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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules of Practice
Rules of Special Applicability
Insurance Filing Cases

Proposed New Rules: N.J.A.C. 1:11-1.1 and 1:11-15.1

Authorized By: Ronald I. Parker, Acting Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F(e), (f) and (g).

Interested persons may submit, in writing, data, views or arguments relevant to the proposal on or before December 5, 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 1984-641.

The agency proposal follows:

Summary

The proposed rules of special applicability, N.J.A.C. 1:11-1 et seq., provide special procedures to govern the determination of insurance filing matters which are certified for contested case hearing.

The rules require the exchange of the name, credentials and testimony of each expert witness who will be called at the hearing. This information must be exchanged by the parties, and filed with the judge or, if the Commissioner of Insurance is hearing the case, with the agency head, at least 10 days prior to the hearing. If the written testimony meets the requirements of N.J.A.C. 1:1-15.1, it is admissible. However, if it is admitted, the witness must be made available for cross-examination. The rule also provides that the testimony of a witness may be excluded, in whole or in part, for failure to exchange the required information in a timely manner.

Social Impact

The proposed new rule is designed to meet the special procedural needs of contested insurance cases arising from insurance filing matters. The special provisions will permit the expeditious examination of expert witnesses and aid in the prompt evaluation of expert testimony so crucial in these cases.

Economic Impact

The proposed rule should result in a significant savings to filers, the Public Advocate and the Department of Insurance. Insurance filings will be determined in an expeditious manner, reducing the expense, in both time and money, of lengthly proceedings.

Full text of the proposed new rules follows.

OFFICE OF ADMINISTRATIVE LAW
TITLE 1
RULES OF SPECIAL APPLICABILITY
CHAPTER 11
INSURANCE FILING HEARING

SUBCHAPTER 1. APPLICABILITY

1:11-1.1 Applicability

The rules contained in this chapter shall apply to the notice and hearing of contested case matters involving the determination of a filing (as defined by N.J.A.C. 11:1-2.6) submitted

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

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Ronald I. Parker
Acting Director

Karen Garfing
Assistant Director, Publications

November 1984

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Approximately seven months ago, we commenced publication of the "new" New Jersey Register. It has been our distinct pleasure to offer you a high quality publication which now features full text adoptions and Formal Opinions of the Attorney General. As you well know, the sheer size of the average Register issue has increased dramatically with these developments. The increase in size has likewise significantly enhanced the cost of publishing the Register. We are now compelled, with great reluctance, to increase the price of the Register and our other publications. The modest increases, effective January 1, 1985, will enable the Office of Administrative Law to maintain its continued commitment to quality publications.

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Very truly yours,

Karen Garfing

Karen Garfing
Assistant Director
Publications

KG:TCM

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by an insurer or a rating organization. Any aspect of notice or hearing not covered by these rules of special applicability shall be governed by the Uniform Administrative Procedure Rules (UAPR) contained in N.J.A.C. 1:1-1.1 et seq. To the extent that these rules of special applicability are inconsistent with the UAPR, these rules shall apply.

SUBCHAPTER 15. EVIDENCE

1:11-15.1 Evidence

(a) At least 10 days prior to the commencement of the hearing, the parties shall exchange, and shall file with the judge, written testimony for each individual that the party intends to call as an expert witness. The written testimony shall include the name, address, title, credentials and area of expertise of the witness and the nature and substance of his or her testimony.

(b) All written testimony which meets the requirements of N.J.A.C. 1:1-15.1 et seq. shall be admissible. Parties may object to the admissibility of the written testimony at the evidentiary hearing. When the prefiled testimony of a witness is admitted into evidence, the witness shall be made available and subject to cross-examination.

(c) Upon application of a party, the judge may exclude, in whole or in part, the testimony of a witness for failure to comply with the requirements of this section.

AGRICULTURE

(a)

DIVISION OF RURAL RESOURCES

State Agriculture Development Committee Creation of Farmland Preservation Programs

Proposed Amendment: N.J.A.C. 2:76-3.12

Authorized By: Arthur R. Brown, Jr., Chairman, State Agriculture Development Committee.
Authority: N.J.S.A. 4:1C-5f and N.J.S.A. 4:1C-7a.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submission and responses, should be addressed to:

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

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

This proposal is known as PRN 1984-600.

The agency proposal follows:

Summary

The Agriculture Retention and Development Program is a program which provides for the long-term encouragement of the agriculture business climate and the preservation of agricultural lands. An integral part of the program which encourages commercial farming and agricultural retention is the creation of Farmland Preservation Programs. N.J.A.C. 2:76-3 describes county agriculture development board and State Agriculture Development Committee responsibilities for developing, reviewing and certifying Farmland Preservation Programs. In accordance with the rules, eligible landowners may voluntarily petition their local county agriculture development board to create a Farmland Preservation Program. The creation of a Program is signified by an agreement, (restrictive covenant), between the landowner and the board which requires the landowner to retain his or her land in agricultural production for a minimum period of eight years. In exchange, the landowner would be eligible to receive specific benefits which would provide an incentive to remain in the Program and ultimately help increase the productivity of the agricultural operation.

In addition to the basic restriction of retaining the land in agricultural production for eight years, N.J.A.C. 2:76-3 identifies other restrictions on the use and development of the land. One of the proposed amendments is a clarification of one of the restrictions which, if strictly interpreted, diminishes the application of the other restrictions.

The amendment at N.J.A.C. 2:76-3.11(a)9, proposes to delete the term "premises", and to substitute "buildings and/or other structures" in its place. The amended restriction would state:

"Nothing herein shall impose upon the Grantors any duty to maintain or require that the buildings and/or structures be maintained in any particular state, or condition, notwithstanding the Grantors' acceptance hereof". This clarifies the original intent of the restriction and eliminates any potential conflict with the statute and the other provisions of the deed restrictions which require that the Premises be retained in agricultural production. In conjunction with this provision, the Committee also proposes a statement which clarifies permitted improvements and/or construction in regard to existing and proposed buildings and structures."

The other proposed amendments to the deed restrictions, which appear throughout the proposal, are made to emphasize that the restrictions and conditions run with the land for the duration of the agreement, and to clarify and expand the parties who are bound by them.

Social Impact

The proposed amendments will primarily affect landowners that enter into farmland preservation programs in accordance with the terms and provisions of the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32 and N.J.A.C. 2:76-3. N.J.A.C. 2:76-3.11(a)9, assures the public that the land will be preserved and protected for agricultural purposes, while relieving the landowner of the specific obligation of maintaining, or maintaining in a particular state, buildings and/or structures on the land.

The proposed amendments, which addresses permitted construction and/or improvements to existing or proposed buildings and structures is consistent with the intent of the other deed restrictions and assures that the lands will not be developed for non-agricultural purposes. The landowner will be

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allowed to obtain approval for making two types of new improvements, concerning 1) housing for farm labor and 2) housing for a household which derives its primary income from farm production.

The amendments which appear throughout the proposal expand the parties who derive their rights from the grantor and describe those parties who are bound by the agreed conditions and restrictions for the duration of the agreement.

Economic Impact

The landowner will not be obligated to expend funds in order to maintain buildings and/or structures, or to maintain them in a particular manner.

The amendment concerning permitted construction, and the necessity for prior approval regarding the two exceptions discussed above, will help preserve the agricultural industry in the area, and promote the preservation of a local food source. With respect to the landowner, it will restrict the development of the land for agricultural uses for the duration of the agreement.

The amendments which expand the list of parties who derive their rights from the grantor, increase the number of those parties bound by the deed restrictions and conditions for the duration of the agreement, and promote the use of the land for agricultural purposes.

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

2:76-3.12 Deed restrictions

(a) The following deed restrictions shall be agreed to by the board and the landowner(s) when entering into a farmland preservation program **and shall run with the land**:

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

"The Grantors covenant for themselves, their heirs, [devisees,] **executors, administrators, personal or** legal representatives, successors and assigns, that the Premises [will] **shall** at all times for the term of the agreement [to] be held, used and conveyed subject to [, and not used in violation of, the following restrictions as said restrictions may be limited or affected by the provisions of the following]:

"1. (No change.)

"2. The Grantors, **their heirs, executors, administrators, personal or legal representatives, successors and assigns** [will] **shall** comply with agricultural management practices insofar as those practices are applicable to the land and the type of farming conducted thereon. Agricultural management practices means practices either formally set forth in current published New Jersey Agricultural Experiment Station recommendations or practices which represent the best collective professional judgement and opinion of the appropriate faculty of the New Jersey Agricultural Experiment Station and practices related to soil and water conservation and management approved by the State Soil Conservation Committee.

"3. The land and its buildings which are affected hereby may be sold collectively or individually for continued agricultural production and related uses as defined in Section 1. hereof. [All deed restrictions shall run with the land for the term of the agreement.]

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

"5. (No change.)

"6. (No change.)

"7. The Grantors, their heirs, **executors, administrators, personal or legal representatives,** successors[,] and assigns, may use such lands to derive income from recreational activities which generally utilize the land in its existing state, so long as such activities do not interfere with the actual use of the land for agricultural production.

"8. (No change.)

"9. Nothing herein shall impose upon the [Grantor] **Grantors, their heirs, executors, administrators, personal or legal representatives, successors and assigns** any duty to maintain or require that the **buildings and/or structures** [Premises] be maintained in any particular state, or condition, notwithstanding the [Grantor's] **Grantors', their heirs', executors', administrators', personal or legal representatives', successors', and assigns'** acceptance hereof. **The Grantors, their heirs, executors, administrators, personal or legal representatives, successors and assigns may use, maintain, and improve the existing buildings and said lands for personal and family residential and recreation use subject to the following conditions: No new residential units or buildings or recreation buildings or improvements to existing buildings for purposes other than agricultural production shall be allowed except for such new residential structure or structures or improvements or converted residential structures as will provide housing for agricultural labor for the subject farm or such new residential unit or structures, or converted residential unit or structures as will serve as a farm house for a household which will derive its primary source of income from agricultural production. Such exceptions are subject to prior joint approval in writing by the board and the committee.**

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

"11. In the event a violation of these restrictions or the terms and conditions thereof is found to exist, the Grantee, or its **heirs, executors, administrators, personal or legal representatives,** successors [or] **and** assigns, or any citizen of the State of New Jersey, acting by and through the State Agriculture Development Committee, may, after notice to the Grantors, [or] their [personal representatives,] heirs, **executors, administrators, personal or legal representatives,** successors [, or] **and** assigns, institute a suit to enjoin by ex parte, temporary and/or permanent injunction, such violation, to require the restoration of the Premises to its prior condition, or to recover damages. The Grantee, or its **heirs, executors, administrators, personal or legal representatives,** successors [or] **and** assigns, does not waive or forfeit the right to take other legal action as may be necessary to insure compliance with the terms, conditions, and purposes of this deed restriction by a prior failure to act.

