, and designation of perinatal services. In addition, the following standards and general criteria shall apply.

1. Standards:

i.-iii. (No change.)

iv. Functions

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(1)-(2) (No change.)

(3) Level III: The Level III Regional Perinatal Center must provide care for normal patients and also for complicated fetal, neonatal and maternal cases which require more intensive care than can be provided in a Level II Perinatal Unit. Services to be provided include: twenty-four hour fetal scalp and neonatal arterial blood gas analysis; ultrasonic and radioisotope capabilities; the ability to continuously monitor neonatal blood pressure, heart rate and respiration; and the capability to maintain respiration on a long-term basis. Being a regional center, the Level III hospital will be responsible for transfer agreements and arrangements, data collection and analysis for the region and for continuing education input into the region. The Level III Regional Perinatal Center must have a permanent monitor in the delivery/C-section room for monitoring capability until the moment of delivery and a neonatal intensive care unit.

(A) (No change.)

(B) Hospitals must meet the functional requirements of each level, as contained in Appendix A.

2. General Criteria: Each application for certification or designation as a perinatal I or II unit or III center must meet each of the following minimum general criteria.

i.-ii. (No change.)

iii.

The applicant must demonstrate that its costs are reasonable in comparison with other facilities which offer the same type of program.

iv.-vi. (No change.)

vii. Services:

(1) and (2) (No change.)

(3) No facility shall be eligible for either the certification or designation process until the health systems agency in which the applicant facility is located has adopted and submitted to the Department of Health a perinatal services plan for its health service area.

3. Reimbursement:

i. Reimbursement shall be made only to those facilities which are certified or designated through the appropriate review mechanism. Reimbursement shall be made only at the level at which certification or designation is granted.

ii. Reimbursement for any capital or operating cost associated with certification or designation will be determined under the methodology and reviews for reasonableness as stipulated in applicable hospital reimbursement regulations. Certificate of Need approval or designation does not mandate nor imply the inclusion of any capital or operating costs in the facilities reimbursement levels.

8:33C-1.3 Perinatal Technical Advisory Committee

(a) The Commissioner shall appoint a Perinatal Technical Advisory Committee to provide assistance to the Department in the implementation of these regulations.

(b) There shall be a maximum of 15 members, which shall include individuals having expertise in the administration, planning and delivery of perinatal services from the fields of nursing, medicine, hospital administration and finance. At a minimum there shall be two consumer members who are familiar with the health planning process in the State of New Jersey.

Appendix A. Delete in its entirety.

Appendix B. Re-codify as Appendix A.

Level I (No change.)

Level II (No change.)

Level III

A.-F. (No change.)

G. Perinatal Outreach Education

The Regional Perinatal Center shall provide an identified program of Perinatal Outreach Education to its region, including components specifically designed to address the educational needs of physicians, nurses, and consumers.

H. High-Risk Infant Follow-up Services

The Regional Perinatal Center shall provide a program of High-Risk Infant Follow-up Services to its region, including components of Monitoring and Assessment, Education, and Referral.

I. Regional Organization Management

The Level III Center shall establish a regional organizational management structure which provides a means to promote cooperative planning and delivery of regional perinatal services. At a minimum, an Advisory Committee shall be established that includes representatives from the referring hospitals of the region, including administrative, nursing, and medical personnel.

J. Uniform Patient Charting

The Level III Center shall demonstrate efforts to establish a uniform patient charting system in all hospitals of its network.

(a)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**Standards for Licensure of Residential
Health Care Facilities
Building Requirements Standards**

Readoption: N.J.A.C. 8:43-2

Proposed: February 21, 1984 at 16 N.J.R. 325(a).

Adopted: August 2, 1984 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with Approval of Health Care Administration Board).

Filed: August 6, 1984 as R.1984 d.363, **without change.**

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

**Summary of Public Comments and Agency Responses:
No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:43-2.

HEALTH

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(a)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**Standards for Licensure of Hospital Facilities
Physical Plant**

Readoption: N.J.A.C. 8:43B-3

Proposed: February 21, 1984 at 16 N.J.R. 327(a).
Adopted: August 2, 1984, J. Richard Goldstein, M.D.,
Commissioner, Department of Health (with the Ap-
proval of Health Care Administration Board).
Filed: August 6, 1984, as R.1984 d.366 **without change**.

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

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey
Administrative Code at N.J.A.C. 8:43B-3.

(b)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**Manual of Standards for Hospital Facilities
Medical Records**

Readoption: N.J.A.C. 8:43B-7

Proposed: June 18, 1984 at 16 N.J.R. 1433(a).
Adopted: August 2, 1984 by J. Richard Goldstein,
M.D., Commissioner, Department of Health (with
approval of Health Care Administration Board).
Filed: August 6, 1984 as R.1984 d.362, **without change**.

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

**Summary of Public Comments and Department Re-
sponses:**

Two letters of comment were received regarding the pro-
posed readoption of N.J.A.C. 8:43B-7 during the comment
period. The Medical Record Association of New Jersey, Inc.,
and Morristown Memorial Hospital requested that N.J.A.C.
8:43B-7 be readopted for one year instead of three years as
proposed. The Department has sought assistance from the
Medical Record Association of New Jersey, Inc., in the devel-
opment of the new rules for N.J.A.C. 8:43B-7 and agrees that
the current rules are outdated and in need of revision in order
to reflect the current state of the art for medical record serv-
ices in hospital facilities. However, because of time con-
straints and priorities within the Department and the extensive
and considerable variables which need further exploration
and development, the Department responded that readoption
of N.J.A.C. 8:43B-7 for one year may not allow adequate
time for revision of this subchapter. The intent of the Depart-
ment is to complete and promulgate the proposed new rules as
expeditiously as possible which may not require a period of
three years. No changes were made in the proposed readop-
tion.

Full text of the readoption can be found in the New Jersey
Administrative Code at N.J.A.C. 8:43B-7.

(c)

HEALTH AID SERVICES

**Public Health Priority Funding
Administrative Policies**

Readoption: N.J.A.C. 8:48

Proposed: June 18, 1984 at 16 N.J.R. 1435(a).
Adopted: July 31, 1984, J. Richard Goldstein, M.D.,
Commissioner, Department of Health.
Filed: August 6, 1984 as R. 1984 d.317 **without change**.

Authority: N.J.S.A. 26:2F-1 et seq., specifically 26:2F-
13.2.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New
Jersey Administrative Code at N.J.A.C. 8:48.

ADOPTIONS

HUMAN SERVICES

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Podiatry Services Manual General Provisions

Readoption: N.J.A.C. 10:57-1

Proposed: June 18, 1984 at 16 N.J.R. 1441(a).
Adopted: July 25, 1984 by George J. Albanese,
Commissioner, Department of Human Services.
Filed: July 25, 1984 as R. 1984 d.343, **without change**.

Authority: N.J.S.A. 30:4D-6b(8), 7 and 7b.

Effective Date: July 25, 1984.
Expiration Date pursuant to Executive Order 66(1978):
July 25, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found at in the New Jersey Administrative Code at N.J.A.C. 10:57-1.

(b)

DIVISION OF PUBLIC WELFARE

Public Assistance Manual Basis for Recovery of Overpayments

Adopted Amendment: N.J.A.C. 10:81-4.23

Proposed: June 4, 1984 at 16 N.J.R. 1314(a).
Adopted: August 2, 1984, by George J. Albanese,
Commissioner, Department of Human Services.
Filed: August 6, 1984 as R.1984 d.347, **without change**.

Authority: N.J.S.A. 44:7-6 and 44:10-3, P.L. 97-35,
and 45 CFR 233.20(a)(13)(i).

Effective Date: August 20, 1984.
Operative Date: September 1, 1984.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

10:81-4.23 Basis for recovery of overpayments

(a) Overpayment means a financial assistance payment received by or for an eligible unit for a payment month which exceeds the amount for which that unit was eligible.

(b) Overpayments may occur through administrative error; failure of a client to inform the county welfare agency of a change in income, resources, or circumstances; or when the client has received continued assistance at an unreduced level pending a fair hearing but has been found ineligible to receive such assistance by the fair hearing decision.

(c) The CWA shall seek recovery of all overpayments regardless of fault including payments caused by administrative action or inaction. The CWA shall recover such overpayments in accordance with procedures set forth in N.J.A.C. 10:82-2.19.

(c)

DIVISION OF PUBLIC WELFARE

Monthly Reporting Policy Handbook Benefit Computation Following Suspension of Grant and Loss of Employment

Adopted Amendment: N.J.A.C. 10:90-4.2

Proposed: May 21, 1984 at 16 N.J.R. 1159(a).
Adopted: August 6, 1984 by, George J. Albanese,
Commissioner, Department of Human Services.
Filed: August 6, 1984 as R.1984 d.348, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 44:7-6, 44:10-3, 30:4B-2 and 45 CFR 233.34(c)(3).

Effective Date: August 20, 1984.
Operative Date: September 1, 1984.

Summary of Public Comments and Agency Responses:

Comment: The only comment received was submitted by a county welfare agency director who observed that while the proposed change dealing with suspension of grant and loss of employment alleviates some of the difficulties of employed clients caused by the retrospective budgeting procedure, the regulation is not expanded enough to provide equity to all working clients, particularly in those cases where the AFDC grant will be computed prospectively and the food stamp allotment, retrospectively. It was suggested that both programs be treated in the same manner.

Response: A change in Federal food stamp regulations to permit prospective budgeting after a sudden loss of income requires the State to formally submit a request to the United States Department of Agriculture (USDA) waiving this regulation. Several states, noting this policy difference between AFDC and food stamps, have requested waivers of food stamps budgeting policy after suspension/significant change to conform to AFDC regulations but the USDA has consistently denied these requests.

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Comment: Another concern expressed by the director was that relief was needed for ongoing clients who lose their jobs and their income is counted retrospectively for both programs.

Response: Federal AFDC regulation permit states to provide supplementary assistance to such clients. The adoption of N.J.A.C. 10:82-5.11 in the June 18, 1984 issue of the New Jersey Register at 16 N.J.R. 1608(a) does address this concern by providing supplemental payments for AFDC families harmed by retrospective budgeting when they suffer a sudden loss of income. However, Federal food stamp regulations do not permit issuance of supplementary food stamp benefits to such households.

Summary of Changes Subsequent to Proposal:

10:90-4.2(a)2 and (b)1 For clarification purposes, the definition of "significant change in circumstances" has been revised to more equitably encompass instances other than "loss of job". Additionally, at N.J.A.C. 10:90-4.2(a), the word "family" has been changed to "eligible unit", for purposes of clarity.

10:90-4.2(a)2i A technical change has been incorporated to state "he or she", rather than just "she".

4.2(b)1 A publication error has been corrected to indicate the deletion of the word "and".

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

10:90-4.2 Computing the assistance payment/food stamp benefit in the initial two payment months of eligibility

(a) The CWA shall use prospective budgeting to compute the assistance payments/food stamp benefits for the initial two payment months of eligibility, except in situations detailed in (b) below. See N.J.A.C. 10:90-2.4(a)2i for determination of gross monthly income in these two months. The CWA will compute the assistance payment by counting the budget month income of the same individuals whose income was considered in the prospective eligibility decision in N.J.A.C. 10:90-4.1.

1. (No change.)

2. The CWA shall use prospective budgeting to compute the assistance payments (but not the food stamp benefits) for the initial two payment months of eligibility, if the initial month follows a payment month of suspension (defined in N.J.A.C. 10:90-4.5) and the ***[family's]* *eligible unit's*** circumstances for the initial month had changed significantly from those reported for the corresponding budget month. A significant change in circumstances is defined as ***[loss of employment]* *an unanticipated loss of all earned or unearned income***.

i. Example: A ***[family's]* *eligible unit's*** AFDC grant for March is suspended for excess income from five pays received in the January budget month. The ***[family's]* *eligible unit's*** MSR, filed on March 4, shows continued receipt of earnings in the February budget month. However, in mid-March, the client advises the CWA that ***he or*** she does not expect to be employed in April. The circumstances in the initial month of April will be significantly different than circumstances in the corresponding budget month of February due to loss of ***[employment]* *all earned income***. The

***[family's]* AFDC** grants for April and May must be calculated using prospective budgeting. Earned income received in February will be disregarded in the calculation of the April AFDC grant.

(b) The CWA shall use retrospective budgeting to compute the amount of the assistance payment/food stamp benefit in the initial two payment months of eligibility if:

1. Assistance had been suspended for one month (as defined in N.J.A.C. 10:90-4.5), ***[and]*** the initial month follows the month of suspension, and the circumstances of the eligible unit in the initial month did not change significantly from those reported for the corresponding budget month due to ***[loss of employment]* *unanticipated loss of all earned or unearned income***, or

2. (No change.)

(c) The CWA shall use prospective budgeting to compute the assistance payment/food stamp benefit for the initial two payment months of eligibility that follow a period of ineligibility of at least one full payment month.

1. (No change.)

2. Except for circumstances in (a)2 above, a payment month of suspension, as defined in N.J.A.C. 10:90-4.5, shall not be considered a payment month of ineligibility for purposes of this section.

3.-4. (No change.)

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(a)

BOARD OF MEDICAL EXAMINERS

Advertising and Solicitation Practices

Adopted Amendment: N.J.A.C. 13:35-6.10

Proposed: May 7, 1984 at 16 N.J.R. 1026(b).

Adopted: June 12, 1984 by New Jersey State Board of Medical Examiners, Jos. A. Riggs, M.D., Acting President

Filed: August 6, 1984 as R.1984 d.372, **with substantive changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 45:9-2.

Effective Date: August 20, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): August 1, 1988.

Summary of Public Comments and Agency Responses:

The proposed amendment to N.J.A.C. 13:35-6.10 was published on May 7, 1984 at 16 N.J.R. 1026. In the context of greatly expanded opportunities for professional advertising, the proposal imposed certain limitations to protect the public against fraudulent or misleading representations, or advertising formats having the potential to reduce the opportunity for rational consideration of substantive content by the public.

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Among the prohibitions was the use of drawings. Only one comment was received. A representative of the directory marketing section of New Jersey Bell Telephone raised several questions respecting this prohibition, pointing out samples of yellow pages advertising which include logos of various types, the typical representative of credit cards, ornamental designs and other non-print matter. The Board considered the questions raised and recognized that certain symbols such as the medical caduceus, have traditionally been associated with health care professions, in forms traditionally utilized by physicians and surgeons, or by podiatrists, or by chiropractors and should not be deemed objectionable or misleading. As a matter of interpretation the Board shall not consider such traditional logos to be "drawings" within the prohibition of the rule. In all other respects, the Board is satisfied that the restrictions are appropriate and will in no way limit the provision of pertinent information to the public by advertising licensees. The only other change in the rule was the entire deletion of subsection (n), which simply indicated that more recent adopted rules would supersede any prior rules; this provision was deemed to be legally superfluous.

Full text of the adoption follows; deletions from proposal indicated in brackets with asterisks *[thus]*).

13:35-6.10 Advertising and solicitation practices

(a)-(l) (No change.)

(m) All advertisements shall be presented in a dignified manner without the use of drawings, animations, clinical photographs, dramatizations, music or lyrics.

[(n) Nothing contained in this section shall be construed to prohibit the licensing board from adopting additional regulations concerning advertising by Board licensees. To the extent that any conflict or inconsistency may arise between the provisions of this section and any subsequently adopted rule dealing more specifically with the same subject matter as set forth, such subsequent adopted rule shall control.]