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

"13. This instrument shall be binding upon the [Grantor, its] **Grantors, their heirs, executors, administrators, personal or legal representatives,** successors and assigns, and upon the Grantee, its **heirs, executors, administrators, personal or legal representatives,** successors and assigns."

(a)

DIVISION OF RURAL RESOURCES

State Agriculture Development Committee Creation of Municipally Approved Farmland Preservation Programs

Proposed Amendment: N.J.A.C. 2:76-4.11

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

Authority: N.J.S.A. 4:1C-5f and N.J.S.A. 4:1C-7a; 4:1C-20; 4:1C-24.

Interested persons may submit in writing, data, views, or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

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

This proposal is known as PRN 1984-598.

The agency's proposal follows:

Summary

The Agriculture Retention and Development Program is a program which provides for the long-term encouragement of the agriculture business climate and the preservation of agricultural lands. An integral part of the program which encourages commercial farming and agricultural retention is the creation of Municipally Approved Farmland Preservation Programs.

N.J.A.C. 2:76-4, describes county agriculture development boards and municipal and State Agriculture Development Committee responsibilities for developing, reviewing and certifying Municipally Approved Farmland Preservation Programs. In accordance with the rules, eligible landowners may voluntarily petition their local county agriculture development board to create a Municipality Approved Farmland Preservation Program. The creation of a Program is signified by an agreement, (restrictive covenant), between the landowner, the municipal governing body and the board which requires the landowner to retain his or her land in agricultural production for a minimum period of eight years. In exchange, the landowner would be eligible to receive specific benefits which would provide an incentive to remain in the Program and ultimately help increase the productivity of the agricultural operation.

In addition to the basic restriction of retaining the land in agricultural product for eight years, N.J.A.C. 2:76-4.11 identifies other restrictions on the use and development of the land. One of the proposed amendments to the rule, is a clarification of one of the restrictions which, if strictly interpreted, diminishes the application of the other restrictions.

The amendment at N.J.A.C. 2:76-3.11(a)9, proposes to delete the term "premises", and to substitute "building and/or other structures" in its place. The amended restriction would state:

"Nothing herein shall impose upon the Grantors any duty to maintain or require that the buildings and/or structures be maintained in any particular state, or condition, notwithstanding the Grantors' acceptance hereof". This clarifies the original intent of the restriction and eliminates any potential conflict with the statute and the other provisions of the deed restrictions which require that the Premises be retained in agricultural production. In conjunction with this provision, the Committee also proposes a statement which clarifies permitted improvements and/or construction in regard to existing and proposed buildings and structures."

The other proposed amendments to the deed restrictions, which appear throughout the proposal, are made to emphasize that the restrictions and conditions run with the land for the duration of the agreement, and to clarify and expand the parties who are bound by them.

Social Impact

The proposed amendments will primarily affect landowners that enter into municipally approved farmland preservation programs in accordance with the terms and provisions of the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32 and N.J.A.C. 2:76-4.

N.J.A.C. 2:76-4.11(a)9, assures the public that the land will be preserved and protected for agricultural purposes, while relieving the landowner of the specific obligation of maintaining, or maintaining in a particular state, buildings and/or structures on the land.

The proposed amendment which addresses permitted construction and/or improvements to existing or proposed buildings and structures is consistent with the intent of the other deed restrictions and assures that the lands will not be developed for non-agricultural purposes.

The landowner will be allowed to obtain approval for making two types of new improvements, concerning 1) housing for farm labor and 2) housing for a household which derives its primary income from farm production.

The amendments which appear throughout the proposal expand the parties who derive their rights from the grantor

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and describe those parties who are bound by the agreed conditions and restrictions for the duration of the agreement.

Economic Impact

The landowner will not be obligated to expend funds in order to maintain buildings and/or structures, or to maintain them in a particular manner.

The amendment concerning permitted construction, and the necessity for prior approval regarding the two exceptions discussed above, will help preserve the agricultural industry in the area, and promote the preservation of a local food source. With respect to the landowner, it will restrict the development of the land for agricultural uses for the duration of the agreement.

The amendments which expand the list of parties who derive their rights from the grantor, increases the number of those parties bound by the deed restrictions and conditions for the duration of the agreement, and promotes the agricultural use of the land.

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

2:76-4.11 Deed restrictions

(a) The following deed restrictions shall be agreed to by the board, the municipal governing body and the land owner(s) when entering into a municipally approved program [:] **and shall run with the land:**

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

"The Grantors covenant for themselves, their heirs, [devisees], **executors, administrators, personal or** legal representatives, successors and assigns, that the Premises [will] **shall** at all times for the term of the agreement [to] be held, used and conveyed subject to [, and not used in violation of, the following restrictions as said restrictions may be limited or affected by the provisions of the following]:

"1. (No change.)

"2. The Grantors, **their heirs, executors, administrators, personal or legal representatives, successors and assigns** [will] **shall** comply with agricultural management practices insofar as those practices are applicable to the land and the type of farming conducted thereon. Agricultural management practices means practices either formally set forth in current published New Jersey Agricultural Experiment Station recommendations or practices which represent the best collective professional judgement and opinion of the appropriate faculty of the New Jersey Agricultural Experiment Station and practices related to soil and water conservation and management approved by the State Soil Conservation Committee.

"3. The land and its buildings which are affected hereby may be sold collectively or individually for continued agricultural production and related uses as defined in Section 1, hereof. [All deed restrictions shall run with the land for the term of the agreement.]

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

"5. (No change.)

"6. (No change.)

"7. The Grantors, their heirs, **executors, administrators, personal or legal representatives,** successors[,] and assigns, may use such lands to derive income from recreational activities which generally utilize the land in its existing state, so long as such activities do not interfere with the actual use of the land for agricultural production.

"8. (No change.)

"9. Nothing herein shall impose upon the [Grantor] **Grantors, their heirs, executors, administrators, personal or legal representatives, successors and assigns** any duty to maintain or require that the **buildings and/or structures** [Premises] be maintained in any particular state, or condition, notwithstanding the [Grantor's] **Grantors', their heirs', executors', administrators', personal or legal representatives', successors' and assigns'** acceptance hereof. **The Grantors, their heirs, executors, administrators, personal or legal representatives, successors and assigns may use, maintain, and improve the existing buildings and said lands for personal and family residential and recreation use subject to the following conditions: No new residential units or buildings or recreation buildings or improvements to existing buildings for purposes other than agricultural production shall be allowed except for such new residential structure or structures or improvements or converted residential structures as will provide housing for agricultural labor for the subject farm or such new residential unit or structures, or converted residential unit or structures as will serve as a farm house for a household which will derive its primary source of income from agricultural production. Such exceptions are subject to prior joint approval in writing by the board and the committee.**

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

"11. In the event a violation of these restrictions or the terms and conditions thereof is found to exist, the Grantee, or its **heirs, executors, administrators, personal or legal representatives,** successors [or] **and** assigns, or any citizen of the State of New Jersey, acting by and through the State Agriculture Development Committee, may, after notice to the Grantors, [or] their [personal representatives,] heirs, **executors, administrators, personal or legal representatives,** successors[, or] **and** assigns, institute a suit to enjoin by ex parte, temporary and/or permanent injunction, such violation, to require the restoration of the Premises to its prior condition, or to recover damages. The Grantee, or its **heirs, executors, administrators, personal or legal representatives,** successors [or] **and** assigns, does not waive or forfeit the right to take other legal action as may be necessary to insure compliance with the terms, conditions, and purposes of this deed restriction by a prior failure to act.

"12. It is understood that this instrument imposes no obligation **and restrictions** on the [Grantor] **Grantors', their heirs', executors', administrators', personal or legal representatives', successors' and assigns'** [and no restrictions on] use of the Premises except as specifically set forth herein. Nothing herein contained shall be construed to interfere with

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the right of the [Grantor, its] **Grantors, their heirs, executors, administrators, personal or legal representatives,** successors[,] **and** assigns[, licensees, and any party claiming under them] to utilize the Premises in such manner as they may deem desirable, subject to the terms and conditions hereof.

"13. This instrument shall be binding upon the [Grantor, its] **Grantors, their heirs, executors, administrators, personal or legal representatives,** successors and assigns, and upon the Grantee, its **heirs, executors, administrators, personal or legal representatives,** successors and assigns."

(a)

DIVISION OF RURAL RESOURCES

State Agriculture Development Committee Acquisition of Development Easements

Proposed Amendment: N.J.A.C. 2:76-6.15

Authorized By: Arthur R. Brown, Jr., Chairman, State Agriculture Development Committee.
Authority: N.J.S.A. 4:1C-5f; 4:1C-31.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

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

This proposal is known as PRN 1984-599.

The agency's proposal follows:

Summary

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

Once a development easement has been purchased, a deed restriction is recorded which permanently prohibits any non-agricultural development from occurring on those lands. This restriction runs with the land and is binding upon every successor. The amendments, which appear throughout the proposal, clarify and expand the list of parties who derive their rights. From the grantor, and correspondingly increase the number of parties bound by the deed restrictions and conditions.

Social Impact

The amendments expand the number of parties who are bound by the agreement to permanently use the land for agricultural purposes. This will aid in preserving the agricultural industry and preserve local food sources.

Economic Impact

The amendments will aid in permanently restricting the land in question for agricultural uses, by expanding the number of parties bound by the agreement. The land, if sold in the future, will be sold for farm uses, and at farm values. The amendments will aid in preserving the agricultural economy and local food sources.

Full text of the current rules can be found at 16 N.J.R. 2427(a).

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

2:76-6.15 Deed restrictions

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

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

"The Grantors covenant for themselves, their heirs, **executors, administrators, personal or legal representatives,** successors and assigns, that the Premises [will] **shall** be held, used and conveyed subject to [, and not used in violation of, the following restrictions as said restrictions may be limited or affected by the provisions of the following]:

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

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

"3. The land and its buildings which are affected hereby may be sold collectively or individually for continued agricultural uses as defined in Section 2 hereof. However, no subdivision of the land shall be permitted without the joint approval in writing of the board and the committee. Such approval is in addition to necessary local approvals.

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

"5. No dumping or placing of trash or waste material shall be permitted on the Premises unless expressly permitted as an agricultural management practice.

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

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

"8. The Grantors, their heirs, **executors, administrators, personal or legal representatives,** successors[,] and assigns, may use such lands to derive income from recreational activities which generally utilize the land in its existing state, so long as such activities do not interfere with the actual use of the land for agricultural production.

"9. Nothing herein shall be construed to convey a right to the public of access to or use of the Premises except as herein provided or as otherwise provided by law.

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

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

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

"13. In the event a violation of these restrictions or the terms and conditions thereof is found to exist, the Grantee, or its **heirs, executors, administrators, personal or legal representatives,** successors [or] **and** assigns, or any citizen of the State of New Jersey, acting by and through the State Agriculture Development Committee, may, after notice to the Grantors, [or] their [personal representatives,] heirs, **executors, administrators, personal or legal representatives,** successors, [or] **and** assigns, institute a suit to enjoin by ex parte, temporary and/or permanent injunction, such violation, to require the restoration of the Premises to its prior condition, or to recover damages. The Grantee, or its **heirs, executors, administrators, personal or legal representatives,** successors [or] **and** assigns, does not waive or forfeit the right to take other legal action as may be necessary to insure compliance with the terms, conditions, and purposes of this deed restriction by a prior failure to act.

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

"15. This instrument shall be binding upon the [Grantor, its] **Grantors, their heirs, executors, administrators, personal or legal representatives,** successors and assigns, and upon the Grantee, its **heirs, executors, administrators, personal or legal representatives,** successors and assigns."

BANKING

(a)

DIVISION OF CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH

Home Mortgage Disclosure

Proposed Amendment: N.J.A.C. 3:1-9.2, 9.3, 9.4, 9.5

Authorized By: Mary Little Parell, Commissioner, Department of Banking.
Authority: N.J.S.A. 17:16F-11.

Interested persons may submit in writing, data, views, or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Dominick A. Mazzagetti, Deputy Commissioner
Department of Banking
Division of Consumer Complaints Legal and Economic Research
CN 040
Trenton, New Jersey 08625

The Department of Banking may thereafter adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The

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adoption becomes effective upon publication of a notice of adoption in the Register.

This proposal is known as PRN 1984-624.

Summary

The proposed amendments reflect a change in terminology made by the Federal Office of Management and Budget, which is used to designate metropolitan areas. The term "standard metropolitan statistical area" (SMSA) has been replaced by "metropolitan statistical area" (MSA) or, in cases where the area constitutes part of a larger urbanized area, "primary metropolitan statistical area" (PMSA). This amendment also revises the list of the areas which are used for the MSA's/PMSA's.

In addition, the amendments remove the exemption found in N.J.A.C. 3:1-9.3(b), which expired April 30, 1980, and deletes all references to N.J.A.C. 3:1-9.5(c), which has not been part of the rule. A sample Format of the Home Financing Loan Disclosure Statement was previously filed as part of the rule. Copies can be obtained from the Department of Banking.

Social Impact

The change in geographical definitions will not significantly change the availability of disclosure statements to the public at branch offices of the depository institutions.

Economic Impact

The proposed amendments contain no policy changes and have no fiscal implications. The amendments do not involve any additional costs to the public or the agency. The proposed amendments may have some economic impact on depository institutions who must either supply additional or fewer copies of the disclosure statement at its branch offices.

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

3:1-9.2 Definitions

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

. . .

["Standard Metropolitan Statistical Area"] [(SMSA)] **"Metropolitan Statistical Area" (MSA) and "Primary Metropolitan Statistical Area" (PMSA)** [means a] **mean** geographical [area] **areas** as defined by the Office of Management and Budget of the United States government for statistical purposes. The [SMSA] **MSA/PMSA** definitions to be used are for the following [SMSA's] **MSA's/PMSA's**:

1. Allentown-Bethlehem[-Easton], PA-NJ;
2. [Asbury Park-Long Branch] **Bergen-Passaic, NJ**;
3. Altantic City, **NJ**;
4. Jersey City, **NJ**;
5. [New Brunswick-Perth Amboy-Sayreville] **Middlesex-Somerset-Hunterdon, NJ**;
6. [New York, NY-NJ] **Monmouth-Ocean, NJ**;
7. Newark, **NJ**;
8. Philadelphia, PA-NJ;

[9. Paterson-Clifton-Passaic]

[10.] **9.** Trenton, **NJ**;

[11.] **10.** Vineland-Millville-Bridgeton, **NJ**;

[12.] **11.** Wilmington, DL-NJ-MD;

. . .

3:1-9.3 Exemptions

(a) (No change.)

(b) [Any depository institution that has neither a home office nor any branch office located in a Standard Metropolitan Statistical Area (SMSA), as defined in N.J.A.C. 3:1-9.2, shall be exempt from the compilation of data and disclosure requirements of the Act and N.J.A.C. 3:1-9.7 until such time as it has an office in a defined SMSA. Beginning on April 30, 1980, each] **Each** and every depository institution with its principal offices in New Jersey, except for those institutions exempted by subsections (a) and (d) of this section, is required to compile and file the data specified by N.J.A.C. 3:1-9.4 for the preceding calendar quarter.

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

3:1-9.4 Compilation of mortgage and home improvement loan data

(a) Data to be compiled:

1. To satisfy the public disclosure requirements of the Act and N.J.A.C. 3:1-9.5, the data shall be compiled in the format prescribed by [N.J.A.C. 3:1-9.5(c)] **the Department of Banking**. Such data shall be compiled and aggregated to a calendar year.

2. To satisfy the filing requirements of the Act and N.J.A.C. 3:1-9.6(a), the data shall be compiled in the format prescribed by [N.J.A.C. 3:1-9.5(c)] **the Department of Banking**. Such data shall be compiled and aggregated to a calendar quarter.

(b) (No change.)

3:1-9.5 Disclosure to public

(a) (No change.)

(b) Rules concerning the office at which disclosure statements to be made available are as follows:

1. Each depository institution shall make available to the public the disclosure statements required to be compiled by [subsection (a) of this subsection,] **(a) above** and by the dates specified in [subsection (a) of this section,] **(a) above** at its principal and at least one branch office in each [SMSA] **MSA/PMSA** in which it has an office.

2. (No change.)

CIVIL SERVICE

(a)

CIVIL SERVICE COMMISSION

Examination Scoring

Proposed Readoption with Amendments: N.J.A.C. 4:1-9
Proposed Repeal: N.J.A.C. 4:2-9, 4:3-9

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, 11:9-1, 11:9-3, 11:9-8, 11:9-9, 11:13-1, 11:21-3, 11:21-9, 11:22-34, 11:22-37.

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Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 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 1984-632.

The agency proposal follows:

Summary

The Civil Service Commission proposes to readopt its rules regarding Examination Scoring which will expire on February 1, 1985 pursuant to Executive Order No. 66(1978). The Civil Service Commission has reviewed the rules codified at N.J.A.C. 4:1-9, 4:2-9 and 4:3-9, which set forth the provisions regarding examination scoring.

As part of the review process, some revisions and additions have been made to Subchapter 9. The principal revisions are organizational, that is, clarifications and restatements of existing rules, and little change in substance has been made. Because most of the changes are language-related, the new rules will enable all users of Civil Service rules to more easily understand, interpret and apply the basic concepts.

Proposed N.J.A.C. 4:1-9.6 will incorporate current N.J.A.C. 4:2-9.1 and N.J.A.C. 4:3-9.1 which provide the procedures to be followed in breaking tie scores in Civil Service examinations.

Substantive additions appear in proposed N.J.A.C. 4:1-9.6(d) which discusses how ties in promotional examinations for police and firefighter titles are broken. This amendment reflects the codification of longstanding policy and practice. The clarification of existing rule and policy has resulted in minor amendments in the areas of scoring and rating examinations, review of scoring key and test papers, appeals against scoring and results of examinations, and additions to eligible lists. The clarification and organization of existing rule and policy has resulted in the recodification of sections dealing with the preservation and inspection of examination records and additions to eligible lists.

Social Impact

As part of the readoption, many technical changes and some substantive additions have been made to the current examination scoring rules. The principal change is the simplification, clarification and reorganization of the rules. With these revisions, the rules will be readily, easily, and correctly applied but the changes reflect little substantive difference. Most rules are actually direct statements of requirements that are already in effect.

The major proposed addition to the subchapter explains policy and procedure that is presently in effect in breaking tie scores on promotional examinations for policy and firefighter titles and should have no adverse social impact. Other additions are clarifications and recodifications of existing rule and policy and should have no adverse social impact.

Economic Impact

It is estimated that the overall economic impact to this rule will be negligible since most of the changes are restatements of policy, practice and rules that are presently in effect.

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

SUBCHAPTER 9. EXAMINATION SCORING

4:1-9.1 Review of **questions and answers** (scoring key)

(a) **Applicants shall be permitted to review the questions and answers (scoring key) for a period of five business days beginning on the second business day after the written examination has been held.** [For a period of at least seven calendar days after a written test has been held, and in accordance with regulations approved by the Commission, the Chief Examiner and Secretary] **The Department of Civil Service** shall permit applicants to review a [key] copy **of the examination questions and answers (scoring key)** [and submit objections with respect to a scoring key for written tests constituting all or part of an examination and consisting entirely of short-answer type questions (that is multiple choice, or other questions which are scored only as wholly right or wholly wrong)] **for all written examinations where the answers are not in essay form** [, for the purpose of arriving at the official scoring key which shall be used in rating the test papers of all applicants]. **Essays and all non-written examinations may be reviewed as specified in N.J.A.C. 4:1-9.8.**

(b) During review of the scoring key, applicants shall not be permitted to see their own [test] **examination** papers or to copy any of the [test] **examination** questions or answers[,]. [but] **Applicants** shall be permitted to make such notes as the [Chief Examiner and Secretary] **Department of Civil Service** determines may be necessary **in order for an applicant** to file **an** [protest] **appeal based on his or her objections to the scoring key**.

4:1-9.2 [Protests] **Appeals** against **questions and answers** (scoring key)

(a) [Until the close of business on the seventh calendar day following the date on which the test is held,] **Within the five business day review period specified in N.J.A.C. 4:1-9.1,** the applicant may file a written [protest] **appeal** against [any part of] the [written test] **scoring key**. [Such protest shall specify the question or questions against which the protest is directed and the reasons for such protest] **All appeals must be received by the Department of Civil Service by the close of the review period**.