(a)

**DIVISION OF CONSUMER AFFAIRS
BOARD OF VETERINARY MEDICAL
EXAMINERS**

General Rules of Practice

**Readoption: N.J.A.C. 13:44-2.1, 2.2, 2.3,
2.7, 2.8, 2.9, 2.10 and 2.13.**

**Readoption with Amendments: N.J.A.C.
13:44-2.11 and 2.12.**

Proposed: April 2, 1984, 16 N.J.R. 688(a).

Adopted: July 25, 1984 by Board of Veterinary Medical Examiners, David Eisenberg, D.V.M., President.

Filed: August 7, 1984 as R.1984 d.375, **with substantive and technical changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 45:16-9.9.

Effective Date: August 20, 1984.

Expiration Date pursuant to Executive Order No. 66(1978):

Summary of Public Comments and Agency Responses and Reasons for Changes:

A written comment on the proposed amendment to the Board's advertising regulation, N.J.A.C. 13:44-2.11, was received from the New Jersey Veterinary Medical Association. The president and several other officers of the Association appeared at the Board's May 23, 1984 meeting to discuss the regulation and the Association's comments. The Association's comments and the Board responses are summarized below.

1. Comment: The Association members objected to the definition of "advertisement" because they believed that regulation of advertisements should be limited to "paid" advertising. They were concerned that "legitimate public service messages" citing as an example the veterinarian who writes a weekly column on animal health care for a local newspaper might be construed as advertising.

Response: The Board determined that the definition should not be amended. "Legitimate public service messages" are not prohibited by the regulation, but certain kinds of "unpaid" advertising may, in fact, constitute violations of the regulation.

2. Comment: The Association members asked that the use of circulars, handbills, and flyers, at least when distributed by hand in such places as public parking lots, be prohibited, since such advertising is unprofessional and undignified, and may constitute a public nuisance.

Response: The Board rejected the comment on the ground that these advertising formats are a legitimate way of providing information to consumers, and that other provisions of the regulation will cover any improper use of such formats.

3. Comment: The Association members objected to the inclusion of N.J.A.C. 13:44-2.11(c)2, prohibiting the promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform, on the ground that this provision was vague and unnecessary.

Response: The Board accepted this comment and determined that this provision should be eliminated from the proposal. The exercise of responsible professional judgment about the services offered by a facility would not in any event be prohibited, and any knowing misrepresentation is covered in other sections of the regulation.

4. Comment: The Association asked for clarification of proposed N.J.A.C. 13:44-2.11(c)6 and 11.

Response: The Board explained that (c)6 would prohibit the use of intimidation or undue pressure and would cover the use of overbearing personal solicitation as well as the kind of veterinary advertising which falsely implies or states that certain diseases in animals constitute health hazards to humans. N.J.A.C. 13:44-2.11(c)11 prohibits formats which obscure a material fact. Whether a given format falls under this prohibition will be determined by the Board on a case by case basis.

5. Comment: The Association asked that the language of N.J.A.C. 13:44-2.11(d) be clarified.

Response: The Board accepted this comment and decided that the second sentence of the proposed sub-section should be amended to state that "Failure of a licensee to provide factual substantiation to support that representation or assertion should be deemed professional misconduct."

6. Comment: The Association objected to N.J.A.C. 13:44-2.11(f) which requires that the names of all licensees owning

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or employed at a veterinary facility be named in advertisements.

Response: The Board accepted the comment, and determined that the intent of this provision, which was to inform the public about the identity of the licensees responsible for providing advertised services, could be served just as well by providing that the name of at least one principal licensee who is responsible for the operation of the facility be included in advertisements. Furthermore, listing all of the licensee's names might be burdensome where a facility employs a large number of licensees.

7. Comment: The Association objected to the inclusion of N.J.A.C. 13:44-2.11(h) in the proposal on the ground that licensees should not be responsible for certain kinds of activity by advertising agencies in their behalf when not authorized by the licensee.

Response: The Board rejected the comment, since this subsection simply means that the licensee is responsible for seeing to it that any published advertisement that he has authorized conforms to the Board regulations.

8. Comment: The Association asked for clarification of N.J.A.C. 13:44-2.11(i) which prohibits the use of non-informational formats used primarily to gain attention.

Response: The Board determined that this subsection should be retained, explaining that this regulation would prevent the use of the kind of egregiously unprofessional advertising which the Association expressed concern about in Comment 2.

9. Comment: The Association suggested that N.J.A.C. 13:44-2.11(k) should be interpreted so that a licensee would not be responsible for keeping copies of tapes of broadcasts where the licensee appeared as a public service, as, for example, when licensees participate in a television news program to discuss animal health care.

Response: The Board does not regard such appearances as advertisements and will, therefore, not require licensees to obtain and keep copies of tapes of such appearances. In discussion of this subsection and subsection (1) it was, however, decided that the two provisions should be consolidated into one subsection dealing with the requirement of keeping copies of all advertisements for three years.

In reviewing the proposed amendments it was also determined that N.J.A.C. 13:44-2.12(c) should be amended before adoption. This subsection permits emergency facilities to turn over records and radiographs to a consumer who wants these records transferred to his or her regular treating veterinarian without the unnecessarily burdensome requirement that the emergency facility keep copies of such records for five years. As originally proposed the regulation required the emergency facility to obtain a receipt for such records and keep the receipt for five years. The Board decided that the receipt need only be kept for two years instead of five since the consumer will know who has possession of the records, and the second veterinarian will be required to keep these records for five years. The retention of the receipt by the emergency service facility for more than two years will serve no useful purpose.

N.J.A.C. 13:44-2.11(c) as proposed had prohibited all claims of professional superiority. The Board determined that the rule as originally formulated might restrict legitimate competition by inhibiting the free flow of truthful information, and that truthful claims of superiority which can be substantiated should be permitted. Other changes were made in this section for purposes of clarity and consistency of form.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions from the proposal shown in brackets with asterisks ***[thus]***).

SUBCHAPTER 2. GENERAL RULES OF PRACTICE

13:44-2.1-2.5
(No change.)

13:44-2.6
(Reserved)

13:44-2.7-2.10
(No change.)

13:44-2.11 Advertising

(a) Definitions: The following words shall have the following meanings:

1. The term "advertisement" shall refer to the attempt directly or indirectly by publication, dissemination, endorsement or circulation or in any other way to induce directly or indirectly any person to enter into an express or implied agreement to accept veterinary services or treatments related thereto.

2. The term "routine professional service" shall refer to a service which the advertising licensee, professional association or institution providing veterinary care routinely perform.

3. The term "printed media" shall refer to newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers and other similar documents or comparable publications, the contents of which is disseminated by means of the printed word.

4. The term "range of fees" shall refer to an expressly stated upper and lower limit on the fees charged for professional service.

5. "Licensee" for the purpose of this section means a person possessing a plenary license to practice veterinary medicine, surgery and dentistry.

(b) A licensed veterinarian who is actually engaged in the practice of veterinary medicine, dentistry or surgery in the State of New Jersey, may provide information to the public by advertising which is not false, fraudulent, misleading or deceptive through the use of the print or electronic media.

(c) A licensee who engages in the use of advertising which contains the following, shall be deemed to be engaged in professional misconduct:

1. ***[Claims]* ***Any claim*** that ***[the]*** services performed or ***[the]*** material used are professionally superior to ***[that which is]* ***those*** ordinarily performed or used ***unless the claim can be substantiated.*******

[2. Promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform.]

[3.]* ***2. ***[Implied]* ***Any implication that*** a service is unique when in fact it is common or is required by law, such as "emergency service provided" unless that service is the principal service provided in which case it must be clearly stated.****

[4.]* ***3. ***[The implication of a]* ***Any statement or implication that*** special certification or training ***[by]* ***is possessed by the licensee, including*** such phrases as "special interest in" or the actual use of a title such as cardiologist, dermatologist, etc., when no such special certification or training ***in fact*** exists.******

[5.]* ***4. ***[An]* ***Any*** implication or statement that a facility is open and operating to provide services during non-regular business hours when in fact it is only providing routine required veterinary services, such as required emergency coverage.****

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[6.] *5.* Techniques or communications which appear to intimidate or to exert undue pressure or influence over a prospective client.

[7.] *6.* *[Use]* *The use* of any personal testimonial attesting to the quality or competence of a service or treatment offered by a licensee.

[8.] *7.* *[Offers to give, receive or accept a fee or offer consideration to or from a third party for referral for a patient, client service or product.]* *Any offer to give to or receive from a third party a fee or any other consideration for referral of a patient or client for whom professional services are to be rendered, or for the prescribing or utilization of any product.*

[9.] *8.* The use of any misrepresentation.

[10.] *9.* The knowing suppression, omission or concealment of any material fact or law.

[11.] *10.* Any format which directly or indirectly obscures a material fact.

[12.] *11.* *[Guaranteeing any service or guaranteeing]* *Any guarantee* that satisfaction or cure will result from the professional service offered.

(d) The board may require a licensee to substantiate the truthfulness of any assertion or representation set forth in an advertisement. Failure of a licensee to provide factual substantiation to support *[a]* *that* representation or assertion shall be deemed professional misconduct.

(e) Advertising making reference to setting forth a fee shall be limited to that which contains a fixed or stated range of fees for a specifically described routine professional veterinary service.

1. A licensee who advertises fees shall disclose all the relevant variables and considerations which are ordinarily included in such a service so that the fees will not be misunderstood. In the absence of such a disclosure, the stated fees shall be presumed to include everything ordinarily required for such a service. No additional charges shall be made for an advertised veterinary service, unless the advertisement includes the following disclaimer: "additional charges may be incurred for related services which may be required in individual cases". This disclaimer cannot be used for veterinary services where related services are ordinarily required.

2. Offers of discounts or fees reductions shall indicate the fixed or stated range of fees against which said discount is to be made.

3. The effective period during which a fee or discount shall remain in effect shall be set forth on the face of the advertisement. In the absence of such a disclosure and solely for the purpose of enforcement, the effective period shall be deemed to be 30 days.

(f) Advertising which contains the name, address or telephone number of a professional service facility shall also contain the *[names of all licensees who are officers, principals, partners or employees of said facility.]* *name of at least one licensee who is responsible for the provision of the advertised services.*

(g) A licensee shall be presumed to have approved and shall be personally responsible for the form and contents of an advertisement which contains the licensee's name, office address, or telephone number.

(h) A licensee who employs or allows another to employ for his benefit an intermediary source or other agent in the course of advertising shall be personally responsible for the form and contents of said advertisement.

(i) Any licensee who engages in any format which appears to be essentially non-informational in nature and used primar-

ily to gain attention shall be deemed to be engaged in professional misconduct.

(j) All licensees must list his or her degree after his or her name or use the word veterinarian if the title Doctor is used before his or her name.

[(k) A video or audio tape or script of every advertisement communicated by electronic media shall be retained by the licensee and made available for review upon request by the Board or its designee for a period of three years.]

(l) A licensee shall be required to keep a copy of all printed advertisements for a period of three years. All advertisements in the licensee's possession shall indicate the accurate date and place of publication.]*

[(k) Copies of all printed advertisements and video or audio tapes of every advertisement communicated by electronics media shall be retained by the licensee and made available for review by the Board or its designee upon request for a period of three years. All advertisements in the licensee's possession shall indicate the accurate date and place of publication.]

13:44-2.12 Patient records

(a) All written records and radiographs on patients shall be retained for a period of five years from the date of the patient's last visit except as provided in (c) below. Where the records reflect the decease of the patient, all written records and radiographs shall be retained for a period of three years from the last date of entry.

(b) (No change.)

(c) Where services are rendered on an emergency basis by a veterinary facility and the patient is referred to the owner's regular veterinarian for continued treatment the veterinarian rendering such emergency treatment may release the original medical records and/or radiographs to the owner or the regular veterinarian; provided, however, that the emergency treatment facility shall obtain a written receipt showing the disposition of the records and shall keep the receipt for a period of *[five]* *two* years.

13:44-2.13 (No change from Code text.)

(a)

OFFICE OF WEIGHTS AND MEASURES

General Commodities

Readoption with Amendments: N.J.A.C. 13:47C

Proposed: May 7, 1984 at 16 N.J.R. 1031(a).
 Adopted: June 12, 1984 by Thomas W. Kelly, State Superintendent, Office of Weights and Measures.
 Filed: August 6, 1984 as R.1984 d.373 **with substantive changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 51:1-61 and 51:4-31.

Effective Date for Readoption: August 6, 1984.

Effective Date for Amendment: August 20, 1984.

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Expiration Date Pursuant to Executive Order No. 66(1978): August 20, 1989 for Subchapters 1, 2 and 3; August 6, 1989 for Subchapters 4 and 6.

Summary of Public Comments and Agency Responses:

Several telephone calls and one detailed letter were received by the agency objecting to the provisions for sale of stuffed commodities. The food industry pointed out that greater than normal handling of the host commodity and the ingredients used for stuffing these foods, coupled with destructive testing during normal weights and measures packaging auditing, could result in a danger to public health. The Office of Weights and Measures is reserving its right to govern the sale of these commodities, but, in the meantime, while developing with the food industry, a workable package auditing scheme, is reverting to the original text of the regulations which is readopted in the form shown herein.

Full text of the adoption follows; deletions from proposal shown in brackets with asterisks *[thus]*).

13:47C-1.1 Words and phrases defined

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

...
“Cordwood”, “firewood”, “fireplace” and “stove wood” mean any logs, boards, timbers or other wood, split or not split, advertised, offered for sale, or sold as fuel.

...
“Persons” means and includes corporations, companies, associations, societies, firms, partnerships, joint stock companies and governmental entities as well as individuals.

...
*[“Stuffed clams” means a product in which the natural meat of clams is either mixed with or covered by a mixture of breading, spices, and/or bacon.

“Stuffed pork chops” means a pork chop with a pocket cut into it in which a non-meat “stuffing” product is inserted.

“Stuffed poultry” means a poultry product into which a non-poultry stuffing is cored or inserted.

“Stuffed veal” is any veal product into which a non-veal stuffing is cored or inserted.]*

“Whole logs” means any single piece of wood, greater in length than eight feet, unsplit and in the natural state. The trimming or lopping of limbs from such logs is permitted and shall not be deemed to change the natural state of such logs.

...

13:47C-2.1 Meat and poultry sold by net weight

[(a)] All meat and/or poultry offered for sale or sold in the State of New Jersey shall be offered for sale or sold on the basis of net weight only, and every person, firm, co-partnership or corporation selling or offering for sale any meat and; or poultry shall at the time of sale or delivery thereof weigh the quantity of meat and; or poultry sold or delivered and for such purpose shall use a scale tested and sealed by the State Office of Weights and Measures or by any county or municipal superintendent or assistant superintendent of weights and measures.

*[(b)] The method of sale for stuffed porks chops is as follows:

1. Prepackaged stuffed pork chops are an item of food and not a combination package, and shall be sold as a unit(s).

i. All other normal labeling information as set forth in N.J.A.C. 13:47D-4 will be required.

2. Exposed for sale (non-packaged) stuffed pork chops shall be sold as a unit(s) by net weight. The purchaser of stuffed pork chops shall, by the use of a sign, label, or other suitable means, be informed that the pork chop(s) is stuffed with a non-meat filling and the percentage of non-meat filling and the percentage of non-meat stuffing contained therein.

(c) The method of sale for stuffed poultry is as follows:

1. Prepackaged stuffed poultry is an item of food and not a combination package and shall be sold as a unit(s) in full compliance with N.J.A.C. 13:47D-7 which states: “labels on stuffed poultry shall bear the net weight and price of the entire net contents of the package.”