(b) The [Chief Examiner and Secretary] **Director of the Division of Examinations** shall review all [protested] questions **and answers under appeal** [,] **and** correct any errors. [disclosed and, i]**In** case of an ambiguity in any question, **the Director has the discretion to** [may] eliminate the question **or give credit for the question**.

(c) [After the necessary and proper corrections have been made, t]**The corrected** scoring key[, as corrected,] shall be[come] the official scoring key [and shall be] used in rating all the applicants' [test] **examination** papers. [and no applicant, thereafter, shall be entitled to protest against the written test] **No appeal concerning the correctness of the scoring key shall be accepted after the review period**, except **an appeal** on the

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grounds of fraud or an error in the application of the scoring key in rating [such] **an** applicant's [test] **examination** paper.

4:1-9.3 Rating [tests] **examinations**

(a) [Each test shall be rated on a scale of 100, which maximum score shall represent the highest performance possible, and 70 shall represent a performance meeting the minimum acceptable standard of fitness and ability of applicants.] Ratings may be based on arithmetic percentages or may be computed by other statistical methods based on the use of scoring formulas **and/or**[on] conversion tables [or any combination thereof].

[(b)] When an examination consists of more than one [test or] part, each [test or] part [shall] **may** be rated independently [and the score multiplied by the weight assigned to it to determine the weighted score. The weighted scores for different parts shall be added together and the resulting weighted average shall constitute an applicant's final grade or rating].

[(d)] **(b)** An applicant who fails to [attain a passing score or] meet the minimum standards prescribed for any **part of an** examination [or part thereof,] [or whose score in any part is so low as to make it impossible to attain a passing grade for that examination,] shall be declared ineligible to participate in the balance of the examination [or, if taken, the balance of the examination need not be scored].

(c) No applicant shall [be] pass[ed in] an examination [who] **if he or she** fails to attain a passing score in the examination as a whole or [who] fails to meet the minimum standards prescribed for any part of the examination.

(d) When education and experience are to be rated as part of an examination, education and experience which exceeds the minimum announced requirements shall be evaluated and graded on the basis of scales approved by the Department of Civil Service.

4:1-9.4 [Rating education and experience] **Reserved**

[When education and experience are included as a qualification requirement and are to be rated as a part of an examination, an applicant's education and experience which exceeds the minimum announced requirements shall be evaluated and graded on the basis of scales approved by the Chief Examiner and Secretary.]

4:1-9.5 Credits for seniority and record of service

(a) Promotion**al** examinations may include an evaluation of records of seniority and performance ratings[,]. **The evaluation shall be** based on [the records of] the applicant's employment **records** as of the last day for filing applications for the examination[, and on the basis of scales approved by the Chief Examiner and Secretary].

(b) [If the supervisor, who completes an Employee Performance Evaluation Improvement System rating for a subordinate, competes in the same promotional examination as the subordinate, such ratings shall not be considered in the computation of the final scores of any of the candidates competing in the examination.] **Performance ratings shall not be used as a factor in promotions when the supervisor who completes a performance rating for a subordinate competes in the same promotional examination as the subordinate.**

4:1-9.6 [Tie scores] **Breaking tie scores obtained in Civil Service examinations**

[(a) Whenever two or more eligible persons have the same final rating in a competitive examination, priority in the placement of their names on the employment list shall be determined on the following basis, which shall be used successively and in the order listed, as far as they may be applicable or necessary:

1. Score attained on the written test;
2. Score attained on the performance test;
3. Score attained on the oral test;
4. Seniority in the highest level position to which a promotion examination is opened and in successively lower positions held by eligibles;
5. Performance ratings (in promotion examinations).

(b) See also N.J.A.C. 4:2-9.1; 4:3-9.1.]

(a) The factors utilized to determine ranking on an eligible list whenever two or more eligibles have the same final score on an open competitive examination are listed below in the order that they are evaluated:

1. Score attained on the written test;
2. Score attained on the performance test;
3. Score attained on the oral test; and
4. Time and date that application is stamped as received by the Department of Civil Service.

(b) The factors utilized to determine ranking on an eligible list whenever two or more eligibles have the same final score on a promotional examination are listed below in the order that they are evaluated:

1. Score attained on the written test;
2. Score attained on the performance test;
3. Score attained on the oral test;
4. Seniority score;
5. In State service, performance ratings;
6. Score for segments of written, performance and oral tests in that order; and
7. Score for education and for experience acquired in addition to that previously credited in (b)4 above.

(c) In particular circumstances, the President of the Civil Service Commission may designate an alternative method to break tie scores.

(d) Whenever two or more eligibles have the same final score in promotional examinations for police and firefighter titles, residents shall be ranked ahead of non-residents. If two or more eligibles who are residents have the same final score, their ranking shall be determined according to (b) above. (See N.J.S.A. 40A:14-9.4 and 40A:14-122.4.)

4:1-9.7 Notification of [rating] **examination results**

(a) After an examination or any part [thereof] **of an examination** has been completed and scored, [applicants] **candidates will be notified of their examination results** [who are declared ineligible in accordance with N.J.A.C. 4:1-9.3(d), or for any other reason, shall be notified of such ineligibility and the reason therefor].

[(b) After an examination has been completed and scored, applicants who attain a final rating above the required minimum shall be notified of their final rating and their standing on the employment list.]

4:1-9.8 Review of [test] **examination** papers by [applicants] **candidates and appeals against results**

(a) For a period of [not less than] 20 **calendar** days immediately following the date of notice [of eligibility or ineligibility resulting from any examination and in accordance with regulations approved by the president, the chief examiner and secretary], **the Department of Civil Service** shall permit [applicants reasonable opportunity during business hours] **candidates** to review their [own test] **examination** [rating,] papers

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and[/or] the official scoring key [for the purpose of determining whether their test papers were scored accurately].

(b) [No applicant] **A candidate** shall be permitted [more than] **only** one [such] review of a particular examination in the 20-day period[,].[nor shall the applicant]

(c) No candidate shall be permitted to copy any questions or answers.

(d) During the 20-day review period, candidates may file a written appeal of their examination results with the Department of Civil Service. See N.J.A.C. 4:1-8.21, 4:1-8.22 and 4:1-8.23 for specific appeal procedures. However, no appeal may be made against the written questions and answers which could have been made during the scoring key review period. See N.J.A.C. 4:1-9.1 and 4:1-9.2.

4:1-9.9 [Protests against ratings] **Reserved**

[(a) During the 20-day period referred to in section 8 of this subchapter, applicants who believe an error has been made in the application of the written test scoring key, or in a rating given in any other part of the examination, or that any other error has been made, may file a written protest with the chief examiner and secretary; provided that if there has been a key copy review period, no protest may be made against the written questions and key answers which could have been made during the key copy review period and no protest against any error indicated herein may be made after the 20-day period.

(b) The chief examiner and secretary shall review all protests or requests for rescoring or rerating and shall advise the commission to make any necessary corrections which warrant changing grades and ratings.

(c) The commission shall determine whether a correction or change in any grade or rating, made as a result of such appeal, shall affect any appointment or certification made prior to such correction or change.]

4:1-9.10 Correction of errors

(a) [Errors may be corrected by the chief examiner and secretary] **The Director, Division of Examinations, may correct an error at any time during the life of an eligible list** [upon discovery at any time during the life of an employment list].

(b) The **Civil Service** [c]Commission shall determine whether such correction shall affect any prior appointments or certifications.

(c) Corrections of errors may result in a change in ranking. See N.J.A.C. 4:1-12.12.

[4:1-9.11] **4:1-8.24** Preservation of examination records

(a) The following **examination** records [pertaining to every examination] shall be [preserved during the life] **retained by the Department of Civil Service until the expiration** of the [resulting employment] **eligible** list:

1. A copy of the public announcement;

2. A description of each [test] **examination** or measure of fitness employed in the examination [together with] **and** the standards used in rating them, the date each [test] **examination** was held, [and] the weight assigned **to an examination** [thereto], **and** the minimum scores required, if any;

3. The resulting [employment] **eligible** list and a list of applicants who failed; [and]

4. **All** [A]applications [including those of applicants who were examined and also those of applicants who were rejected for reasons other than noncitizenship or nonresidency];

5. Applicants' [test] **examination** papers and, if feasible, other [test] **examination** materials, recordings or transcriptions made in oral [examinations] **tests** and appraisal record sheets made by examiners in rating applicants in any [tests] **examinations** or parts [thereof] **of examinations; and**

6. [Such o[**O**ther records or information as may be pertinent.

[4:1-9.12] **4:1-8.25** Inspection of [public] examination records

All **examination** records [pertaining to an examination] listed in [paragraphs 1, 2 and 3 of N.J.A.C. 4:1-9.11(a)] **4:1-8.24(a) 1, 2 and 3** shall be open to public inspection. [Those records listed in paragraphs 4, 5 and 6 of said N.J.A.C. 4:1.9.11(a)] **All other records** may be held open to such limited inspection and examination by such persons and under such circumstances as the [p]**P**resident may determine to be in the best public interest.

[4:19-13] **4:1-12.12** Additions to eligible lists

(a) Additions may be made to the eligible lists [and eligibles' ranking adjusted accordingly] when:

1. A make-up examination has been given and the applicant[(s)] attains a passing score;

2. Administrative errors by the Department of Civil Service are [discovered] **corrected;**

3. Changes **are** necessary due to the actions of a third party; [examples being] an appointing authority fail[ing]**s** to notify promotional eligibles, [errors from] the Veterans Administration **makes an error in submitting a document,** [or] **a** college[s] **makes an error** on **an** official document[s]; **or**

[4. The addition so ordered by the chief examiner and secretary as the administrative determination on questions concerning the admission of applicants to examinations, the certification of names of eligible persons and all other questions arising during the course of an examination, or is so ordered by the Civil Service Commission as its determination pursuant to N.J.A.C. 4:1-8.15.]

4. An error is corrected by the Director, Division of Examinations, at any time during the life of an eligible list.

SUBCHAPTER 9. [EXAMINATION SCORING] **(RESERVED)**

[4:2-9.1 Breaking tie scores obtained in Civil Service examinations]

Full text of the rule proposed for repeal may be found at N.J.A.C. 4:2-9.1.

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(a)

CIVIL SERVICE COMMISSION

Performance Evaluation and Employee Training

Proposed Readoption with Amendments N.J.A.C. 4:1-20, 4:2-20
Proposed New Rules: 4:2-20.1, 20.2, 20.3, 20.4, 20.5
Proposed Repeal: N.J.A.C. 4:1-20.2 through 20.6, 20.8; 4:2-20.1 through 20.5, 20.7; 4:3-20

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 December 5, 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 1984-633.

The agency proposal follows:

Summary

In accordance with the "sunset" provisions of Executive Order 66 (1978), the Civil Service Commission has reviewed the rules codified at N.J.A.C. 4:1-20, 4:2-20 and 4:3-20 which regulate State employee evaluation and training programs. Pursuant to Executive Order No. 66 these rules will expire February 1, 1985, December 7, 1986 respectively. After reviewing the rules, the Commission proposes that the subchapters be combined and condensed to eliminate unnecessary detail and to reflect current policy and practice.

The most substantive change in Subchapter 20 is the repeal of all sections pertaining to the Employee Performance Evaluation and Improvement Program (EPEIS). This program is being replaced by a Performance Appraisal Review (PAR) program. The PAR is a multi-level rating system where the employee and supervisor mutually agree on performance objectives and goals. A pilot program has proven this system to be an improvement over the EPEIS system and one on which management and unions agree. Conferences have been held with management and union representatives to consider all input and ensure open lines of communication.

The training portions of the subchapter have been condensed into fewer sections. Internal procedure language and detail that was part of the now obsolete Civil Service Personnel Manuals have been proposed for repeal and those provisions that reflect policy and procedure relevant to State departments have been retained.

The Employee Interchange Act, Tuition Aid and Employee Advisory Service sections have been revised for clarity and conciseness but have not been substantively changed.

Social Impact

This readoption will affect all State employees. The evaluation system, which is the bases for annual increments, has been revised to encourage mutual cooperation between employee and employer in establishing work objectives and improvement goals. Employee morale should be greatly improved through this system, productivity should increase and the total work environment improve.

The remainder of the subchapter is substantively unchanged. However, the employee always benefits from rules that are written in clear, concise language.

Economic Impact

Economic or fiscal impact as a result of this readoption cannot be measured. It is expected that the improved evaluation system will increase productivity and therefore be economically positive.

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

4:1-20.1 Performance evaluation [system] **and employee training**

[(a) The Department of Civil Service shall prescribe or approve the keeping of performance records and the establishment of standards of performance for employees in the classified service and system of performance evaluation based on such standards.]

[(b) See also N.J.A.C. 4:2-20.1, 4:2-20.2, 4:2-20.3]

(a) In State service, employee evaluation and training programs shall be established and administered through the Department of Civil Service. See N.J.A.C. 4:2-20.

(b) In local service, employee evaluation and training programs may be established and administered by the jurisdiction.

4:1-20.2 through 4:1-20.6 (Reserved)

(See text proposed for repeal in the New Jersey Administrative Code at N.J.A.C. 4:1-20.2 through 20.6.)

[4:1-20.7] **4:2-6.4** Career development

(a) The [Chief Examiner and Secretary] **President of the Civil Service Commission** shall authorize, with the approval of the Commission:

1. Programs including trainee programs designed to attract and utilize persons with minimal qualifications but potential for development, in order to provide career development opportunities among returning veterans, handicapped persons and members of disadvantaged groups;

2. Programs to achieve the most effective use of scarce professional administrative and technical manpower.

[(b) See also N.J.A.C. 4:2-20.11.]

4:1-20.8 (Reserved)

(See text proposed for repeal in the New Jersey Administrative Code at N.J.A.C. 4:1-20.8.)

[4:1-20.9] **4:2-20.6** Tuition aid program

[(a) This section applies only to State service.]

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[(b)]**(a)** The tuition aid program provides tuition assistance or reimbursement to employees who attend accredited educational institutions primarily on their own time subject to the limitations of this rule and the availability of funds. The intent of the program is to fulfill the needs of the agency sponsoring the aid and State government as a whole. Each agency shall determine its needs and disburse available funds to employees engaged in an appropriate course of study.

[(c)]**(b)** An appointing authority shall prepare a tuition aid [program] **plan** at the beginning of each fiscal year[. In preparation of a tuition aid program,] **with consideration given to** affirmative action responsibilities [shall be considered]. The [program] **plan** shall include criteria for:

1. Employee eligibility[: L] **which is** limited to full-time, permanent employees in the classified and unclassified services[.] **with** [E]exceptions [may be] granted on a case by case basis by the appointing authority. Agencies may establish additional criteria for determining eligibility.
2. Internal application procedure;
3. Maximum amount of aid available per person not to exceed $500.00 or the cost of six credits, whichever is greate[d]**r,** per semester or educational program;
4. Acceptable academic grades for reimbursement;
5. Eligible costs; and
6. A procedure to notify employees of approval or disapproval.

[(d)]**(c)** Payment or reimbursement will be made only after evidence of satisfactory completion of the course as defined by the appointing authority's [program] **plan** [is submitted to the agency's fiscal office with] **and** evidence of tuition payment to the educational institution[.] **is submitted to the agency's fiscal office.**

[(e)]**(d)** At the start of each fiscal year, agencies shall submit blanket Staff Training Requests which meet the above criteria. Any requests outside the criteria shall be submitted on a separate Staff Training Request within the time frame specified on the request form. The Department of Civil Service in conjunction with the Department of Treasury may grant exceptions.

[(f)]**(e)** A tuition aid [program] **plan** shall be submitted for approval to the Department of Civil Service **at least** one month prior to implementation. The approved [tuition aid program] **plan** must be posted in conspicuous locations in the agency and shall include the name, telephone number and location of the individual responsible for administering the program.

[(g)]**(f)** The appointing authority's training officer, or the individual responsible for training, shall develop and implement an equitable tuition aid plan and shall review the program each year to insure that it is consistent with current agency goals. The training officer shall consult with the affirmative action officer on all program matters concerning affirmative action responsibilities and data. Revisions to the [program] **plan** must be submitted for approval to the Department of Civil Service **at least** one month prior to implementation.

[h]**(g)** The appointing authority shall submit a semiannual report to the Department of Civil Service by February 1 and August 1 of each year. The report shall include the following information:

1. Names and titles of **all** employees receiving **tuition** aid. The names of employees who are exceptions to the employee eligibility limitations **shall be noted along with** [and] the reasons for the exceptions [shall be noted];
2. Amount of aid for each employee per semester or education program;
3. Semester enrolled, course name, credits, grade received; and
4. Affirmative action data.

[(i)]**(h)** The appointing authority is subject to audit by the Department of Civil Service to ensure compliance with the provisions of this rule, the agency's tuition aid program, and any other statutes or rules which affect the program. If at any time an agency does not comply with the above provisions, Civil Service reserves the right to suspend an agency's tuition aid program until the irregularities are resolved.

4:2-20.1 through 4:2-20.5

(See text proposed for repeal in the New Jersey Administrative Code of N.J.A.C. 4:2-20.1 through 20.5).

4:2-20.1 Performance Assessment Review: General

(a) The Department of Civil Service shall prescribe a Performance Assessment Review (PAR) program to ensure that the performance of each employee is reviewed, assessed and recorded under uniform procedures. The PAR shall use a multi-level rating scale and standardized form as designated by the Department of Civil Service.

(b) The appointing authority shall retain records of the employee's PAR with his or her personnel records. In addition, the appointing authority shall prepare and retain an overall summary of all employee final ratings.

(c) The President of the Civil Service Commission may grant exceptions to the prescribed PAR program.

4:2-20.2 Performance Assessment Review: Procedure

(a) The employee's supervisor shall consult with the employee to establish a Performance Assessment Review (PAR). The supervisor and employee shall develop performance standards and job objectives against which the employee's performance can be reviewed, measured, assessed and rated. The employee shall be provided with a copy of the performance standards and job objectives.

(b) The PAR evaluation period shall be based on a one-year cycle. The supervisor and employee shall confer at least once every six months to discuss the employee's progress during the evaluation period. Assessments shall be made, ratings assigned and improvement goals set at the mid-term and final conferences. However, where the employee's performance is less than standard, the supervisor and the employee shall confer at least once every three months.

(c) In cases where there are changes in supervisors or job assignments during the evaluation period, the employee's performance shall be rated by all of the immediate supervisors for that period. The final rating shall be a proration of all these ratings.

(d) The supervisor and the employee shall confer regarding the ratings and the employee shall receive a copy of the ratings after the conference.

(e) An employee shall be provided with the opportunity to inspect the records which show his or her PAR ratings.

(f) Disagreements concerning ratings which deprive an employee of an increment or concerning standards shall be resolved through the grievance procedures. See N.J.A.C. 4:2-23.2. The Department of Civil Service may also designate a representative to participate in an informal conference to aid in the resolution of PAR disputes.

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1. An employee is not precluded from challenging the basis of a rating if the rating is an issue in a disciplinary action.

(g) The names and titles of employees who have received ratings which deprive an employee of an increment shall be referred to the Employee Advisory Service. See N.J.A.C. 4:2-20.7.

(h) The PAR program shall be monitored and audited by the Department of Civil Service.

4:2-20.3 Performance Assessment Review: Use

(a) As provided in the State compensation plan and salary procedures, an employee shall receive an anniversary date increment unless his or her final rating was the lowest PAR rating. An employee who receives the lowest PAR rating shall be denied an anniversary date increment.

1. The Department of Civil Service may consider requests from appointing authorities to grant increments prospectively to employees who had been denied increments due to his or her PAR rating, but have subsequently improved to a level which warrants the granting of an increment.

(b) Performance ratings may be used as a factor in promotions. See N.J.A.C. 4:1-9.5.

(c) Performance ratings shall be used to determine the order of layoff for permanent employees. See N.J.A.C. 4:2-16.2(c).

4:2-20.4 Training responsibilities

(a) The Department of Civil Service shall initiate and conduct employee development and training programs and encourage and assist appointing authorities in conducting such programs.

(b) The President of the Civil Service Commission shall recommend standards for determining training needs and criteria for a continuous review and evaluation of training programs and for employee selection and eligibility for those programs. The President may approve programs which meet such standards.

(c) Departments shall:

1. Obtain approval from the Department of Civil Service for any training program which involves the direct expenditure of funds.

2. Submit a summary of training activities on a prescribed form to the Director, Division of Management Training and Employee Services, by September 15 following the close of the fiscal year in which such activities took place.

3. Develop and maintain a written record of the education, training, and upward mobility programs in which each employee takes part, and record such information in the individual's personnel file at least annually.