2. Exposed for sale (non-packaged) stuffed poultry shall be sold as a unit(s) by net weight; and the purchaser of stuffed poultry shall, by the use of a sign, label, or other suitable means, be informed that the poultry is stuffed and the percentage of filling contained therein.

(d) The method of sale for stuffed veal is as follows:

1. Prepackaged stuffed veal is an item of food and not a combination package and shall be sold as a unit(s).

i. All other normal labeling information as set forth in N.J.A.C. 13:47D-4, will be required.

2. Exposed for sale (non-packaged) stuffed veal shall be sold as a unit(s) by net weight. The purchaser of stuffed veal shall, by the use of a sign, label, or other suitable means, be informed that the veal is stuffed with a non-meat filling and the percentage of non-meat stuffing contained therein.]*

13:47C-2.5 Shellfish

(a) All fish crustaceans, shellfish and mollusks, and products of which the basic ingredients are comprised of fish, crustaceans, shellfish or mollusks not in package form when offered for sale or sold at retail shall be so offered for sale or sold by a net weight only.

(b) The following items of fish, crustaceans, shellfish and mollusks are exempt from the requirements of (a) above; provided they are offered for sale or sold as directed:

1. When all such fish crustaceans, shellfish or mollusks are offered for sale or sold for immediate consumption on the premises of the seller;

2. Fresh oysters when shucked shall be offered for sale or sold by liquid measure or count;

3. Fresh clams when shucked shall be sold by count or liquid measure. Clams when unshucked shall be sold by count;

4. Live crabs shall be sold by count;

*[5. The method of sale for stuffed clams is as follows:

i. Prepackaged stuffed clams are an item of food not a combination package and shall be sold as a unit(s). All other normal labeling information as set forth in N.J.A.C. 13:47D-4 will be required.

ii. Exposed for sale (non-packaged) stuffed clams shall be sold as a unit(s) by net weight. The purchaser of stuffed clams shall, by the use of a sign, label, or other suitable means, be informed that the clams are stuffed with a non-meat filling and the percentage of non-clam stuffing contained therein.

iii. In addition to the above requirements, the natural shell of the clam(s) is to be considered as tare.]*

(c) When any single-service container is used for the purpose of determining the liquid measure at the time of sale, it shall be one that has received approval by the State Superin-

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tendent of Weights and Measures for commercial purposes. When liquid measuring devices are used, they must not only have received approval from the State Superintendent of Weights and Measures as to type and construction; but they must also have been individually tested and sealed by a weights and measures officer.

13:47C-3.1 Cordwood and firewood

(a) For the purpose of this chapter, this section shall apply to the sale of all wood, natural and processed, for use as fuel, at retail.

(b) Representation: A "representation" means any advertisement, offering, invoice, or the like that pertains to the sale of fireplace or stove wood.

(c) Identity: A representation may include a declaration of identity that indicates the species group (Example: 50 percent miscellaneous softwood). Such a representation shall indicate, within 10 percent accuracy, the percentages of each group.

(d) Quantity: Wood, of any type, for use as fuel shall be advertised, offered for sale and sold only by measures, using the term "cord" and fractional parts of a cord; except that:

1. Wood, natural or processed, offered for sale in package form shall display the quantity in terms of cubic feet, to include fractions of cubic feet.

2. Whole logs may be sold by net weight.

3. Cordwood firewood, fireplace or stove wood may be sold or offered for sale in package form by net weight plus count when each such individual package contains less than four cubic feet (32 cord).

(e) Prohibition of terms: The terms "face cord," "rack," "pile," "truckload," or terms of similar import shall not be used when advertising, offering for sale, or selling wood for sale, or selling wood for use as fuel.

(f) Delivery ticket or sale invoice: A serialized delivery ticket or invoice shall accompany all shipments of non-packaged cordwood, firewood, fireplace, stove wood or whole logs when in transit between seller and buyer. The delivery ticket or sales invoice shall be issued by the seller to the purchaser at time of delivery. All such delivery tickets and sales invoices shall be subject to inspection by any weights and measures officer while in transit.

1. The delivery ticket or sales invoice shall contain at least the following information:

- i. The legal name and address of the vendor;
- ii. The name and address of the purchaser;
- iii. The date delivered;
- iv. The quantity delivered and the quantity upon which the price is based, if this differs from the delivery quantity;
- v. The price of the amount delivered;
- vi. The identity of the most descriptive terms commercially practicable, including any quality representation made in connection with the sale;
- vii. The serial number of the delivery ticket or invoice.

2. Any person issuing or directing the issuance of, or possessing a delivery ticket or sales invoice showing a different species, quantity or quality other than the species, quantity or quality of the cordwood, firewood, fireplace, stove wood or whole logs being delivered shall be subject to a penalty for a violation of this chapter.

3. A copy of all delivery tickets and sale invoices shall be retained by the seller, or vendor for a period of at least six months and shall be subject to inspection, at the seller or vendor's place of business, during normal business hours, by any weights and measures officer.

(g) Reweighing or remeasuring; all cordwood, firewood, fireplace, stove wood, whole logs, as defined by this chapter, will be subject to inspection, when in transit, at the time of delivery or at any reasonable time following delivery, by any weights and measures officer pursuant to N.J.S.A. 51:1-88.

(a)

VIOLENT CRIMES COMPENSATION BOARD

Rules on Practice and Procedure

Adopted New Rule: N.J.A.C. 13:75

Adopted Repeal: N.J.A.C. 13:75

Proposed: April 16, 1984 at 16 N.J.R. 846(a)

Adopted: July 5, 1984 by Violent Crimes Compensation Board, Kenneth W. Welch, Chairman.

Filed: July 25, 1984 as R.1984 d.342 **without change**.

Authority: N.J.S.A. 52:4B-9.

Effective Date: August 20, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): August 20, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

CHAPTER 75
RULES RELATING TO PRACTICE AND PROCEDURE
BEFORE THE
NEW JERSEY VIOLENT CRIMES COMPENSATION
BOARD

13:75-1.1 Scope of rules

The following rules shall constitute the practice to be followed in all proceedings before the Violent Crimes Compensation Board.

13:75-1.2 Liberal construction of provisions

These rules shall be liberally construed by the Board to permit it to discharge its statutory function and secure equitable determinations in all matters before the Board.

13:75-1.3 Practice where rules do not govern

The Board may rescind, amend or expand these rules from time to time, provided the same is effected in accordance with the provisions of the New Jersey Administrative Procedure Act, and N.J.S.A. 52:4B-1 et seq. In any manner not expressly governed by these rules or by statute, the Board shall exercise its discretion.

13:75-1.4 Definitions

The definitions set forth in N.J.S.A. 52:4B-2 are hereby adopted by this Board and incorporated by reference in these rules.

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13:75-1.5 Filing of claims

(a) For incidents occurring prior to November 30, 1981, all claims must be filed within one year of the date of the incident upon which the claim is based. For those incidents occurring on or after November 30, 1981, all claims must be filed within two years after the date of the incident upon which the claim is based or, if after that date, upon determination by the Board that good cause exists for the delayed filing.

(b) The incident must have been reported to the police within three months of its occurrence.

(c) All claims must be filed on official forms which include an authorization for securing medical and other necessary records and a subrogation agreement. Having been completed and notarized, these should be forwarded to the office of the New Jersey Violent Crimes Compensation Board at either 60 Park Place, Suite 1010, Newark, New Jersey 07102 or 194 West State Street, CN 084, Trenton, New Jersey 08625, either in person or by mail. The official forms may be obtained by requesting them at the stated addresses or pursuant to the provisions of N.J.S.A. 52:4B-22. All forms should be returned within 30 days of the date original notification is given this office.

(d) If a claim is made by a minor, as defined under New Jersey law, the forms shall be signed by his parent or guardian unless New Jersey statutory provisions require otherwise. If a claim is made by a person who is mentally incompetent, the forms shall be signed by his guardian or such other individual who is authorized to administer his estate.

(e) At the time of filing of the claim, the Board shall provide counseling to victims without charge as provided by N.J.S.A. 52:4B-25.

13:75-1.6 Eligibility of claims

(a) The Board shall make an award solely to eligible victims of violent crimes as said crimes are defined by N.J.S.A. 52:4B-11.

(b) In instances where the victim of the crime has died as a direct result, thereof, the Board may award compensation to the following persons:

1. A surviving spouse, parent, or child of the deceased victim who has suffered economic loss;

2. Any relative of the deceased victim as defined in N.J.S.A. 52:4B-2 who was dependent upon the victim for support;

3. The relative, estate of, or other natural persons who have demonstrated out-of-pocket unreimbursed and unreimbursable medical and funeral expenses for which they have become responsible on behalf of the decedent due to the incident upon which the claim is based.

(c) Any claimant who is held to be responsible for the crime upon which a claim is based, or is held to have been an accomplice or conspirator of the offender or is injured while participating in an illegal activity, or is a relative of the offender or living with the offender as a member of his family relationship group, as defined by N.J.S.A. 52:4B-2, is not eligible for compensation. For incidents occurring after March 3, 1983, a relative of the offender or a victim living with the offender as member of the offender's family relationship group may recover, if, subsequent to the incident giving rise to the claim, the claimant no longer resides in the same household as the offender and the claimant cooperated in the prosecution of the offender.

(d) The Board reserves the right to consider any circumstances it deems to be relevant, including but not limited to, provocation, consent or behavior on the part of the victim

which directly, or indirectly contributed to his injury or death, and the prior case history of the victim which may also include matters pertaining to the victim's medical history.

(e) No compensation shall be awarded if the victim was injured as a result of the operation of a motor vehicle, boat, or airplane unless the same was used as a weapon in the deliberate attempt to run the victim down, or the same was used in the commission of a crime as defined by a N.J.S.A. 52:4B-11 and the victim was injured by the same during the commission of said crime.

13:75-1.7 Compensable damages

(a) The Board may enter an Order of Payment where the claimant has suffered a minimum out-of-pocket loss of \$100.00 as defined by N.J.S.A. 52:4B-18(d), or has lost at least two continuous weeks' earnings or support.

1. The minimum out-of-pocket loss requirement of (a) above shall not apply for incidents occurring upon or after December 6, 1982 where the applicant is 60 years of age or older, or is "disabled" as defined by 42 USC Sec. 416(i), the Federal Social Service Act. Those to be categorized as "disabled" for the purposes of the Criminal Injuries Compensation Act of 1971 are people who, because of a previously determined physical or mental impairment, including blindness, can not engage in any substantial activity. In addition, their disability must be expected to result in death or have lasted, or potentially can last, for a continuous period of not less than 12 months.

(b) The Board may order the payment of compensation for expenses incurred as a result of the personal injury or death of the victim. These expenses must represent a pecuniary loss to the claimant as defined by N.J.S.A. 52:4B-1 et seq., and these rules consisting of, but not limited to, work and earnings loss, replacement service loss (defined below), dependents' loss of support in case of death, other reasonable pecuniary loss incurred by claimant due to victim's death, and such allowable expenses which the Board determines to be reimbursable within these rules such as reasonable charges for reasonably needed products and services, accommodations, replacement tuition costs, medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care.

1. The Board may order the payment of compensation for the loss of earning power as a result of the total or partial incapacity of the victim. Said loss includes work loss or loss of income the injured person would have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income. In computing the earnings loss the Board may consider any income received from substitute work actually performed by the claimant or any income that would have been earned through available appropriate substitute work he was capable of performing but unreasonably failed to undertake, and reduce the award, accordingly.

2. Replacement services loss means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income, but for the benefit of himself or his family, if he had not been injured.

3. In computing the earnings loss of the victim/claimant or in the case of death, the loss of support of the claimant/dependent, the Board shall only consider the victim's earnings and/or the amount of money the decedent was contributing toward household support at the time of the injury or death of the victim. Where the dependents of a decedent have received or are receiving a greater sum of money from other

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sources by reason of the decedent's death than the sum contributed to their support by the decedent at the time of death, no compensation for loss of support shall be awarded to the dependents. The Board, however, reserves the right to review its determination should claimant's dependency, marital or earnings status be altered, and to modify its award accordingly.

(c) Every claimant making application to the Board for compensation is required to produce verification for and provide evidence of all losses and injuries claimed as compensable items in said application, and the Board shall consider solely those losses and injuries for which such verification and evidence is so produced.

(d) In making its award the Board shall make no allowance for pain and suffering.

(e) In death cases the maximum reimbursement for funeral expenses will be \$750.00. However, for deaths occurring on or after January 10, 1980, the maximum reimbursement shall be \$2,000.00, or such amount as the Board will determine pursuant to N.J.A.C. 13:75-1.3.

(f) Unless otherwise permitted by these rules, the Board shall limit its award to losses incurred as a result of personal injury or death resulting from a violent crime as defined by N.J.S.A. 52:4B-11. All property damage is specifically excluded.

(g) For injuries resulting from incidents occurring on or after December 7, 1982, no compensation shall be awarded in an amount in excess of \$25,000.00. For incidents occurring on or prior to December 6, 1982, the maximum compensation shall not exceed \$10,000.00. These limitations shall remain in effect until statutory law provides otherwise.

(h) Unless otherwise provided for by N.J.S.A. 52:4B-1 et seq. and these rules, an award for compensation may be made whether or not any person is prosecuted or convicted for the crime giving rise to the claim before the Board.

13:75-1.8 Investigation of Claims

All claimants under the law creating the Board must fully cooperate with investigators, agents, and/or representatives of the Board in order to be eligible for any award. The claimant shall advise the Board of any and all changes of address and residence to permit the Board to properly process the claim petition. In the event that such cooperation is refused or denied, the Board may in its discretion deny such claim.

13:75-1.9 Request for hearings

(a) After investigation of a claim has been completed, the claimant shall be informed of the Board's recommendation in the matter and of his right to request a hearing by giving written notice to the Board within 20 days of receipt of the recommendation. After receipt of the claimant's response to said recommendation or where claimant fails to respond within 20 days, the Board may render a decision in writing or schedule a hearing pursuant to N.J.S.A. 52:4B-7.

(b) The Board may within its discretion make a determination whether further action concerning the application is necessary.

13:75-1.10 Conduct of hearings

(a) When a hearing is ordered, the claimant, his or her attorney, and all material and necessary parties, shall be notified in writing of the time, place and purpose of any such hearing. This notice shall be mailed not less than 15 days before the date of hearing, unless waived by the claimant. At

the discretion of the Board, any issue may be considered and determined although not indicated in the notice of the hearing, if the administration of N.J.S.A. 52:4B-1 et seq. will thereby be substantially served.

(b) Hearings shall be held at a time and place designated by the Board.

(c) The claimant has the right to be present at the hearing, however, the claimant may be excused at his request. Claimant shall be allowed to present testimony or cross-examine witnesses personally or by counsel. Failure of the claimant to appear at the time of the hearing may be excused and a new hearing scheduled if the Board finds that good cause has been shown.

(d) Any person having a substantial interest in a proceeding may appear, produce evidence and cross-examine witnesses personally or by counsel. However, said appearance must be based upon a valid application or claim petition before the Board, submitted by an eligible victim, and in full compliance with N.J.A.C. 13:75-1.8.

(e) All hearings shall be conducted in an orderly manner so as to ascertain the rights of all parties. All witnesses shall testify under oath and a record of the proceedings shall be made. Any member of the Board may administer oaths and/or affirmations and may question the claimant and witnesses.

(f) The parties or their representatives shall be allowed a reasonable time for presentation of oral argument or for the filing of briefs or other statements as to the facts and questions of law. The claimant shall have the burden of proof by the preponderance of the credible evidence.

(g) The Board shall not be bound by common law or statutory rules of evidence or by any technical or formal rules of procedure other than as provided for in these rules. Any statement, document, or information necessary to afford the parties a fair hearing may be received as evidence. The Board may also accept hospital records or reports and physician's reports as proof of the injuries sustained without requiring the presence of the attending physician at the hearing.

(h) The Board may require a medical examination of the claimant by a physician selected from a panel of impartial medical experts. The claimant shall present himself to the physician selected at the time and place designated. A written report of such examination shall be filed with the Board by the examining physician and a copy mailed by the Board to the claimant or his attorney. The physician's fee shall be paid by the Board.

(i) Hearings shall be open to the public except that the Board in its discretion may hold private hearings in accordance with applicable legal requirements if the interest of the victim and/or claimant will be best served. In the following instances the Board may exercise its discretion:

1. Where prosecution against the alleged perpetrator of the crime is pending and/or the Board determines that there is a continuing or on-going investigation of the crime;

2. In an alleged sexual offense where the welfare and interest of the victim or dependents may be adversely affected;

3. In the interest of public morality;

4. Where prosecution has resulted in an acquittal or a dismissal on technical grounds;

5. Where the Board determines that because of a public hearing one or more of the parties will be subjected to public ridicule or personal mental anguish or embarrassment.

(j) Upon application of the claimant or his attorney submitted in affidavit or motion form, a case may be reopened for further investigation, and, if the Board finds it necessary, for further testimony. Approval of a motion to reopen pro-

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ceedings shall not be deemed a matter of right but rather a matter within the Board's discretion. The Board may, on its own motion, reopen or reinvestigate cases at any time it deems necessary.

13:75-1.11 Attorneys

(a) Claimants have the right to be represented before the Board or any member, thereof, at all stages of proceedings, by an attorney-at-law duly licensed to practice in the State of New Jersey, or qualified to make such appearance pursuant to the Rules Governing the Courts of New Jersey, Rule 1:21-1(a).

(b) The attorney shall file a notice of appearance, or when appropriate, a notice of substitution prior to or at the time of his first appearance before the Board.

(c) If any party designates an attorney to represent said party and such attorney has executed and filed with the Board the appropriate notice, such notice shall remain in effect until:

1. The party represented files with the Board a written revocation of the attorney's authorization; or
2. The attorney files with the Board a written statement of his withdrawal from the case; or
3. The attorney states on the record at a Board hearing that he is withdrawing from the case; or
4. The Board received notice of the attorney's death or disqualification, and
5. The Board approved said attorney's removal from participation in the matter.

(d) After the filing of a notice of appearance or substitution in accordance with this section and as long as such notice may remain in effect, copies of all written communications or notices to the party shall be sent to such attorney in lieu of the party so represented or to both the party and his attorney at the Board's discretion. Service upon the attorney shall be service upon the party he represents.

13:75-1.12 Attorney's fees

(a) Attorney's fees shall be approved by the Board. However, whenever an award is made, the claimant's attorney shall receive a fee not exceeding 15 percent of the amount awarded as compensation. Before approval, the Board shall require an affidavit of services rendered where said fees exceed \$500.00. An attorney shall not ask for, contract for, or receive from the claimant any sum other than the fee set by the Board.

(b) Where no Order of Payment is entered by the Board, the Board shall make no award of a legal fee to the attorney for the claimant. Where an appearance is made pursuant to N.J.A.C. 13:75-1.10(d), the Board shall make no award of a legal fee.

(c) Attorney's fee shall be computed on an hourly basis and shall not exceed a maximum of \$50.00 per hour.

(d) All records of public agencies that are necessary to the investigation of a claim shall, whenever possible, be obtained by the Board. Therefore, no payment will be made to an attorney for obtaining such reports unless the Board had made a specific request of the claimant and or of his attorney for such reports.

13:75-1.13 Subpoenas

(a) The Board shall issue subpoenas and subpoenas duces tecum, either at its own instance or upon written application of any party made not less than 10 days prior to the hearing. The 10 days provision may be waived at the discretion of the Board.

(b) The claimant may file an application for the issuance of a subpoena and the Board may issue the same upon the showing of necessity that the evidence sought constitutes an element of the claim. The claimant's application for subpoena shall be in writing designating the names and addresses of witnesses and the locations of documents, books, payrolls, personal records, correspondence, papers or any other evidence necessary to the claim being heard.

(c) Where a subpoena is issued pursuant to (b) above or at the instance of the Board or any member thereof, service and witness mileage fees shall be borne by the Board. The mileage fee shall be the prevailing rate on the date of the appearance as established by the State Department of Treasury.

(d) The Board, at its own instance or on application in writing of the claimant, shall take or cause to be taken affidavits or depositions of witnesses residing within or without the State, whenever it deems such procedures necessary. The Board may set appropriate terms and conditions pertaining to the taking of affidavits or depositions. The requesting party shall bear the expense, however, where the Board enters an Order of Payment the Board may consider said expense as a reasonable expense incurred for reimbursement purposes.

13:75-1.14 Manner of payments

(a) All payments made by the Board shall be made in a lump sum amount, except in instances of death or protracted disability the Board shall exercise its discretion in determining whether payments are to be made in a lump sum or periodically.

1. Where periodic payments have been ordered in a death case, the Board shall verify the dependency and financial status of the claimant at least every six months. Upon discovering a change in circumstances, either by marriage or otherwise, the Board may adjust the award and payments accordingly.

2. Where periodic payments have been ordered in a protracted disability case, the Board may at least every six months verify the disability of the claimant to determine whether the claimant is entitled to continue to receive payments either in the amount awarded or in such amount as the Board deems appropriate.

3. Where periodic payments have been ordered the maximum period for said payments shall not exceed 60 months.

13:75-1.15 Decisions by the board

(a) In order to be eligible for review by the Board, all evidence must have been filed with the Board. If the procedure listed herein is not followed, the Board may in its discretion delay its decision or a hearing until the foregoing prerequisite has been completed with.

(b) The Board shall render its decision regarding the application within six months of receipt by the Board of all information necessary for it to render a final judgement in the matter.

13:75-1.16 Judicial review

Appeals from the Board shall be taken directly to the Appellate Division of the Superior Court pursuant to the rules set forth by the Supreme Court of the State of New Jersey in Rule 2:2-3.

13:75-1.17 Publication of claims

The Board, from time to time, may publish the record of claims and, at its discretion may divulge names of the claimants or other interested parties pursuant to the laws of the

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State governing disclosure of public records and the right to privacy.

13:75-1.18 Availability of forms and rules

The Board shall prepare and furnish, free of cost, and shall have available on request at the Board's offices, such forms and rules as the Board determines necessary to fulfill its statutory function. Such forms shall include, but not be limited to, claim petitions, emergency award applications, medical report and earnings record authorization, counselling services request, and subrogation agreements.

13:75-1.19 Monies received from other sources

(a) In determining the amount of compensation to be awarded, the Board shall take into consideration amounts received or receivable from other "source or sources" by the victim or his dependents as a result of the offense or occurrence giving rise to the application.

(b) "Source or sources" means a source of benefits or advantages which the claimant has received in lieu of economic loss or which is readily available to the claimant from, but not limited to:

1. The offender;
2. The government of the United States or any agency thereof, the State or any of its political subdivisions, or an instrumentality of two or more states;
3. Social Security, Medicare, and Medicaid;
4. State required temporary non-occupational disability insurance;
5. Worker's Compensation;
6. Wage continuation programs of any employer;
7. Proceeds of a contract of insurance payable to the victim for loss which he sustained because of the criminally injurious conduct;
8. A contract providing prepaid hospital and other health care services or benefits for disability; or
9. All proceeds or recovery from any collateral action or claim based upon or arising out of the circumstances giving rise to claimant's petition before the Board.
 - i. Even though there exists a judgment, verdict, settlement, adjudication or any other resolution in and/or of said collateral action or claim which indicates or specifies that the proceeds or recovery are based upon economic loss, pain and suffering, punitive damages, or any other legal or economic loss classification, the Board, within its discretion, may consider said resolution in defining "source or sources".

13:75-1.20 Validity of rules if any portion declared invalid

If any portion of these rules, or the application thereof, shall be adjudged or declared to be invalid, or inoperative, or if by statutory amendment any rules shall lose its force and effect, such judgment or amendment shall not affect, impair or void the remainder of these rules.

13:75-1.21 Loss of earnings or support

Amounts awarded by the Board as weekly compensation for unreimbursable or unreimbursed losses in earnings or support shall not exceed the maximum prevailing weekly benefit payable under Worker's Compensation schedules in effect in this State at the time of the injury for those incidents which occurred between the effective date of the Criminal Injuries Compensation Act of 1971 and December 31, 1982. For injuries arising from incidents which occur upon or after January 1, 1983, the weekly rate shall be fixed by the Board pursuant to N.J.S.A. 52:4B-9.

13:75-1.22 Domestic help

(a) The reimbursement for expenses arising out of the hiring of domestic help to care for a minor child or for an adult who may or may not be the victims of the crime alleged in claimant's application, but who, nevertheless, are in need of such service and/or assistance as a direct result of said crime, shall be set by the Board.

(b) The Board shall make a determination in each case as to a reasonable period of time for the employment of domestic help, however, the maximum reimbursement for said period shall be \$30.00 per day except that the total amount of such reimbursement shall not exceed \$100.00 per week.

13:75-1.23 Lost member schedule

(a) Amounts awarded by the Board as compensation for lost or permanent loss of use of members shall not exceed the maximum prevailing benefit payable under Workers Compensation schedules in effect in this State at the time of the injury for those incidents which occurred between the effective date of the Criminal Injuries Act of 1971 and December 6, 1982 inclusive. However, the amount so awarded shall not exceed \$10,000.00, the maximum award permitted by the statutory provisions of N.J.S.A. 52:4B-18 in effect at that time.

(b) For injuries arising from incidents which occur after December 6, 1982, the award for lost or permanent loss of use of members shall be fixed by the Board. The maximum award for such loss resulting from said incident, unless further amended by the Board, shall be as set forth in the following pay schedule.

1.	Loss of arm	-	\$12,500.00
2.	Loss of leg	-	12,500.00
3.	Loss of hand	-	11,500.00
4.	Enucleation of one eye	-	11,000.00
5.	Loss of sight in one eye	-	10,500.00
6.	Loss of foot	-	10,500.00
7.	Loss of pinky	-	950.00
8.	Loss of ringfinger	-	1,400.00
9.	Loss of 2nd finger	-	1,900.00
10.	Loss of index finger	-	2,350.00
11.	Loss of thumb	-	3,550.00
12.	Loss of big toe	-	1,900.00
13.	Loss of remaining toes	-	700.00 (each)
14.	Loss of tooth	-	232.00 (per tooth)
15.	Loss of hearing:		
	(75 percent of total hearing loss as determined by the Board shall be considered as total loss for the purpose of this section)		
	1 ear	-	\$ 2,800.00
	2 ears	-	10,800.00

(c) The Board may, within its discretion, award a lump sum payment for such loss not provided for, herein, except that no award made pursuant to this section shall exceed \$12,500.00 per lost member. The loss of any two body members identified in (b) 1 through 6 above shall entitle the victim to an award of \$25,000.00.

13:75-1.24 Transportation costs

(a) Maximum reimbursement for transportation expenses incurred as a direct result of the incident giving rise to the claim shall not exceed \$10.00 a day and shall include, but not be limited to, visits to treating physicians, health and care facilities, substitute travel costs other than ambulance or ambulatory mobile care services incurred due to a criminally-induced physical incapacity, and attendance at court proceed-

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ings for purposes of prosecuting the alleged offender. However, reimbursement for the purposes of this section does not include costs arising pursuant to N.J.A.C. 13:75-1.13.

1. Necessary and reasonable transportation expenses incurred such as railroad and airline fare which are a direct result of the incident and incidental to treating and caring for the victim may be reimbursed to claimant or to claimant's relatives as defined by N.J.S.A. 52:4B-2.

13:75-1.25 Emergency award

(a) The Board may grant an emergency award where such grants could help prevent financial hardship or stress which might not otherwise arise, forcing persons, among other things, to go on welfare or be evicted from their homes because of inability to make rent or other payments while at the same time paying medical expenses, or where a person cannot maintain a reasonable level of health, safety and education for himself or his dependents.

(b) The claimant has the burden of showing the need for such emergency awards and must do so by the preponderance of the credible evidence. The Board shall consider all relevant factors in making its determination.

(c) The maximum amount of any one emergency award shall not exceed \$500.00, however, the total amount of emergency funds awarded to an individual claimant shall not exceed \$1,500.00.

(d) Any emergency awards made to a claimant shall be deducted from the final amount of compensation awarded to said claimant. Where, however, the final amount is less than the sum of the emergency awards provided, or where the Board determines that an applicant shall receive no compensation, the claimant shall return to the Board an amount of money equal to the difference or repay the full amount of said awards.

13:75-1.26 Subrogation

(a) If compensation is awarded to a claimant, the Board is subrogated to any cause of action claimant might have against the person or persons responsible for such personal injury or death and shall be entitled to bring an action against the same for the amount of the damage sustained by the claimant.

1. The Board may exercise its right only to the extent that compensation has been awarded by the Board.

2. Where the Board at its own discretion commences an action against the person or persons responsible for the victims injuries to recover monies compensated to a claimant, the claimant shall cooperate fully with the Board in pursuit of its action including, but not limited to, joining as a party to said action.

(b) As a prerequisite to bringing a collateral action to recover damages relating to criminally injurious conduct, for which compensation is also being claimed or has been awarded by the Board, the claimant shall give the Board prior written notice of the proposed action. After receiving the notice, the Board may at its discretion:

1. Join in the action as a party plaintiff to recover the compensation it has awarded; or

2. Require the claimant to execute an assignment to the Board for the amount of compensation it has awarded; or

3. Reserve its rights until such time as the action has been completed, or;

4. Waive by Board resolution its rights under this section.

(c) Where the claimant brings the collateral action and recovers monies which the Board seeks as reimbursement for compensation awarded claimant by the Board, claimant may

deduct from compensation recovered in behalf of the Board a pro rata share of claimant's attorney fees in the collateral action.

(d) Where there are proceeds or recovery from any collateral action or claim within N.J.A.C. 13:75-1.19(b)9, the Board shall exercise its subrogation only as to claimant's net proceeds so recovered that are in excess of \$1,000.00.

ENERGY

(a)

THE COMMISSIONER

Energy Conservation

Energy Subcode

Adopted New Rule: N.J.A.C. 14A:3-4

Proposed: June 18, 1984 at 16 N.J.R. 1462(a).

Adopted: July 24, 1984 by Leonard S. Coleman, Jr.,
Commissioner, Department of Energy.

Filed: August 6, 1984 as R.1984 d.370, **with substantive and technical changes** not requiring additional notice and comment.

Authority: N.J.S.A. 52:27F-27.

Effective Date: August 20, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): August 20, 1989.

Summary of Public Comments and Agency Responses:

The Department received comments from the Department of Community Affairs (DCA) indicating that certain references in the proposal that were not current and needed to be updated or corrected. For this reason the Department has changed the reference in N.J.A.C. 14A:3-4.2(a)2 to use group "T" to "U" and has added use group "E". The new address of Building Officials and Code Administrators International (BOCA) is reflected in the adopted rule at N.J.A.C. 14A:3-4.4(a)2. The Department has changed the reference in Appendix A of the energy subcode from "90-75" to "90-80" to make that reference consistent with the energy subcode as amended in the proposal (N.J.A.C. 14A:3-4.4(b)7) and deleted to Exception 4 in Article 1 of the energy subcode which refers to ASHRAE Standard Reference Number "90-75."