4. Complete a department-wide or agency survey to determine training needs at least annually.

5. Through written questionnaires, oral interviews, testing, or other appropriate means, complete an evaluation of all programs of education and training in which employees take part.

6. Develop a plan for career development to provide education and training designed to meet assessed needs and to prepare employees for advancement to higher level positions.

4:2-20.5 State Employee Development and Training Council

(a) A State Employee Development and Training Council (Council) is established by the Department of Civil Service to act as an advisory group on matters regarding the training and development of employees.

(b) The Council shall consist of representatives of each executive department and executive commission and may include representatives of the judicial and legislative branches and its legislative commissions.

(c) The Council shall elect officers from its membership and designate an employee of the Department of Civil Service to act as its executive secretary.

(d) Each department head shall designate a representative and alternates to the Council who must be professional or management level employees with a knowledge of employee development and training. However, in case of a vote, each department shall have only one vote.

[4:2-20.6] **4:2-6.8** Program for the utilization of trainee titles

(No change in text.)

[4:2-20.7 4:3-20.2 Information: CETA Title II or CETA Title VI participants]

[(a) This section advises appointing authorities of the provisions contained in Regulation 96.24(d) of the Federal Comprehensive Employment and Training Act (CETA).]

[(b) If layoffs of regular employees occur during the CETA Title II or CETA Title VI grant period, participants cannot remain working in the same or substantially equivalent job within the employing agency that is affected by the layoff. Under these circumstances during the CETA Title II or CETA Title VI grant periods, such participants will either be transferred or positions not affected by the layoffs or be laid off.]

[(c) If an appointing authority has a CETA position and a regular position in which the employees are performing substantially equivalent jobs and the regular employee is laid off, the CETA employee cannot remain working in that position. The prime sponsor (the appointing authority) has the option of appointing employees laid off from regular positions to the positions vacated by CETA employees, assuming they qualify under CETA. CETA employees are to be either transferred to positions not affected by the layoffs or be laid off.]

[4:2-20.8, 4:3-20.1] **4:2-6.8** Administration of the Work Incentive/On-The-Job Training Program

(a) The Work Incentive/On-The-Job Training (WIN/OJT) Program authorizes funds for the immediate employment in the public service of WIN participants. The prime objective of developing OJT positions for WIN participants is to ultimately provide permanent employment in unsubsidized jobs in the public sector and to fill the unmet service needs of government. Appointing authorities operating under this program are directly responsible for complying with the "assurance" incorporated in the WIN/OJT grants.

(b) Appointing authorities, operating under the provisions of Title II, Civil Service Statute Annotated, are authorized to fill WIN/OJT positions, in accordance with this section. The Civil Service Commission in cooperation with the New Jersey Department of Labor and Industry has established the following alternatives for the appointment of WIN/OJT employees:

1. Approval is granted for the appointment of WIN/OJT employees to temporary positions for a 12-month period.

2. Individuals may be appointed to WIN/OJT positions as regular appointees under normal certification procedures at the request of the appointing authority with the consent of the appointee.

(c) Employment terms and conditions of employment:

1. Individuals receiving temporary appointments to WIN/OJT positions will obtain all of the Civil Service terms and conditions accorded to temporary employees.

2. Individuals receiving appointments to WIN/OJT positions under (b)2 above have the same terms and conditions as employees who are appointed to regular positions.

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[4:2-20.10, 4:3-20.3] **4:1-20.2** [Administration of the Government] Employee Interchange Act [of 1967]

[(a) This section sets forth regulations and procedures issued pursuant to N.J.S.A. 52:14:-6.10 et seq., Government Employee Interchange Act of 1967. They shall apply to any department, division, office, agency, bureau or section of this State or any political subdivision of the State, or any authority or instrumentality created or chartered by the State.]

[(b) The objectives of the act are to provide for the temporary interchange of Federal, State and local government employees to:

1. Encourage and improve intergovernmental cooperation;

2. Provide a means for the State and local governments to develop or increase the knowledge, skills and abilities of their employees; and

3. Assist in the resolution of problems of the sending or receiving agency.]

[(c) The act will not apply to the assignment of an employee:

1. As a student to an established education institution;

2. To any unit of government outside the territorial limits of the United States or its possession.]

[(d)]**(a)** Any [unit of government in the State of] New Jersey **governmental unit** is authorized to participate, as either a sending agency or a receiving agency, in [interchanging employees] **a program of employee interchange** with any other [unit of] Federal, State or local government **unit** [of the United States, provided:] **pursuant to N.J.S.A. 52:14-6.10 et. seq.**

1. The [chief executive officer of the] sending agency, [and] the receiving agency; and the participating employee shall [have executed and filed] [with] **submit the prescribed form for employee interchange to** the President of the New Jersey Civil Service Commission [the prescribed CS-118;] **for review;**

2. The period of assignment shall not be less than two months nor for more than 12 months; [however,] **except that** the President of the Civil Service Commission [is authorized to set a time period] **may provide for an assignment of** of less than two months [of assignment in order] to accommodate emergency situations, e.g., a call for fire wardens to help control a fire in a neighboring state. **An** ["E]emergency situation["] does not [allow for a reduced time period to permit a desirable, but not] **apply to a non**-crisis **situation,** [interchange with] **of** less than two months [assignment period;]

3. An[y] employee shall not receive [such] assignments for more than 12 months during any 36 month period;

4. The participating employee shall [agree to] remain in the employ of the sending agency for a period of [at least] **not less than** one year after the termination of the period of interchange.

[(e) The Department of Civil Service shall review all forms CS-118 described in (d)1 above to insure compliance with these regulations and the intent of N.J.S.A. 52:14-6.10.]

[(f)]**(b)** The sending agency or the receiving agency may terminate [a program of] **an** employee interchange **program** without reason provided 30 days written notice is given to the other agency, the participating employee, and the Department of Civil Service.

[(g)] **(c)** No employee[s] shall be assigned as a participating employee or continue in such assignment without his [freely given] **or her** consent. If the employee agrees to participate, [s/he] **he or she** shall be assigned to a receiving agency but continue as an employee of the sending agency, except for purposes of supervision which shall be determined by agreement between the sending and receiving agencies. During this period of assignment all rights and benefits shall be continued including but not limited to: salary, seniority, promotion, reemployment, retirement[,] **and** pension[, insurance, vacation, sick leave and, if necessary, Workmen's Compensation].

[(h)]**(d)** A participating employee shall receive his salary from the sending agency. No compensation shall be received from the receiving agency except as may be reimbursed for the necessary per diem and mileage expenses.

[(i)]**(e)** The sending agency may pay the **employee's** expense[s incurred by a participating employee in transporting the employee's immediate family, household goods and personal effects from and to the regular place of employment and the assigned place of employment] **for relocation as a result of assignment** provided that the [period of] assignment is **for a period of** [more than] eight months [in duration] **or longer.**

[(j)]**(f)** The Division of [Personnel Services] **Management Training** and Employee [Development], **Services** Department of Civil Service, is responsible for administering these regulations. [It shall assist any New Jersey governmental unit in participating in government employee interchange programs pursuant to N.J.S.A. 52:14-6.10 et seq. or in any comparable acts of the Federal government or other state.]

[4:2-20.11] **4:2-20.7** Employee Advisory Service

(a) [This section describes the operation and regulations of t]The Employee Advisory Service **(EAS) is** established by the Department of Civil Service[.

(b) The purpose of the Employee Advisory Service is to provide a means of] **to** assist[ing] State employees [who have demonstrated a capability for satisfactory work performance but have been performing less than satisfactorily or in such a manner as to cause concern because of personal or job related problems.]

[(c) Policy:]

[1. It is the policy of the State of New Jersey to assist employees] in achieving and maintaining the highest level of job performance of which they are capable. [The Employee Advisory Service arranges for the referral of employees, or members of an employee's household, for counseling or other professional services if:

i. The employee's job performance is less than satisfactory; or

ii. The employee is experiencing personal problems which are manifested on the job; or

iii. A member or members of an employee's household has personal problems which adversely affect the employee's job performance.]

[2. All appointing authorities and employees are encouraged to utilize the Employee Advisory Service.]

(c) Appointing authorities should refer employees to the [Service] **EAS** when an employee's job performance causes concern, rather than relying on a report of job performance. State employee associations and unions may refer employees to the [Employee Advisory Service] **EAS** if the employee agrees to the referral.

[(d)] **(b)** The [Employee Advisory Service] **EAS**, a unit in the [Bureau of Employee Services,] Division of [Personnel Services] **Management Training** and Employee [Development] **Services**, Department of Civil Service, is [composed] **comprised** of professional counselors who evaluate employees and [refer them to community resources for medical, psychiatric or other professional assistance.] **arrange for the referral of employees, or members of an employee's household, for counseling or other professional services if:**

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1. An employee has been denied an anniversary date increment due to his or her performance rating.

2. The employee is experiencing personal problems which are manifested on the job; or

3. A member or members of an employee's household has personal problems which adversely affect the employee's job performance.

[(e) Definitions:]

[1. "Active client status" means the status of an employee when s/he or a member of his/her household, is currently being counseled or is scheduled to undergo counseling with the Employee Advisory Service or referral agency.

2. "Employee" means a State employee or a member of his/her household.

3. "Employer referrals" means employees referred to the Service by management because of less than satisfactory job performance or problems manifested on the job.

4. "Personnel officer" means any individual authorized to be responsible for agency personnel functions.

5. "Self-referrals" means employees who, on their own initiative, contact the Employee Advisory Service.]

[(f) Confidentiality:]

[1.] **(d)** Information concerning a**n** [self-referred] employee **who on his own initiative contacts the EAS**, whether stated, written or known in the [Employee Advisory Service] **EAS** files or referral files, shall be confidential unless the employee authorizes release of such material.

[2.]**(e)** [All] **No confidential** information[, as in N.J.A.C. 4:2-20.11(f)1,] concerning an [employer-referred] employee **referred by his or her supervisor or appointing authority** shall **be released except as authorized by the employee.** [be confidential except t]**T**he following information will be considered non-confidential and may be released to the employer:

[i.]**1.** Whether the individual has been accepted for a program;

[ii.]**2.** Whether the program is expected to be beneficial;

[iii.]**3.** Whether or not appointments were kept;

[iv.]**4.** The dates and times of future appointments with the Employee Advisory Service or community resources;

[v.]**5.** The amount of time needed to complete the program.