These technical changes should make the rule consistent with the terminology used by DCA and the current BOCA standards.

DCA also suggested that the reference to BOCA/1981 should be changed to 1984. However, at this writing the 1984 edition is not in effect so the Department of Energy will not make the change at this time.

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

CHAPTER 3
ENERGY CONSERVATION

SUBCHAPTER 4. ENERGY SUBCODE

14A:3-4.1 Scope

This subchapter comprises the State Energy Subcode, which sets standards for thermal and lighting efficiency in newly constructed and renovated buildings and in its entirety is the Energy Subcode of the Uniform Construction Code.

14A:3-4.2 Applicability

(a) The requirements of the Energy Subcode shall apply as follows:

1. The thermal efficiency standards of the Energy Subcode set forth in N.J.A.C. 14A:3-4.4 shall apply to all newly constructed and renovated buildings.

2. The lighting efficiency standards of the Energy Subcode set forth in N.J.A.C. 14A:3-4.5 shall apply to all newly constructed and renovated buildings in use groups A, B, ***E***, F, H, I, M, R, S and ***[T]* *U*** as defined in the Building Subcode of the Uniform Construction Code.

14A:3-4.3 Definitions

(No change.)

14A:3-4.4 Thermal efficiency standards

(a) The Department adopts the model code of the Building Officials and Code Administrators International, Inc., known as the "BOCA Basic Energy Conservation Code/1981" including all subsequent revisions and amendments thereto. Copies of the BOCA Basic Energy Conservation Code/1981 may be obtained from the sponsor at BOCA, *[17926 South Halsted Street, Homewood, Illinois, 60430.]* ***4051 West Flossmoor Road, Country Club Hills, Illinois 60477.***

(b) The Energy Subcode is amended as follows:

1. ***The following amendments are made to Article 1 of the Energy Subcode entitled "Scope":**

i. Section E-100.1 is amended to delete Exception 4.*

[1.]* *2. The following amendments are made to Article 2 of the Energy Subcode entitled "Definition", section 201-General Definitions:

i. Add the definition of the term "Bin. Degree Day Methods" which means the simplified methods for calculating the heating or cooling load is treated as an instantaneous function of the difference between indoor and outdoor temperatures. The Degree Day method uses the actual temperature difference while the bin method categorizes these differences into "bins" covering a range of five degrees (for example, from 20-25 degree difference);

ii. Add the definition of the term "Boiler Capacity" which means the rate of heat addition in BTU/hr. (watts) measured at the boiler outlet at design temperature and pressure and rated input;

iii. Add the definition of the term "Building Envelope" which means the walls, roof and floor of a building through which heat may be transferred to or from the exterior or from non-conditioned spaces. The above elements are to be considered as comprising a building envelope for all conditioned spaces that they enclose;

iv. Add the definition of the term "Cut on Temperature" which means the temperature at which a piece of mechanical equipment will automatically begin operation;

v. Add the definition of the term "Design Parameters" which means the conditions of the temperature and humidity which form the basis for the mechanical system design;

vi. Add the definition of the term "Dry Bulb Temperature" which means the atmospheric temperature as indicated by an ordinary thermometer;

vii. Add the definition of the term "Dual Duct/Multi-Zone Systems" which means mechanical systems in which the entering air is divided into two flows. The first is heated to the highest temperature required in the building. The other stream is cooled to the lowest temperature anywhere in the building. These two air streams are then mixed in varying proportions to provide the correct air temperature for each zone of the building;

viii. Add the definition of the term "Economizer Cycle" which means the use of uncooled outside air for cooling purposes when it will result in an energy savings;

ix. Add the definition of the term "Enthalpy" which means the amount of internal energy (heat) in a mixture of air and water vapor;

x. Add the definition of the term "Fenestration" which means the window area of the wall;

xi. Add the definition of the term "Heated Space" which means space within a building which is provided with heat input from a heating system to maintain an air temperature of 50 degrees F (10 degrees C) or higher;

xii. Add the definition of the term "Latent Heat" which means heat which does not change the temperature of substance but which changes its state. That is, latent heat addition could change a solid to a liquid or a liquid to a gas. Latent heat removal could change a gas to a liquid or a liquid to a solid;

xiii. Add the definition of the term "New Energy" which means energy which has not been recovered from mechanical systems within the building and is used for heating and cooling. This energy might be electrical, solar, or result from combustion of fuels;

xiv. Add the definition of the term "Ninety-seven and one-half percent temperature" which means the hourly temperature which is exceeded ninety seven and one-half percent of the time during a year. That is, it is colder than this only two and one-half percent of the time;

xv. Add the definition of the term "Overall Thermal Transmittance Value (OTTV)" which means measure of heat transmission for cooling purposes. Measured in units of BTU/hr. transferred through a one square foot area of a substance in the cooling season;

xvi. Add the definition of the term "Part Load Profile" which means the compilation of operating characteristics of a piece of mechanical equipment when operated over the range from zero to full load;

xvii. Adds the definition of the term "Power Factor" which means the proportion of total power in an electric circuit which is available as usable energy;

xviii. Add the definition of the term "Recooling Systems" which means mechanical systems which heat all entering air to the highest temperature required anywhere in the building. The air is then recooled to the temperature necessary for other parts of the building;

xix. Add the definition of the term "Recovered Energy" which means energy utilized which is obtained by recovering

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useful energy from other mechanical devices in the building which would otherwise be wasted;

xx. Add the definition of the term "Reheat Systems" which means mechanical systems which cool all entering air down to the coolest temperature required for the building. The air is then reheated to the temperature necessary for other parts of the building;

xxi. Add the definition of the term "Relative Humidity" which means the ration of the amount of water vapor in the air to the maximum amount of water vapor the air can hold at that temperature;

xxii. Add the definition of the term "Sensible Heat" which means heat which changes the temperature of a substance when added or removed;

xxiii. Add the definition of the term "Source Energy" which means the energy obtained from a given source such as electricity, oil, gas, solar, etc.;

xxiv. Add the definition of the term "Spill Light" which means light which illuminates an area for which it is not intended or needed;

xxv. Add the definition of the term "Standby Loss" which means the amount of energy lost from a system over a period of time when there is no demand placed on it for energy;

xxvi. Add the definition of the term "TDEQ (Equivalent Temperature Difference)" which means temperature to be utilized in calculating the design load for cooling systems. It is designed to account for the lag in wall temperature use due to the mass of the walls. Heavier walls heat up more slowly;

xxvii. Add the definition of the term "Two and one-half percent Temperature" which means the hourly temperature which is exceeded two and one-half percent of the time during a year. That is, it is cooler than this ninety-seven and one-half percent of the time;

xxviii. Add the definition of the term "Veiling Reflection" which means a reflected glare which obscures vision and reduces the ability to see details;

xxix. Add the definition of the term "Wet Bulb Temperature" which means a temperature which reflects the amount of moisture which may be evaporated into the atmosphere. When the relative humidity is 100 percent the dry bulb temperature is equal to the wet bulb temperature. When the relative humidity is lower, moisture can evaporate into the atmosphere cooling a thermometer. The greater the difference between the wet and dry bulb temperatures, the dryer the air;

Renumber current 1.-3. as *[2.-4.]* *3.-5.*

[5.] *6.* The following amendments are made to Article 7 of the Energy Subcode entitled "Alternative Systems:"

i. Section 700.0 is amended to delete the words "this code" on line 6 and add "the energy subcode."

*7. The following amendments are made to Appendix A, entitled "Referenced Standards":

i. ASHRAE Standard Reference Number is amended to delete the words "90-75" and add "90-80."*

14A:3-4.5 Lighting efficiency standards

(a) The Department adopts the Illuminating Engineering Society's standard LEM-1, 1982, "IES Recommended Proce-

dures for Lighting Power Limit Determination", including all subsequent revisions and amendments thereto. Copies of LEM-1, Lighting Power Budget Determination Procedure, may be obtained from the sponsor at IES, 345 East 47th Street, New York, New York, 10017.

(b) The following amendments are made to section 2 of standard LEM-1, 1982, of the energy subcode, entitled "Scope":

i. Delete the first paragraph in section 2 and add the words "These provisions regulate the amount of power which may be utilized by a building for lighting. No building shall employ more power for lighting than that determined through the use of the criteria and calculated procedures contained herein."

14A:3-4.6 Enforcement

The energy subcode standards shall be enforced by the New Jersey Department of Community Affairs pursuant to N.J.S.A. 52:27F-27, and its authorities under the Uniform Construction Code, N.J.A.C. 5:23.

(a)

THE COMMISSIONER

**Energy Conservation
Lighting Efficiency Standards for New and
Renovated Buildings**

Adopted Repeal: N.J.A.C. 14A:3-8

Proposed: June 18, 1984 at 16 N.J.R. 1464(a).
Adopted: July 24, 1984 by Leonard S. Coleman, Jr.,
Commissioner, Department of Energy.
Filed: August 6, 1984 as R.1984 d.371, **without change.**

Authority: N.J.S.A. 52:27F-27

Effective Date: August 20, 1984
Expiration Date pursuant to Executive Order No.
66(1978): None.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted repeal may be found in the New Jersey Administrative Code at N.J.A.C. 14A:3-8.

ADOPTIONS

TRANSPORTATION

TRANSPORTATION

(a)

LOCAL AID

New Jersey Bridge Rehabilitation and Improvement Fund

State Aid to Counties and Municipalities

Adopted Concurrent Proposal: N.J.A.C. 16:21A

Proposed: March 5, 1984 at 16 N.J.R. 437(a).

Adopted: July 23, 1984, by James A. Crawford, Assistant Commissioner of Transportation Services and Planning.

Filed: August 1, 1984 as R.1984 d.344, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 27:7-47, 27:13-1 et seq., and the New Jersey Bridge Rehabilitation and Improvement Bond Act of 1983, L. 1983, c.363.

Effective Date: August 20, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): August 20, 1989.

Full text of the adoption follows.

CHAPTER 21A NEW JERSEY BRIDGE REHABILITATION AND IMPROVEMENT FUND: STATE AID TO COUNTIES AND MUNICIPALITIES

SUBCHAPTER 1. GENERAL PROVISIONS

16:21A-1.1 Appropriation of Funds

1983 Bond Issue Funds are appropriated by the Legislature as the State's share of the cost for the construction, reconstruction, replacement, improvement, repair or rebuilding of bridges carrying county or municipal roads, including railroad overhead bridges.

16:21A-1.2 Definitions

"Railroad overhead bridge" means any bridge or passage carrying a county or municipal road over and across a railroad, subway, or street, traction, or electric railway, or over and across the right-of-way of such a railroad, subway or railway.

1. This definition does not include bridges over and across a railroad or electric railway operated by the State, the State Department of Transportation or the NJ Transit Corporation unless otherwise stated to the contrary.

2. A bridge is defined as a structure having a minimum span of 20 feet.

16:21A-1.3 Standards

(a) The proposed bridge improvement projects shall conform to the design criteria of the appropriate American Association of State Highway and Transportation Officials publi-

cation listed below. Any exceptions to these design criteria must be justified by the local engineer to be in the public interest.

1. Geometric Design Guide for Resurfacing, Restoration and Rehabilitation (R-R-R) of Streets;
2. A Policy on Geometric Design of Rural Highways;
3. A Policy on Arterial Highways in Urban Areas;
4. Geometric Design Guide for Local Roads and Streets;
5. Standard Specifications for Highway Bridges.

(b) All workmanship and materials shall conform with the New Jersey State Department of Transportation Standard Specifications for Road and Bridge Construction.

16:21A-1.4 Applications and Agreements

(a) Each county and municipality may submit fully executed applications and agreements for 1983 Bridge Rehabilitation and Improvement Bond Funds to the Local Aid district office.

(b) Application and agreement forms are available to the local government at the district offices.

16:21A-1.5 Procedure

(a) The application and agreement provides for an engineering description of the existing road and bridge and the description of the proposed improvement indicating the length of span, proposed load limit, right-of-way width, paved and graded widths, shoulder widths, type and depth of proposed pavement and an estimate of the cost of the proposed work for both the bridge and approach roadways. The district offices shall make a field investigation of all projects for which applications have been received.

(b) Applications will be evaluated by a county/municipal Screening Committee and staff of the New Jersey Department of Transportation appointed by the Commissioner of Transportation. Recommendations will be presented to the Commissioner of Transportation for Consideration.

SUBCHAPTER 2. PLANS AND SPECIFICATIONS

16:21A-2.1 Local Government Responsibility

(a) The local government shall be responsible for engaging a professional engineer registered in the State of New Jersey to prepare construction plans and specifications and to provide construction engineering and inspection and material testing as required.

(b) The local government will provide such maps, reports, construction plans and specifications and contract documents as may be required by the State.

SUBCHAPTER 3. CONTRACTS

16:21A-3.1 Award of Contract

(a) The local government will advertise and award the contract, subject to the approval of the State, in accordance with the provisions of Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

(b) Within 10 days, or such longer period as the Local Aid district office will approve, following the receipt of construction bids, the local government shall submit the following to the Local Aid district office:

1. Two copies of the contract plans and specifications;
2. Two copies of the engineer's estimate of cost;
3. Two copies of the summary of construction bids;
4. A resolution awarding the contract to the lowest responsible bidder, subject to the approval of the Department.

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(c) When all information relative to the bidding has been approved by the State, the local government shall be advised of the approval of the award of contract.

16:21A-3.2 Contract Completion and Payment

(a) When all work has been completed satisfactorily, the local government will prepare and submit to the Local Aid district office, the following:

1. A statement of the work performed, certified by the municipal/county engineer, for acceptance and approval of the completed work.

2. A certification by the county/municipal auditor that the project's records have been examined and all expenditures are supported by valid documentation.

3. A request for reimbursement by the State, on vouchers to be supplied by the State.

(b) After a final inspection of the completed work by the State and a determination has been made by audit that all documents are in proper order, action shall be taken to reimburse the county/municipality.

(c) The county/municipality shall maintain complete documentation of the project for a period of three years after receiving reimbursement by the State. An evaluation of the acceptability of the work by the Department and a determination of the extent of State participation in the cost thereof, will be based on an inspection of the completed project and a review of the documentation maintained by the county/municipality.

SUBCHAPTER 4. STATE PARTICIPATION IN COST

16:21A-4.1 Cost of Construction

(a) With respect to those bridges which carry county or municipal roads which are constructed, owned, or maintained by a county or municipality, the State participation shall not exceed 80 percent of the eligible cost of the completed rehabilitation and improvement work.

(b) With respect to those railroad overhead bridges which carry county or municipal roads and which are not constructed, owned, or maintained by the State, county or municipality, the State shall defray 55 percent of the cost, the local government 20 percent, and the railroad company over whose tracks or right-of-way the bridges cross 25 percent.

(c) With respect to those railroad overhead bridges which carry county or municipal roads and whose ownership is not determined or is in doubt, the State participation shall not exceed 80 percent of the eligible cost of the completed rehabilitation and improvement work.

(d) With respect to those railroad overhead bridges over and across a railroad or electric railway operated by the State, the State Department of Transportation or the NJ Transit Corporation, the State shall defray the cost rehabilitation and improvement.

(e) Eligible items of work include the construction, reconstruction, improvement, rehabilitation, relocation, renewal, establishment, elimination or repair of bridges.

16:21A-4.2 Cost of Right-of-Way Acquisition

(a) Projects may be eligible for State participation in real estate purchase price costs provided:

1. The county or municipality shall make application to the State including an adequate parcel map depicting any additional properties necessary for a particular project and also secure advance Right of Way program authorization.

2. Upon State approval of the parcel map and Right of Way participation program authorization, the county or municipality shall submit appraisals of the individual parcels to be acquired on appraisal forms provided by the Department of Transportation prepared in accordance with current standards and procedures of the Division of Right of Way.

(b) In the case of property of one ownership that has an estimated value not in excess of \$50,000, one fee appraisal will be required. In the case of all property ownerships estimated in excess of \$50,000, two fee appraisals will be required.

(c) Qualifications of fee appraisers shall be in accordance with standard State Department of Transportation Right of Way procedures utilized for prequalifying appraisers. Appraisers not able to prequalify as per standard procedures shall not be approved for use in appraising for participation purposes.

1. Prior to the institution of negotiations, appraisals shall be submitted to the State for review and fair market value certification and registration.

(d) Negotiations conducted on behalf of the county or municipality shall be persons independent of appraisal responsibility. Negotiations shall be in accordance with statutory Eminent Domain requirements, N.J.S.A. 20:3-6. If Relocation Assistance is involved, Relocation Assistance shall be provided in accordance with prevailing statutes.

(e) Upon county or municipality counsel certification that good and proper title has been acquired to a particular parcel, the State shall participate on a reimbursement basis with the concerned county or municipality in purchase prices not substantially in excess of the approved and registered fair market value.

1. Where properties are acquired by condemnations and compensation is determined by the Condemnation Commission or the Court, the State will participate in the proportionate share of the amount ultimately awarded in condemnation.

(f) The extent of Right of Way purchase price cost participation will be governed by the classification of bridges as outlined under cost of construction, N.J.A.C. 16:21A-4.1.

1. Reimbursement claims for Right of Way purchase price participation shall be presented on invoice forms provided by the State accompanied by satisfactory evidence of attainment of legal ownership of property by the county or municipality.

16:21A-4.3 Cost of Engineering, Inspection and Construction Supervision

(a) The State will participate in the cost of engineering accomplished by either a consultant engaged by the county/municipality or by its full-time engineering staff. The extent of State participation will be governed by the classification of bridges as outlined under cost of construction, N.J.A.C. 16:21A-4.1. Prior approval of the State's participation in the cost of engineering fees shall be obtained before any engineering services are performed.

(b) Local government desiring State participation in the cost of engineering shall submit to the Department of Transportation a list of the scope of services to be performed by the engineer. The State shall participate in accordance with the percentage range as outlined in the current policy and procedure of the Department concerning engineering fees.

(c) Payment for engineering fees shall be made on a reimbursement basis. Claims shall be presented on forms provided by the State.

(d) The State shall also participate in the cost of inspection and construction supervision including the necessary material testing. The extent of State participation will be governed by

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the classification of bridges as outlined under cost of construction, N.J.A.C. 16:21A-4.1. The State shall participate in accordance with the percentage range as outlined in the current policy and procedure of the Department concerning inspection and construction supervision fees.

16:21A-4.4 Emergency Bridge Projects

The New Jersey Department of Transportation will evaluate applications received from municipalities and counties throughout the State for projects of an emergency nature. The rapid construction, reconstruction, or rehabilitation of projects of this type will reduce undue hardships to the traveling public or correct unsafe conditions in a timely fashion. All rules, regulations and procedures included in this Chapter shall pertain except, due to the emergency nature of the projects, applications will not be evaluated by a County/Municipal Screening Committee.

16:21A-4.5 Federally-aided Bridge Projects

(a) At the discretion of the Commissioner of Transportation, funds appropriated may be used for the non-federal share of any federal program which finances the rehabilitation and improvement of bridges. State funds may be used for 80 percent of the required match for the cost of work participated in by the Federal Highway Administration. The remaining 20 percent would be provided by the county or municipality. The State will participate in 80 percent of the cost of work determined to be non-participating by the Federal Highway Administration providing the work is determined by the State to be an integral part of the improvement and in the public interest. The county/municipality will be responsible for 100 percent of the cost of work determined to be non-participating by both the Federal Highway Administration and the State.

(b) All rules, regulations and procedures included in this Chapter pertain to non-federally-aided bridge projects. Federally-aided bridge projects supported in part with monies in the New Jersey Bridge Rehabilitation and Improvement Fund shall be governed by appropriate rules, regulations and standards established for the applicable federal program.

(a)

TRANSPORTATION OPERATIONS

Route 4 in Englewood

Adopted Amendment: N.J.A.C. 16:28A-1.4

Proposed: June 4, 1984, at 16 N.J.R. 1322(a).
Adopted: July 19, 1984 by Jarrett R. Hunt, Assistant Chief Engineer, Traffic and Local Road Design.
Filed: August 6, 1984 as R.1984 d.354, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-198.1 and 39:4-199.

Effective Date: August 20, 1984.
Expiration Date pursuant to Executive Order 66(1978): November 7, 1988.

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Summary of Public Comments and Agency Responses: No comments received.

Full text of the adopted amendment follows:

16:28A-1.4 Route 4 in Englewood

(a) (No change.)

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

1.-11. (No change.)

12.-13. (Proposed at 16 N.J.R. 854(a).)

14. Along the eastbound (southerly) side in Englewood City, Bergen County:

i. Grand Avenue—(Mid-block):

(1) Beginning 775 feet west of the westerly curblin of the Grand Avenue and extending 135 feet westerly thereof.

(b)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Route 7

Adopted Amendment: N.J.A.C. 16:28A-1.6

Proposed: June 4, 1984 at 16 N.J.R. 1323(a).
Adopted: July 19, 1984 by Jarrett R. Hunt, Assistant Chief Engineer, Traffic and Local Road Design.
Filed: August 6, 1984 as R.1984 d.355, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-197.5.

Effective Date: August 20, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1988.

Summary of Public Comments and Agency Responses: No comments received.

Full text of the adopted amendment follows.

16:28A-1.6 Route 7

(a) (No change.)

(b) The certain parts of State highway Route 7 described in this section shall be designated and established as restricted parking space for the use of persons who have been issued special Vehicle Identification cards by the Division of Motor Vehicles in accordance with N.J.S.A. 39:4-197.5.

1. Restricted parking in the Town of Belleville, Essex County:

i. Along the west side (#221 Washington Avenue):

(1) Beginning at a point 44 feet from the southerly curb line of Academy Street and extending 22 feet southerly therefrom.

ii. Along the east side (#228 Washington Avenue):

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(2) Beginning at a point 45 feet from the northerly curb line of Academy Street and extending 22 feet northerly therefrom.

(a)

TRANSPORTATION OPERATIONS

Miscellaneous Traffic Rules Through Streets, Stop and Yield Intersections Route 56 (Landis Avenue)

Adopted Amendment: N.J.A.C. 16:30-2.1

Proposed: June 4, 1984, at 16 N.J.R. 1324(a).
Adopted: July 19, 1984, Jarrett R. Hunt, Assistant
Chief Engineer, Traffic and Local Road Design.
Filed: August 6, 1984 as R.1984 d.356, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-140.

Effective Date: August 20, 1984.
Expiration Date pursuant to Executive Order 66(1978):
November 7, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted amendment follows.

16:30-2.1 Through street designation of State highways.
(a) These State highway routes, for their entire lengths, in the counties as described in this section, shall be designated and established as "through streets" where "stop" or "yield" signs shall be installed on the near right side of each intersection roadway.
1.-120. (No change.)
121. Route 56: Cumberland and Salem counties;
(b) (No change.)

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

Alternate Benefit Program Contributions

Adopted Amendment: N.J.A.C. 17:1-2.18

Proposed: April 2, 1984, at 16 N.J.R. 703(a).
Adopted: July 30, by Douglas R. Forrester, Director,
Division of Pensions
Filed: August 6, 1984 as R.1984 d.374, **without change**.

Authority: N.J.S.A. 18A:66-192.

Effective Date: August 20, 1984.
Expiration Date pursuant to Executive Order No.
66(1978): May 15, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

17:1-2.18 Contributions
(a) (No change.)
(b) A participant may increase or decrease the percentage of optional annuity deductions or the allocation of salary deductions and reductions between the Teachers' Insurance and Annuity Association and the College Retirement Equities Fund no more than once a taxable year. For purposes of these rules, a taxable year is deemed to be the calendar year commencing on January 1 and ending on December 31.
(c) (No change.)

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(c)

CASINO CONTROL COMMISSION

Applications Form of Application; Personal History Disclosure Form 4A

Adopted Amendment: N.J.A.C. 19:41-7.14

Proposed: June 4, 1984 at 16 N.J.R. 1336(a).
Adopted: August 3, 1984 by Casino Control Commission, Walter N. Read, Chairman.
Filed: August 6, 1984 as R.1984, d.369, **without change**.

Authority: N.J.S.A. 5:12-63(c) and -70(a)

Effective Date: August 20, 1984.
Expiration Date pursuant to Executive Order No.
66(1978): May 17, 1988.

Summary of Public Comments and Agency Responses and Reasons For Making Changes:
No comments received.

OFFICE OF ADMINISTRATIVE LAW NOTE: The Personal History Disclosure Form 4A which was adopted by the Casino Control Commission is not reproduced herein. Copies of this form can be obtained from:
Casino Control Commission
Princeton Pike Office Park
Building No. 5, CN 208
Trenton, N.J. 08625

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(a)

CASINO CONTROL COMMISSION

Gaming Schools

Adopted Amendments: N.J.A.C. 19:44-1.1, 2.2, 2.3, 2.5, 3.1, 3.2, 3.3, 4.1, 5.1, 6.1, 6.3, 7.2, 8.1, 8.2, 8.3, 8.4, 9.1, 9.3, 9.4, 9.5, 9.6, 10.1, 10.2, 10.3, 11.1, 11.3, 11.4, 13.2, 15.4, 16.1, 17.11, 18.1, 18.2

Proposed: September 6, 1983 at 15 N.J.R. 1460(a).

Adopted: August 6, 1984 by Casino Control Commission, Walter N. Read, Chairman.

Filed: August 6, 1984 as R.1984 d.368, **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. 5:12-63(c) and 5:12-69(a)

Effective Date: August 20, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): October 13, 1988.

AGENCY NOTE: The amendments addressed in this notice were originally proposed at 15 N.J.R. 1460(a) as part of the readoption notice of N.J.A.C. 19:44.

On October 12, 1983, the Commission readopted N.J.A.C. 19:44, but deferred action on the amendments to enable the Commission to evaluate more fully the comments it received. as a result of those comments, N.J.A.C. 19:44-2.2, -5.1, -9.1 and -18.1 are being adopted with technical changes not requiring additional public notice and comments (See N.J.A.C. 1:30-3.5).

Due to the nature of changes recommended by the public, N.J.A.C. 19:44-9.4 is being adopted in part and republished in part. For purposes of clarity, N.J.A.C. 19:44-9.4(a) is being adopted with the same language it contained before it was published so that a new amendment can be meaningfully proposed to this section; (b) is being adopted as it was published.

Other sections affected by the comments are N.J.A.C. 19:44-8.3 and -15.4. A separate proposal filed pursuant to N.J.A.C. 1:30-3.5, addressing N.J.A.C. 19:44-8.3, -9.4 and -15.4 will be published in the September 4, 1984 New Jersey Register.

Summary of Public Comments and Agency Responses:

The Commission received comments from the Division of Gaming Enforcement and representatives of two gaming schools. The comments related to the regulations that are currently in effect and the proposed amendments.

Concerning N.J.A.C. 19:44-8.3(a)2, the representatives advocated an increase in the minimum number of training hours for students studying craps as a second game because of recent changes in the rules of the games. They also recommended an increase in the minimum hours for second game roulette when baccarat is the first game, since baccarat does not provide skills that would enhance students' comprehen-

sion of roulette. The Commission accepted this comment and intends to propose an amendment increasing the hours of training.

In response to the proposed amendment to N.J.A.C. 19:44-9.1(b), the schools indicated that notifying the Commission prior to altering the number or arrangement of tables was too burdensome since these items change frequently. The Commission accepted this comment.

To prevent confusion, the gaming school representatives indicated that N.J.A.C. 19:44-9.4(a) should specify which gaming equipment does not have to meet the requirements imposed on casino licensees. They also felt that subsection (b) should be revised to permit the name of casino licensees to be imprinted on a gaming table since the schools periodically use tables loaned by casinos. The Commission rejected these comments since the regulation adequately addresses the concern of the schools.

Concerning N.J.A.C. 19:44-15.4(a)2, the representatives suggested that only full-time instructors be listed in the bulletin since the inclusion of temporary instructors would require an inordinate number of revisions to the bulletin. Concerning N.J.A.C. 19:44-15.4(a)10, the representatives requested that the bulletin not be required to contain the time and clock hours allotted to each subject since this information is contained elsewhere and compliance with this requirement would necessitate a voluminous bulletin. The Commission accepted these comments and intends to propose amendments that will permit this revision.

Concerning the proposed amendments to N.J.A.C. 19:44-18.1(b), the representatives asked that the additional information on the permanent record card only be required for students accepted after the effective date of the amendment and that the information be permitted to be maintained by an EDP system. The Commission accepted these comments.

The Division recommended that N.J.A.C. 19:44-2.2 and 5.1 be modified to indicate that the Division receive the submissions required by the regulations. The Commission accepted these comments.

The Division objected to the amendment to N.J.A.C. 19:44-9.5 which eliminates the requirement that chips be inventoried daily. Instead, the Division recommends that the chips be inventoried at two week intervals. The Commission rejected this comment since gaming school chips have no value and are distinctly dissimilar from chips issued by casinos.

Lastly, The Division also objected to the elimination of the perpetual inventory of gaming equipment. N.J.A.C. 19:44-9.4(a). The Commission accepted this comment but limited the equipment that must be inventoried.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions shown in brackets with asterisks *[thus]*).

19:44-1.1 Definitions

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

...
"Course" shall mean a unit of educational instruction or training in a specific subject area of gaming and playing or dealing techniques which upon successful completion may be used to satisfy any experiential or training requirements imposed by the commission as a prerequisite to licensure as a casino key employee or casino employee.

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“Gaming school” shall mean any person or school, whether or not a governmental agency, teaching any course or program of instruction, which is a casino service industry enterprise, as defined in the act or the regulations of the commission, or which shall enroll any student or offer any course to the public of this State or do any other business whatsoever in this State, whether for compensation or not, relating to such teaching. All gaming schools are hereby deemed to be casino service industry enterprises and are required to be licensed as gaming schools in accordance with sections 92a and b of the act and the regulations of the commission.

“Sales representative” shall mean any person owning an interest in, employed by or representing a gaming school and who solicits or enrolls any person for education, training or instruction in such school.

19:44-2.2 License; providing goods or services

(a) (No change in text.)

(b) Any gaming school licensee which enters into an agreement with a casino licensee or an applicant for a casino license to provide any course or program of instruction, must file with the commission ***and division***, prior to the commencement of such training, a copy of said agreement. Each such agreement shall describe the training to be offered in sufficient detail to allow the commission to properly evaluate that training. This description shall include but need not be limited to:

1. The course or program title;
2. The number of persons involved in such training, and the maximum number of students that will be permitted to enroll in any one session of such training;
3. A description of the plan of instruction to be used;
4. The tuition and other charges or costs to the persons trained and to the parties to the agreement;
5. The name, license number and employer of every instructor to be utilized for such training;
6. The name, license number and employer of any support personnel to be used in such training;
7. The location where such training is to be conducted; and
8. Any certificate or other documentation to be awarded to persons successfully completing such training program.