[3. Release of confidential information:]

[i.] **(f)** To release confidential information, a release form must be signed by the client and his[/] **or** her treatment agency or counselor[;].

[ii.] The client may state an expiration date on the release form after which confidentiality is restored[;].

[iii.] A client who signs a confidentiality release form is allowing full disclosure of information. There is no provision for partial disclosure.

[(g) Procedure:]

[1. Referrals:]

[i.]**(g)** The [employing agency] **employer** is to refer an employee to the [Employee Advisory Service] **EAS** for evaluation as soon as problems are manifested which may affect job performance.

[ii.]**(h)** The names and titles of employees who have received [job performance ratings of less than satisfactory] **the lowest PAR rating** will be referred to the [Chief, Employee Services,] **Director,** Division of [Personnel Services] **Management Training** and Employee [Development] **Services**[, Department of Civil Service] **(Director)**.

[iii.]**(i)** An employee whose job performance is cause for concern may be referred by the line supervisor to the personnel officer in his[/]**or** her department and in turn to the Employee Advisory Service.

[iv.]**(j)** If the [Employee Advisory Service] **EAS** counselor determines that the client's situation is not within the scope of the [Service] **EAS**, the counselor may refer the employee to the [Chief, Employee Services,] **Director** who will interview the client. **If the client is a State employee,** [T]the [Chief, Employee Services,] **Director** may contact the **employee's** personnel officer [in the client's department in an effort] to **try to** work out a solution to the employee's problem.

[v.]**(k)** When an employee who is referred to the [Employee Advisory Service] **EAS** does not accept the referral [by the Employee Advisory Service] to a community resource or when an employee who has been referred to the [Employee Advisory Service] **EAS** does not keep referral appointments, the counselor will inform the referring department.

[2.]**(l)** [Employer-referred] **An** employee[s] **who is referred to the EAS by his or her appointing authority** will be scheduled for appointments through [the] **his or her** personnel officer[s] **or any individual authorized to be responsible for agency personnel functions** [to their departments]. Should the [Employee Advisory Service] **EAS** need to interview the supervisor concerning an employee's work performance, the personnel officer **or authorized person** will arrange for the supervisor to report to the [Service] **EAS**.

[3.]**1.** Employees who are referred by their [personnel officer] **supervisor or appointing authority** to the [Employee Advisory Service] **EAS** will be excused from work assignments for up to two visits. Arrangements beyond the two excused visits are to be worked out between the employee and [management] **employer** with or without participation by the [Employee Advisory Service] **EAS**.

[4.]**(m)** The [Employee Advisory Service] **EAS** will maintain follow-up on all clients to determine their progress. If the [employee] **client** does not follow the course of action recommended by the [Employee Advisory Service] **EAS**, or no further follow-up services can be performed, the [employee] **client** shall no longer remain in active-client status. **Active-client status is when an employee or a member or his or her household is currently being counselled or is scheduled for counseling. If an employee is no longer in active-client status,** [T]the appointing authority shall determine [what] **the** course of action to **be** taken concerning [said] **the** employee. **Before seeking removal of an employee who is in active-client status, the appointing authority shall consult with the Director, Division of Management Training and Employee Services.**

[5.]**(n)** The employee must assume the financial responsibility for use of community referral agencies whose fees are not covered by the State.

[(h) Before seeking removal of an employee who is an active client status, the appoint authority shall consult with the Chief, Employee Services.]

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Shore Protection Program Procedural Rules

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Proposed New Rule: N.J.A.C. 7:7F-3.7
Proposed Amendments: N.J.A.C 7:7F-1 and 3

Authorized by: Robert E. Hughey, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 13:1D-9, P.L. 1978, c.157 Section 10 as amended by P.L. 1983, c.356.
DEP Docket No. 068-84-10.

A **public hearing** concerning this proposal will be held on
November 19, 1984, 4:00 P.M.
Room 702
Labor and Industry Building
Trenton, New Jersey

Interested persons may submit, in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions, and responses, should be addressed to:

Karen Kominsky
Division of Coastal Resources
CN 401
Trenton, N.J. 08625

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

This proposal is known as PRN 1984-615.

The agency proposal follows:

Summary

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

The purpose of the new section (N.J.A.C. 7:71F-3.7) is to establish procedures for the expenditure of the 1983 Shore Protection Bond Act funds in the form of loans.

Social Impact

This proposal will have minimal social impact as it is primarily procedural in nature. The primary social impact will result from the inclusion of the shore protection loan program to provide funds to address coastal erosion problems. The loan provides an additional form of assistance to local governments to address coastal erosion problems. The loan will be used to pay the local match share of a State shore protection grant.

Economic Impact

A positive economic impact will result from this proposal by establishing procedures for the expenditure of the 1983 bond issue funds to address coastal erosion problems. The loan program will create economic incentive and assistance for municipalities to undertake shore protection programs. The rules impose no additional costs on local governments beyond those already associated with the application process for any shore protection state aid grants.

Environmental Impact

The environmental impact will be positive through the continuation of the shore protection program and the resultant protection of the coastal resources of the state.

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:7F-1.1 Scope and construction

(a) This chapter shall constitute the rules governing the distribution of State funds for matching grants and State conducted shore protection projects pursuant to the Beaches and Harbors Bond Act of 1977, P.L. 1977, c.208, **the Shore Protection Bond Act of 1983, P.L. 1983, c.356,** and any appropriation bills passed thereafter. **It also constitutes the rules governing the distribution of Federal shore protection funds by the State.** This chapter prescribes procedures for selection of projects to be funded, applications for local grants, and contract management.

(b) (No change.)

7:7F-1.2 Purpose

(a) This chapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Beaches and Harbor Bond Act of 1977, P.L. 1977, c.208 **and the Shore Protection Bond Act of 1983, P.L. 1983, c.356;**

2. To establish policies and procedures for selecting projects to be funded under the Act;

3. To establish policies and procedures for distribution of matching State funds appropriated pursuant to the Act for the purposes of shore protection;

4. To establish policies and procedures for State participation in any Shore Protection project funded with State and/or Federal funds.

[4.] **5.** To protect the public by insuring that funds appropriated are spent in a proper manner and for the intended purposes;

[5.] **6.** To insure that the distribution and use of funds are consistent with the laws of the State of New Jersey and the policies of the Department.

7:7F-1.4 Definitions

The following words shall have the following meaning when used in this chapter, unless the context clearly indicates a different meaning or intent.

"Bond Act" means the Beaches and Harbors Bond Act of 1977, P.L. 1977, c.208, **and the Shore Protection Bond Act of 1983, P.L. 1983, c.356.**

"Borrower" means a municipal or county government which has received a loan pursuant to these rules, and which has executed a loan award document.

SUBCHAPTER 3. LOCAL GOVERNMENT GRANTS

7:7F-3.1 Eligibility

Any loan government applicant is eligible for a shore protection grant **or loan** in any year where the proposed shore

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protection project ranks high enough on the [oceanfront] priority list to be funded (given the funds available), is in compliance with the Department's Rules on Coastal Resource and Development Policies (see N.J.A.C. 7:7F-3.8), and for which the local government and other local governments in the reach have irrevocably committed funds.

7:7F-3.2 Pre-application procedures

(a) The Division requires informal conferences with local governments interested in applying for Shore Protection matching grants **or loans**, unless waived. Inquiries and questions should be directed to the Chief, Bureau of Coastal Engineering, Division of Coastal Resources, 1433 Hooper Avenue, Toms River, New Jersey 08753.

(b) During the conference the Division shall identify and explain all grant **and loan** application requirements. The conference is for informational purposes only, and neither written nor verbal statements made during the conference shall be binding on the Department or on the local government.

7:7F-3.3 Application procedures

(a) An application may be in letter form, and shall include all technical documents and supplementary materials necessary for the Division's review. Submittals which do not substantially comply with this chapter shall [not be processed further] **be returned to the applicant with a notice of deficiency**.

(b) Applications shall be signed by a person authorized by resolution or ordinance [obligating] **to obligate** the applicant to the terms and conditions of the requested grant **or loan**.

(c) Applications shall be submitted well in advance of the desired grant **or loan** award date. Generally, processing of a completed grant **or loan** application by the Department requires 120 calendar days after receipt of the application.

(d) Applications for shore protection State-aid grants **or loans** shall be sent to the Chief, Bureau of Coastal Engineering, Division of Coastal Resources, 1433 Hooper Avenue, Toms River, New Jersey 08753.

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

7:7F-3.4 Funding formula

(a) Shore Protection grants shall provide **no more than** 75 percent of eligible project costs, with **at least** 25 percent to be provided by the grantee. Projects undertaken solely by the State shall be 100 percent State funded.

(b) (No change.)

7:7F-3.5 Eligible costs

(a) **Shore Protection funds** [Funds from the Beaches and Harbors Bond Fund] may be used for the following costs:

1. The cost of researching, planning, developing, [and] designing, **acquiring land or easements, or monitoring** the project, including the cost of consulting engineers contracted by the Department.

2. Construction and,

3. Administrative costs.

(b) **Shore Protection funds** [Funds from the Beaches and Harbors Bond Fund may] **shall** not be used for the following costs incurred by local governments:

1. Pre-application and application phase engineering,

[2. Land acquisition, access, or easements,]

[3.] **2.** In kind costs,

[4.] **3.** Administrative costs.

7:7F-3.6 Grant agreement

(a) Upon execution of **a** State-aid grant **or loan** agreement between the State and a local government, the Division, the Division shall transmit the [grant] agreement (certified mail, return receipt requested) to the applicant for execution. The applicant shall execute it and return it within 30 calendar days after receipt. The Division may, at its discretion, extend the time for execution. The [grant] agreement shall set forth the approved project scope, budget (including the local government and State shares), and total project costs. The [grant] agreement shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process.

(b) The grant **or loan** shall become effective and shall constitute an obligation of appropriated [Beaches and Harbors Bond Act] **Shore Protection funds** in the amount and for the purposes stated in the [grant] agreement, at the time of execution of the grant **or loan** agreement by the Department and the applicant.

(c) Neither the approval of a project nor the award of any grant **or loan** shall commit or obligate the Department to award any continuation grant **or loan** or enter into any [grant] agreement, including grant **or loan** increases to cover cost overruns, with respect to any approved project or portion thereof.