19:44-2.3 Casino licensee offering any course or program of instruction

For purposes of this chapter, the issuance of a casino license shall be deemed to include the issuance of a gaming school license to the casino license holder without the necessity of a separate gaming school license being issued provided that the casino licensee has met all the requirements for licensing as a casino service industry. A casino licensee may offer any course or program of instruction provided that the casino licensee shall have first been issued a certificate of operation authorizing the operation of a gaming school in compliance with these regulations.

19:44-2.5 Waivers

Upon written application from a public school district or public institution of higher education, the commission in its discretion may waive any licensure or qualification of any individuals except those instructors and other principal employees responsible for the teaching of any course or program of instruction.

19:44-3.1 Gaming school license standards

(a) No gaming school license shall be issued unless the qualifications of the gaming school enterprise shall have first been established in accordance with sections 86, 89 and 92b of the act and regulations of the commission which qualifications shall include but shall not be limited to:

1.-3. (No change in text.)

4. (No change in text.)

5. If the gaming school enterprise is not a corporation, that it maintains an office in this State and has designated to the commission and maintains in this State an agent for the acceptance of service of process;

6. The adequacy of its affirmative action program for both its employees and students; and

7. The appropriate individuals associated with or employed by the gaming school be properly qualified as required by the Act and these regulations.

19:44-3.2 Gaming school certificate of operation standards

(a) Notwithstanding the issuance of a license, no gaming school may enroll students or offer any course or program of instruction unless and until a valid certificate of operation has been issued to the gaming school licensee by the commission.

(b) No certificate of operation shall be issued unless the gaming school licensee has established qualifications, to the satisfaction of the commission, in each of the following areas:

1. The adequacy of its courses or programs of instruction;

2. The adequacy of its proposed facilities, supplies and equipment to provide thorough instruction and training to the students enrolled, and to effectively accommodate its students and faculty;

3. The adequacy of its system of record keeping;

4. The adequacy of its bulletin and enrollment agreement;

5. The school has a properly licensed resident director in its employ and such individual shall have established his qualifications in accordance with the casino key employee standards excluding New Jersey residency as set forth in sections 86, 89 and 92b of the Act and the regulations of the commission;

6. The adequacy of its insurance coverage;

7. For schools whose facilities are leased or rented, the adequacy of its contract or lease agreement;

8. The adequacy of its surety bond; and

9. The school has in its employ properly licensed instructors for the courses it proposes to offer and any other individuals employed by the gaming school be properly licensed as required by these regulations.

19:44-3.3 Changes

(a) A change in any item that was found necessary for the issuance of, or made a condition on, the gaming school license must be approved by the commission prior to any announcement or implementation of the change by the gaming school.

(b) A change in any item that was found necessary for the issuance of, or made a condition on, the gaming school certificate of operation must be approved by the commission prior to any announcement or implementation of the change by the gaming school.

19:44-4.1 Persons required to be qualified

(a) No gaming school license shall be issued unless the individual qualifications of:

1. (No change in text.)

i.-iii. (No change in text.)

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- iv. Its supervisory personnel;
- v. Its principal employees, and
- vi. Such other persons whom the commission may consider appropriate for approval or qualification.

19:44-5.1 Establishment of qualifications

(a) No natural person shall be employed by a licensed gaming school as an instructor, administrative employee or a sales representative unless he shall first have established his qualifications in accordance with the casino employee standards set forth in sections 92b, 86 and 90 of the act and the regulations of the commission and unless a gaming school employee license authorizing the person to hold the particular position of employment shall first have been issued to him, provided, however, that notwithstanding the provisions of this section, the licensure of clerical personnel shall not be required.

(b) Notwithstanding any other requirements of this subchapter, guest lecturers who do not possess a gaming school instructor's license may be employed provided that prior notice is filed with the commission ***and division*** and that an individual who possesses a valid instructor's license is responsible for the conduct of the class and is in attendance during the sessions conducted by the guest lecturer.

19:44-6.1 Duration of licenses

(a) Licensure as a gaming school and a resident director shall be granted for a period of one year.

(b) Licensure as an instructor, an administrative employee or sales representative shall be granted for a period of three years.

19:44-7.2 Selection of name

A gaming school shall not infringe on the name of any other school whatsoever. It shall not use any title, name, label, insignia or designation which can be construed as misleading or deceiving to prospective students with respect to the nature of the school or its accreditation, courses or programs or methods of instruction.

19:44-8.1 Approval

No person or school, whether or not a governmental agency, shall offer any course or program of instruction or enroll any student in any course or program of instruction unless an approval authorizing such course or program of instruction shall have first been obtained from the commission.

19:44-8.2 Outline

(a) For each course or program submitted to the commission for approval, the gaming school shall submit a course or program outline in sufficient detail for proper evaluation which outline shall include, but need not be limited to:

- 1.-4. (No change in text.)
5. A description of the plan of instruction to be used which shall include daily lesson plans;
6. A description of the space, equipment, tools and audio-visual material to be used for each course or program;
Renumber 8.-9. as 7.-8.
Renumber 11.-13. as 9.-11.
12. A description of the method and frequency by which the course will be evaluated in relation to its goals and objectives;
13. The student-teacher, student-table and table-teacher ratios for each course or program; and

14. A copy of all textual material to be used in the course or program of instruction.

19:44-8.3 Minimum hours

(a) (No change in text.)

1. For a student being trained to deal his first game the following minimum hours of training and instruction shall be required:

i.-ii. (No change in text.)

iii. 200 hours to prepare a student to deal roulette; and

iv. (No change in text.)

2. For a student being trained to deal his second or subsequent game the following minimum hours of training and instruction shall be required:

i. (No change in text.)

(1) (No change in text.)

(2) 120 hours to prepare to him to deal roulette; and

(3) (No change in text.)

ii. For a student who has been trained to deal roulette:

(1) (No change in text.)

(2) 80 hours to prepare him to deal blackjack; and

(3) (No change in text.)

iii. For a student who has been trained to deal craps:

(1) (No change in text.)

(2) 80 hours to prepare him to deal blackjack; and

(3) (No change in text.)

iv. For a student who has been trained to deal baccarat:

(1) (No change in text.)

(2) 80 hours to prepare him to deal roulette; and

(3) 80 hours to prepare him to deal blackjack.

(b) For any training or instruction other than that listed in (a) above, the required minimum hours of training and instruction shall be determined by the commission on a case by case basis.

19:44-8.4 Certificate

Upon satisfactory completion of any course or program of instruction, the gaming school shall, in writing, certify directly to the commission that the student has completed the said course or program of instruction.

19:44-9.1 Sufficient physical facilities and equipment

(a) The physical facilities and equipment of each gaming school shall be sufficient for attainment of the school's purposes and shall be safe and adequate in quality, size, and number to effectively accommodate students, faculty and staff. The school shall have sufficient space, equipment and supplies on hand to provide a shop, laboratory or classroom space for each of the students in attendance at every session of instruction or training.

(b) No gaming school shall alter its physical facility ***[or the number or arrangement of the gaming tables in its gaming school]*** unless prior notice, which shall include a diagram detailing the proposed change, has been submitted to and approved by the ***[c]* *C*ommission.**

19:44-9.3 Leases

Facilities leased or rented which house the instructional program of the school shall be bound by contract or lease agreement between the owner of the school and the owner of the facilities. Said contract or lease agreement shall stipulate length of lease, conditions of lease and shall be signed by both parties. A copy of the agreement must be filed with the commission prior to the issuance of a certificate of operation.

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19:44-9.4 Equipment

(a) Unless the [c]* *C*ommission shall otherwise determine, all gaming equipment utilized by a gaming school shall conform to all requirements set forth in the regulations of the [c]* *C*ommission governing gaming equipment utilized by casino licensees. [Each gaming school shall keep an itemized and current list of all gaming equipment utilized by it.]* ***Each gaming school shall keep an itemized and current list of all gaming equipment utilized by it.***

(b) Unless the commission shall otherwise determine, each table for blackjack, roulette, craps, baccarat and big six shall have the name of the gaming school, or some other identifying attribute as approved by the commission, permanently imprinted thereon in letters at least one inch in height and shall, as shall each slot machine, also have permanently affixed on it a serial number which, together with the location of the table or machine, shall be filed with the commission.

19:44-9.5 Gaming chips and plaques

(a) Unless the commission shall otherwise determine, all gaming chips and plaques utilized by a gaming school shall be distinctly dissimilar to any gaming chips and plaques utilized by a casino licensee.

(b) No gaming school shall issue or cause to be utilized in its gaming school any gaming chips or plaques until such gaming chips and plaques are submitted to and approved by the commission.

19:44-9.6 Security

Each gaming school shall provide adequate security of its premises for the protection of its equipment. No such equipment shall be removed from the premises of the school or sold or transferred to any person without the prior approval of the commission; provided, however, that gaming chips and plaques may be removed by students for practice purposes without the necessity of any approval of the commission.

19:44-10.1 Insurance

No gaming school certificate of operation shall be issued unless the commission shall have first been satisfied that the said gaming school has insurance adequate to protect its financial interest, to maintain its solvency in the case of loss by fire or other causes and to afford it reasonable protection in instances of personal and public liability.

19:44-10.2 Annual budget

(a) (No change in text.)

1. Anticipated income for the year, identified by source and amount, which shall include the following:

i. (No change in text.)

ii. Income, actual or anticipated, by source and amount for the year; and

iii. Total anticipated income.

2. Anticipated expenditures which shall include the following categories:

i.-vi. (No change in text.)

vii. Fixed charges: The expenditures for the rental of land and buildings, old age survivors insurance, insurance for buildings and equipment, workman's compensation and liability insurance; and

viii. (No change in text.)

19:44-10.3 Financial statements

An annual audited financial statement in a form as shall be specified and approved by the commission certified by a certi-

fied public accountant licensed to practice in the State of New Jersey shall accompany each application for a gaming school license.

19:44-11.1 Surety bond requirements

No gaming school certificate of operation shall issue to other than a governmental agency unless the gaming school shall have first posted with the commission a surety bond with a responsible surety company acceptable to the commission in an amount to be determined by the commission conditioned for the faithful performance of all agreements and contracts with the students enrolled therein and for payment of any and all fees imposed pursuant to these regulations.

19:44-11.3 Notice, form of surety bond

The surety bond shall be drawn in favor of the "Casino Control Commission" on bond forms provided or approved by the commission which contain a provision requiring the surety company to provide both the commission and the gaming school at least 30 days notice in writing before withdrawing as surety on the bond or modifying materially any term or condition of the bond. In the event of any such withdrawal by the surety company, a failure of the said gaming school to post a new surety bond prior to the expiration of the said 30 day period shall be grounds for suspension of its gaming school certificate of operation.

19:44-11.4 Exemptions

The commission may exempt any gaming school from the requirements of this section in any instance in which it is satisfied that a gaming school has provided other financial assurances which adequately guarantee its faithful performance of all agreements and contracts with the students enrolled therein and for payment of any and all fees unpaid pursuant to these regulations.

19:44-13.2 Discontinuance of course or program

In the event of discontinuance of a course or program of instruction by the school, the school may be required by the commission to refund to the student in full or in part any fee paid by the student for the course or program of instruction.

19:44-15.4 Contents of bulletin

(a) (No change in text.)

1.-2. (No change in text.)

3. A calendar of the school showing legal holidays and other important dates;

4. (No change in text.)

19:44-16.1 Enrollment agreement

(a) Each gaming school shall use an enrollment agreement which shall be the contract between the school and the student and shall:

1. Be prepared in duplicate, dated and signed by the student and a designated representative of the school; the student shall be furnished a copy of the agreement immediately upon execution;

2.-9. (No change in text.)

19:44-17.11 Prior approval

(a) Unless the commission shall otherwise determine, all proposed advertisements shall be submitted in writing to the commission prior to the broadcast or publication of such material; however, any advertisement that is identical to or contains only minor changes in the specifics of any previously

ADOPTIONS

OTHER AGENCIES

approved advertisement shall not be required to be resubmitted for approval. Said specifics shall include, but not be limited to, instructors' names and class types, dates, times and locations.

(b) Each gaming school licensee shall maintain a record of all its advertisements which shall include, at a minimum, the following:

1. A description of the advertisement;
2. The date approved by the commission; and
3. The date and method of broadcast or publication.

19:44-18.1 Adequate records

(a) The schools shall maintain, for at least five years, in a place secure from theft or destruction, adequate records

which shall be made available to the commission or division upon request. These records shall include:

1.-8. (No change in text.)

(b) A permanent record ***[card]***, **in a form approved by the Commission,*** shall be maintained for each student indefinitely. This ***[card]* *record*** shall show the course or program of instruction attended, the total amount of tuition paid or owed, the total hours of training actually received, the date of completion or withdrawal and, for students enrolled in a course designed for second or subsequent game training, verification that the student meets the minimum hours of training and instruction required for enrollment in such a course. In the event of the closing of a school, the student's permanent record ***[card]*** shall be forwarded to the Commission.

EMERGENCY ADOPTION

HIGHER EDUCATION

(a)

STUDENT ASSISTANCE BOARD

Tuition Aid Grant Program 1984-1985 Award Table

Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 9:7-3.1

Authorized By: Student Assistance Board, M. Wilma Harris, Vice Chairwoman.

Authority: N.J.S.A. 18A:71-47(b) and 18A:71-48.

Emergency Amendment Adopted: August 7, 1978 by Student Assistance Board, M. Wilma Harris, Vice Chairwoman.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c): August 8, 1984.

Emergency Amendment Filed: August 8, 1984 as R. 1984 d.376.

Emergency Amendment Effective Date: August 8, 1984.

Emergency Amendment Expiration Date: October 7, 1984.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted amendment becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The concurrent proposal is known as PRN 1984-497.

The agency emergency adoption and concurrent proposal follows.

Summary

The Tuition Aid Grant program provides awards based on financial need to enable students to obtain an undergraduate degree from both public and private colleges in New Jersey.

The emergency amendment and concurrent proposal establishes an increased award table for the Tuition Aid Grant program for the 1984-1985 academic year. Approximate increases are as follows: County Colleges-\$50.00; State Colleges-\$60.00; Independent Institutions-\$100.00; Rutgers University and UMDNJ-\$30.00; NJIT-\$200.00; Out-of-State-No change.

Social Impact

The increased awards will provide for full tuition benefits for students attending public sector institutions and up to \$1,900 for students attending New Jersey independent institutions. Emergency adoption of this amendment may be expected to allow prompt notification to students and families of increased awards, thereby allowing many who could otherwise not financially afford to attend college to enroll for the 1984-85 academic year. Other students and their families who anticipated borrowing money to finance their collegiate education will, upon receiving an increased award, not be required to borrow as much money as originally planned.

Economic Impact

The proposed award table is consistent with the fiscal year 1985 Appropriations Act for the Department of Higher Education and provides increased awards over the existing table, reflecting increased tuition rates and related college costs. Emergency adoption of this amendment will allow the increased awards to be made commencing with the fall semester of the 1984-85 academic year.

Full text of the adopted emergency amendment and concurrent proposal follows (additions indicated in boldface **thus**).

9:7-3.1 Tuition Aid Grant Award Table

The value of the grant is related to the tuition charges of the various institutional sectors in New Jersey and the student's ability to pay for educational costs. The award table below shows approximate award levels depending upon tuition and ability to pay.

(Delete the existing table in the New Jersey Administrative Code at N.J.A.C. 9:7-3.1 and **replace** it with the following table.)

TUITION AID GRANT (TAG) AWARD TABLE FOR 1984-85 APPROXIMATE TUITION AID GRANT VALUES NEW JERSEY COLLEGES AND UNIVERSITIES

New Jersey Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers U. & UMDNJ ¹	NJ Inst. of Tech.	Renewal ² Out-of-State Colleges & Universities
A	B	C	D	E	F	G
Under 750	\$750	\$1088	\$1900	\$1520	\$1796	\$450
750-1049	650	980	1800	1420	1690	260
1050-1349	550	880	1700	1320	1590	260
1350-1649	450	780	1600	1220	1490	260
1650-1949	350	680	1500	1120	1390	200
1950-2249	250	580	1400	1020	1290	0
2250-2549	200	480	1300	920	1190	
2550-2849	0	380	1200	820	1090	
2850-3149		280	1100	720	990	
3150-3449		200	1000	620	890	
3450-3749		0	900	520	790	

EMERGENCY ADOPTION

HIGHER EDUCATION

New Jersey Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers U. & UMDNJ ¹	NJ Inst. of Tech.	Renewal ² Out-of-State Colleges & Universities
3750-4049			800	420	690	
4050-4349			700	320	590	
4350-4649			600	200	490	
4650-4949			500	0	390	
4950-5249			400		290	
5250-5549			300		200	
5550-5849			200		0	
Over 5849			0			

¹ Rutgers Engineering and Pharmacy students will receive the award values shown in column F up to their maximum tuition charge. Approved programs only at UMDNJ. Contact the financial aid office for details.

² "Renewals" are students who received a Tuition Aid Grant in 1981-82 or prior years.

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

Division of Coastal Resources

Notice of Relaxation of Application of N.J.A.C. 7:6-1.37(d)

Authority: N.J.S.A. 12:6-1e and 12:7-34.49

Take notice that the Commissioner, Department of Environmental Protection, upon recommendation of the Boat Regulation Commission and finding it to be in the public interest and as provided at N.J.A.C. 7:6-1.2(b), relaxes the application of N.J.A.C. 7:6-1.37(d) in the manner specified below.

For the purpose of operating a parasailing business in the areas of Little Egg Harbor (Ham Island) and Barnegat Bay, Rick Gardner is hereby granted a waiver of the maximum tow line length (75 feet) contained in N.J.A.C. 7:6-1.37(d), permitting his use of 300-foot tow lines. This waiver is granted for a trial period commencing immediately and concluding at the termination of the 1985 boating season. This waiver can be withdrawn upon the Commissioner's making the finding that the parasailing operation is not being conducted with utmost attention to the safety of participants and observers alike or that said operation is not being conducted without endangerment to the general boating public.

HEALTH

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Megavoltage Oncology Service Certificate of Need Batching Cycles

Public Notice

Take notice that the Commissioner of Health, in cooperation with the Health Care Administration Board, has changed for one time only the batching cycle, scheduled to begin on

September 15, 1984 for certificate of need applications for megavoltage radiation oncology equipment and services.

The batching cycle for certificate of need applications scheduled to begin on September 15, 1984 is being deleted. The next deadline for the submission of new or revised certificate of need applications for megavoltage radiation oncology equipment and services will be December 31, 1984.

The change is for one time only and shall have no effect on the scheduling of subsequent batching cycles for certificate of need applications for megavoltage radiation oncology equipment and services.

This one time change in the cycle for the review of certificate of need applications for megavoltage oncology services is being implemented in order to avoid possible confusion and disruption within the planning process resulting from the submission of certificate of need applications during the period when substantive amendments to the existing rules (N.J.A.C. 8:33I-1.1 et seq.) are being proposed.

Deletion of the September 15, 1984 megavoltage radiation oncology services batching cycle will allow the proposed revisions to the existing megavoltage oncology rule to become effective prior to the next megavoltage services batching cycle of January 15, 1985.

Any inquiries should be addressed to:
John A. Calabria, Coordinator
Health Planning Services
New Jersey Department of Health
CN 360, Room 403
Trenton, New Jersey 08625

LABOR

(c)

THE COMMISSIONER

Availability of Current Prevailing Wage Rates

Public Notice

William G. Van Note, Jr., Acting Commissioner of Labor pursuant to the "New Jersey Prevailing Wage Act", N.J.S.A. 34:11-56.25 et seq., wishes to advise the public of the availability of current prevailing wage rates for public works as defined in the cited act.

Copies of current prevailing wage rates for all New Jersey counties may be obtained by writing to the New Jersey Department of Labor, Division of Workplace Standards, CN 389, Trenton, N.J. 08625, or by calling on the telephone to 609-292-2259.

TREASURY-GENERAL

(a)

DIVISION OF BUILDING AND CONSTRUCTION

New Project Solicitation of Design Services

Applications (DBC Form 48B) for the project described below are due in DBC no later than 5:00 P.M., August 17, 1984, and shall be submitted to the attention of Ron Wengerd, Secretary of the A/E Selection Board. Submissions received after this time and date will not be considered. If not currently prequalified by DBC, applications must have submitted a completed DBC Form 48A by the closing date of August 10, 1984.

DBC No.: M565

CCE: \$2,360,000

Title: New Rehabilitation Center

N.J. Commission for the Blind & Visually Impaired
New Brunswick, N.J.

DBC is seeking to engage the services of an architectural firm to prepare the necessary design documents and to administer the construction contracts for the referenced project. The facility will consist of a new two-story, 20,000 sf building to be built on a 24,000 sf site in New Brunswick. It will include a residential component, offices, training/shop areas, and recreational facilities and is to be fully accessible (including considerations for the blind and visually impaired). The scope of work includes on-site parking for 25 cars and sitework.

Only architectural firms with a DBC Rating of at least \$5,000,000 and relevant experience will be considered. At least one firm of a Joint Venture must have a DBC Prequalification Rating of \$5,000,000. Applicants must identify their pertinent engineering consultants on the 48B submittal.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Definition of Cash Equivalents

N.J.A.C. 19:45-1.1

Agency Response to Petition for Rulemaking (N.J.S.A. 52:14B-4(f))

Petitioner: Claridge at Park Place, Inc.

Authority: N.J.S.A. 5:12-69(c), 52:14B(f) and
N.J.A.C. 1:30-3.6

Take notice that on June 27, 1984, the Casino Control Commission refused to publish the regulation proposed by Claridge at Park Place, Inc. which amended the definition of cash equivalents (N.J.A.C. 19:45-1.1) to include checks drawn on bank accounts maintained by licensed casino facilities. The public was informed of the Commission's intention to consider the rule proposal of Claridge at Park Place, Inc. by notice published in the June 4, 1984 New Jersey Register at 16 N.J.R. 1384(a).

The Commission decided not to publish the proposed rule because it believed that the adoption of the rule was beyond its statutory authority. The Commissioners expressed the opinion that such a change could only be made through an amendment to the Casino Control Act rather than an amendment to the regulations.

INDEX OF PROPOSED RULES

The *Index of Proposed Rules* contains rules which have been proposed in the New Jersey Register between August 15, 1983 and August 6, 1984, and which have not been adopted and filed by August 6, 1984. **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)
1:1-2.2	Jurisdiction of OAL	7-2-84	16 N.J.R. 1636(a)
1:1-3.3	Transcripts at public expense for use on appeal	7-16-84	16 N.J.R. 1834(a)
1:1-3.7, 3.12, 3.13	Lay representation in contested cases	6-18-84	16 N.J.R. 1408(a)
1:1-5.2	Notification of second jurisdictional claims	6-18-84	16 N.J.R. 1412(a)
1:1-14	Consolidation and predominant interest motions: timing of decision	6-18-84	16 N.J.R. 1413(a)
1:1-17.1	Approving the settlement	9-6-83	15 N.J.R. 1401(a)
1:2-2.10	Lay representation in contested cases	6-18-84	16 N.J.R. 1408(a)
1:6A-3.1	Special education hearings: emergency relief applications	4-16-84	16 N.J.R. 780(a)
1:6A-4.2	Lay representation in contested cases	6-18-84	16 N.J.R. 1408(a)
1:6A-5.3	Special education hearings: transfer of record	3-5-84	16 N.J.R. 408(a)
1:10-17.1	Division of Public Welfare cases	5-7-84	16 N.J.R. 945(a)
AGRICULTURE—TITLE 2			
2:5-4	Area quarantine for avian influenza (with Emergency Adoption)	12-19-83	15 N.J.R. 2176(a)
2:52-2.1, 2.2, 3.1, 3.2	Changes in milk suppliers: notice requirements	8-6-84	16 N.J.R. 2028(a)
2:52-6.1, 6.2, 6.3	Determining the cost of milk and milk products	8-6-84	16 N.J.R. 2030(a)
2:53-3.2	Determining the cost of milk and milk products	8-6-84	16 N.J.R. 2030(a)
2:53-4.1, 4.2	Changes in milk suppliers: notice requirements	8-6-84	16 N.J.R. 2028(a)
2:76-5	Cost-sharing for soil and water conservation projects	7-2-84	16 N.J.R. 1637(a)
2:76-6	Acquisition of development easements	7-2-84	16 N.J.R. 1639(a)
2:90-2	Eligible projects for soil and water conservation cost sharing	6-18-84	16 N.J.R. 1416(a)
BANKING—TITLE 3			
3:1-1.2	Readopt rules concerning Interest on Other Loans	7-2-84	16 N.J.R. 1642(a)
CIVIL SERVICE—TITLE 4			
4:1-1.1-1.10	Purpose and application of rules	5-21-84	16 N.J.R. 1132(a)
4:1-5.5	Awarding back pay	1-17-84	16 N.J.R. 97(a)
4:1-10.2, 13.9, 13.10	Working test period; seniority and promotions	6-4-84	16 N.J.R. 1296(a)
4:1-14.6	Interim appointments and return to permanent titles	5-21-84	16 N.J.R. 1134(a)
4:1-18.3	Compensation for holidays	6-18-84	16 N.J.R. 1421(a)
4:2-8.1	Seniority and promotions	6-4-84	16 N.J.R. 1296(a)
4:2-14.1	Interim appointments and return to permanent titles	5-21-84	16 N.J.R. 1134(a)
4:2-18.1, 18.2, 18.3	Compensation for holidays	6-18-84	16 N.J.R. 1421(a)
4:3-6.5	Repeal: Special police officer to police officer	5-21-84	16 N.J.R. 1136(a)
4:3-6.8	Repeal: Unclassified appointments by assignment judges	5-21-84	16 N.J.R. 1137(a)
4:3-8.3	Seniority and promotions	6-4-84	16 N.J.R. 1296(a)
4:3-14.2	Interim appointments and return to permanent titles	5-21-84	16 N.J.R. 1134(a)

N.J.A.C. CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
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5:23-1.6	UCC: inspection of public school facilities (with Emergency Adoption)	7-2-84	16 N.J.R. 1812(a)
5:23-4.12, 4.22, 4.25	UCC: private enforcing agencies; premanufactured construction	8-6-84	16 N.J.R. 2031(a)
5:23-5.4	Uniform Construction Code: inspector trainees	7-2-84	16 N.J.R. 1643(a)
5:23-5.5	Uniform Construction Code: engineer and architect licensure; fire service experience	7-2-84	16 N.J.R. 1644(a)
5:26-1.1, 1.3, 1.4, 3.1, 4.3, 9.3, 11.3	Planned real estate full disclosure	8-16-84	16 N.J.R. 2032(a)
5:27-5.3	Fire safety in rooming and boarding houses	2-21-84	16 N.J.R. 299(a)
5:30-10.1, 10.2	Local finance: municipal port authorities	8-15-83	15 N.J.R. 1304(a)
5:31	Local Finance Board: local authorities	7-16-84	16 N.J.R. 1835(a)
5:80-6	Housing and Mortgage Finance Agency projects: Tenant Selection Standards	5-7-84	16 N.J.R. 954(a)
5:80-7	Housing and Mortgage Finance Agency: housing sponsor's role	8-6-84	16 N.J.R. 2178(a)
EDUCATION—TITLE 6			
6:11-1-8	Teacher Preparation and Certification	7-2-84	16 N.J.R. 1646(a)
6:11-12	Readopt Supplement to Standards for State Approval of Teacher Education	7-16-84	16 N.J.R. 1841(a)
6:20-4.1-4.6	Tuition for private schools for handicapped	6-4-84	16 N.J.R. 1298(a)
6:22-1.8	School districts: long-range facilities plans	7-16-84	16 N.J.R. 1850(a)
6:39-1	Evaluation: readopt Statewide Assessment rules	7-16-84	16 N.J.R. 1852(a)
ENVIRONMENTAL PROTECTION—TITLE 7			
7:1G-1.2, 6	Worker and Community Right to Know: Trade Secrets (see also 8:59-3)	7-16-84	16 N.J.R. 1854(a)
7:1G-2.1	Worker and Community Right to Know: designation of hazardous substances	7-16-84	16 N.J.R. 1861(a)
7:10-4	Community drinking-water systems: interim testing schedule for hazardous contaminants	6-4-84	16 N.J.R. 1301(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(c)27	Floodways along Pequest River in Sussex and Warren counties	6-4-84	16 N.J.R. 1306(a)
7:13-1.11(d)49	Floodway delineations in Union County	5-21-84	16 N.J.R. 1146(a)
7:13-1.11(d)51	Floodways along North Branch Raritan (Project U)	6-4-84	16 N.J.R. 1307(a)
7:13-7.1(c)31	Project MR floodway delineations in Warren, Hunterdon, Sussex and Morris counties	7-16-84	16 N.J.R. 1863(a)
7:13-7.1(d)42	Floodway delineation along Green Brook in Somerset and Union counties	7-16-84	16 N.J.R. 1864(a)
7:13-7.1(d)47	Floodway delineation along Bear Brook in Park Ridge, Bergen County	7-16-84	16 N.J.R. 1865(a)
7:13-7.1(d)52	Supplemental Project I floodway delineations in the Passaic River Basin	7-16-84	16 N.J.R. 1865(b)
7:14-4.4	NJPDES: local control over dischargers	7-5-83	15 N.J.R. 1059(a)
7:19-5	Small water company takeover	3-19-84	16 N.J.R. 563(a)
7:19A	Emergency Water Supply Allocation Plan rules	2-21-84	16 N.J.R. 308(a)
7:19B	Emergency Water Surcharge Schedule	2-21-84	16 N.J.R. 314(a)
7:20	Dam Safety Standards	4-16-84	16 N.J.R. 790(a)
7:25-2	Readopt rules on Use of Land and Water Areas under DEP control	6-4-84	16 N.J.R. 1309(a)
7:25-4.19	Endangered and Nongame Species Advisory Committee	8-6-84	16 N.J.R. 2033(a)
7:25-6	1985-86 Fish Code	8-6-84	16 N.J.R. 2034(a)
7:25-16.1	Readopt freshwater fishing license lines	8-6-84	16 N.J.R. 2044(a)
7:25-18.2	Ocean and bay pound nets	7-16-84	16 N.J.R. 1866(a)
7:25-22.2	Purse seine fishing of menhaden	7-2-84	16 N.J.R. 1668(a)
7:26	Solid and hazardous waste collector-haulers: Disclosure Statement Forms	6-18-84	16 N.J.R. 1425(a)
7:26-1.4, 2.6, 2.10, 2.13, 3.5	Disposal of asbestos waste	3-5-84	16 N.J.R. 440(a)
7:26-1.7	Solid waste disposal: exemption from registration (with Emergency Adoption)	5-7-84	16 N.J.R. 1100(a)
7:26-1.7	Extension of comment period: Solid waste disposal-exemption from registration	5-7-84	16 N.J.R. 1627(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow	5-7-84	16 N.J.R. 1000(a)
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