(d) Where the total amount paid under a grant and grant amendments is less than the amount appropriated by the Division of Coastal Resources for the grantee's project, then such difference in amount shall be retained by the State **for deposit in the Shore Protection Fund** for reallocation pursuant to the [Beaches and Harbors Bond Act] **1983 Shore Protection Bond Act or subsequent acts**. The local government matching share of the difference shall be returned to the respective local government.

(e) The grant **or loan** agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project or Department objectives. The grantee or contractor shall comply with any special conditions which the Department requires in the [grant] agreement or any amendment thereto; such requirements will include the Affirmative Action requirements of P.L. 1975, Chapter 127.

7:7F-3.7 Shore protection loans

(a) A local government which receives a State shore protection grant will be eligible to receive a loan. In determining eligibility, special consideration will be given to the ability of a local government to finance the shore protection project based on the per-capita income and equalized property tax rate of the local government; project location in an area heavily utilized by the public; and the submission of a financial plan for maintenance of the project by the local government.

(b) Terms of the loan shall include the following:

1. The amount of the loan, determined by the Division, shall be based upon shore protection project costs.

2. The interest rate for the loan shall be established at a rate deemed appropriate by the Department of Treasury.

3. The loan maturity period shall be for a period of no more than 10 years from the date payments to the borrower begin. Principal and accrued interest may be prepaid by the borrower prior to the end of the loan maturity period without penalty.

4. All other financial terms shall be established by agreement between the Department and the Department of Trea-

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sury. Loan terms shall be made available to all applicants by the Department in all cases prior to execution of any loan award document.

(c) State payment of the loan shall be as follows:

1. State loan funds shall be released to the Division as payment for the local share of the shore protection project as required by the project work schedule.

2. In the case of a greater than 25 percent locally funded project, State funds, equal to the loan amount shall be released to the borrower on an interim basis corresponding to the percent of the total project completed. Ten percent of all payments shall be withheld until the entire project has been completed to the satisfaction of the Department.

(d) Funds from repayment of loans issued under the authority of the Shore Protection Bond Act and this chapter shall be deposited in the Shore Protection Fund and shall remain available for further shore protection grants or loans to be awarded to these regulations.

(e) A project which receives greater than 25 percent local funds would be subject to the following requirements:

1. The project must be approved and monitored by the Division. The borrower must comply with the time schedule and project scope which are specified in the loan award document;

2. The borrower must submit proof of its compliance and the compliance of contractors and subcontractors with all hazard insurance is in full force and effect and that the premiums have been paid;

3. The borrower shall certify that it and its contractors and subcontracts are maintaining their financial records in accordance with generally accounting principles;

4. The borrower shall certify that it and its contractors and their subcontractors are in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and the rules and regulations promulgated pursuant thereto;

5. The borrower shall certify that the borrower includes in all its construction or development contracts for the project a requirement that the contractor post a performance bond or other performance guarantee in an amount equal to the full cost of the project;

i. This performance bond or guarantee shall remain in effect until the Division's final inspection of the project and determination in writing that the project is satisfactorily completed;

ii. The performance bond or performance guarantee shall be both nondiscriminatory and financially satisfactory to the Department, and meet all statutory requirements;

6. The borrower shall certify that it is in compliance with all other requirements and conditions of the loan award document;

7. The borrower bears primary responsibility for the administration and success of the project, including any subagreements made by the borrower for accomplishing loan objectives;

8. Loan funds may only be used for the shore protection project as specified in the loan award document. Any other use of loan funds will constitute a violation of the loan agreement and termination of the loan; and

9. All rules concerning contract management pursuant to N.J.A.C. 7:7F-4.1 through 4.5 shall apply to greater than 25 percent locally funded projects.

(f) Repayment of loan, the loan shall be subject to the following:

1. The borrower shall repay the loan in accordance with the schedule agreed to in the loan award document. Late payments in violation of the agreed schedule will be subject to an interest charge at a rate to be deemed appropriate by the Department of Treasury.

2. Consistent delinquent repayment will result in forfeiture of eligibility by the local government for future State shore protection assistance.

[7:7F-3.7] **7:7F-3.8** Compliance with Coastal Resource and Development Policies

(a) Grants **and loans** will be conditioned on compliance with the Department's Rules on Coastal Resource and Development Policies (N.J.A.C. 7:7E-1 **et seq.)** in four policy areas:

1. Public Access to the Shorefront
2. Beaches
3. Dunes
4. Erosion Hazard Areas

(b) Local governments must be able to demonstrate that adequate public access [will be] is provided to the **waterfront** area [affected by the Shore Protection Project]. Factors to be evaluated will include, but are not limited to:

1. Physical access to anyone, at a reasonable, non-discriminatory cost (if a fee is charged) [to the area affected by the Shore Protection Project,]
2. Adequate parking or public transportation for non-residents,
3. Public ownership or control of beach areas and access routes, to insure that the beach area [protected by the Shore Protection project] will be accessible to the public.

(c) (No change.)

(d) N.J.A.C. 7:73-3.22 prohibits development which destroys dunes or impairs their natural functioning. Local governments must be able to demonstrate that their zoning ordinances and the implementation of such ordinances [for the area affected by the Shore Protection Project] comply with this policy.

(e) N.JA.C. 7:7E-3.24 prohibits development in erosion hazard areas, except for linear development and shore protection activities. These areas are identified in the Shore Protection Master Plan, and **a** local government [wanting to undertake a shore protection project in an erosion hazard area] **which has erosion hazard areas and wants to undertake a shore protection project** must be able to demonstrate that local ordinances comply with **this policy**.

[7:7F-3.8] **7:7F-3.9** Federal reimbursement

Any funds **provided or** reimbursed to the State by the Federal government in connection with a shore protection project shall be passed on **when appropriate** to a local government on a pro-rata basis to the extent that the local government participated in the funding of the project.

[7:7F-3.9] **7:7F-3.10** Payment of local share

(No change.)

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(a)

DIVISION OF WATER RESOURCES

Flood Hazard Area Delineations

Proposed Amendment: N.J.A.C. 7:13-7.1 (formerly N.J.A.C. 7:13-1.11)

DEP Docket No. 054-84-08.

Pursuant to a notice in the Register on September 17, 1984 (16 N.J.R. 239(a)), the Department proposed to delineate flood hazard areas for the Paulins Kill and its tributaries. The hearing has been rescheduled from October 3, 1984 to November 28, 1984, to allow additional opportunity to inspect the maps of the delineated areas.

A **public hearing** concerning this proposal will be held on November 28 at 1 P.M. at:

County Administration Building
Newton
Sussex County

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Clark Gilman
Bureau of Flood Plain Management
Division of Water Resources
CN 029
Trenton, New Jersey 08626

(b)

DIVISION OF FISH, GAME AND WILDLIFE BUREAU OF SHELLFISHERIES

Preservation of Sea Clams

Proposed Amendment: N.J.A.C. 7:25-12.1

Authorized By: Robert H. Hughey, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 50:1-5, 50:2-6.1 and 50:2-6.3.
DEP Docket No. 063-84-09.

A **public hearing** concerning this proposal will be held Wednesday, November 28, 1984, in Room CC-103 at Stockton State College, Pomona, New Jersey, 6:30 P.M.

Interested persons may submit in writing data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions and responses should be addressed to:

Gale Critchlow, Chief
Division of Fish, Game and Wildlife
Bureau of Shellfisheries
1566 Edgewood Avenue
Trenton, New Jersey 08618

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 1984-583.

The agency proposal follows:

Summary

The proposed amendment properly references the Bureau of Law Enforcement in the Division of Fish, Game and Wildlife thereby reflecting an administrative change. It makes specific the provision for adjusting the weekly vessel harvest limit in the event that the year's quota is increased to extend the season.

The amendments are proposed to bring this rule into conformity with federal regulations.

The proposal prohibits a New Jersey licensed sea clam vessel from fishing in New Jersey waters on its Federal fishing day and clarifies the procedure for reporting fishing location. The proposal also requires the tagging of individual containers of sea clams before leaving the vessel.

The proposal also clarifies the rule on issuance of bait clam license, and the days and hours for bait clam fishing. The proposal also raises the landing fee from $0.10 to $0.15.

Social Impact

The proposed changes are mostly procedural and are being made to conform with Federal regulations. Since sea clammers are required to comply with the Federal requirements, these proposed amendments should have little or no additional impact on the members of the sea clam industry. No effect on the general public is anticipated.

Economic Impact

It is anticipated that the increased landing fee (from $0.10 to $0.15) will cost each harvester less than $500.00 during the eight-month sea clam season, an amount estimated to be less than one-seventh of the value of his catch for one week of that season. The amendments will not affect the yield of claims therefore there will be no new or additional economic impact.

Environmental Impact

Rutgers University sea clam investigations, carried on annually under contract with the Department of Environmental Protection, have demonstrated that the harvest quota limits set by the sea clam regulations have successfully prevented devastation of the resource. Continued closure of areas where there are a large number of juvenile clams should continue to allow for the undisturbed growth of the standing stocks to marketable size.

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

7:25-12.1 Preservation of the sea clam resource in New Jersey
(a)-(b) (No change.)
(c) General provisions are as follows:
1.-5. (No change.)

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6. This subchapter may be enforced by **the Division of Fish, Game and Wildlife, Bureau of Law Enforcement, and** the New Jersey State Policy Marine Law Enforcement Bureau [and all enforcement personnel designated by the Commissioner].

7. (No change.)

(d) Harvest limitations are as follows:

1.-2. (No change.)

3. When, at any time during the period of November 1 through May 31, the Department has determined that 500,000 bushels have been harvested from the waters of this State, the Department may close the State's waters to any further harvesting upon two day's public notice, or may increase the harvest limit **and adjust the weekly per vessel limit,** with the advice of the Shellfisheries Councils and the [Department of Zoology, Rutgers University] **staff of the Rutgers Shellfish Laboratory,** to extend the season. Said notice may be accomplished by publication in newspapers circulating in Monmouth, Ocean, Salem, Cumberland, Burlington, Atlantic, and Cape May Counties and by certified mail to each licensee. A public notice of any change pursuant to this subsection shall be published in the New Jersey Register.

4.-5. (No change.)

(e) General control methods are as follows:

1. [For the purpose of calculating the harvest limit,] Any licensee fishing at any time in the State's waters [on any given day], **or who notifies the Division of Fish, Game and Wildlife's Bureau of Law Enforcement of his intention to fish the State's waters as required below at (e)4,** shall have his entire catch for that day counted as part of [the harvest limitation] **his weekly vessel quota.**

2. No New Jersey licensed vessel shall transfer sea clams to any other vessel. All sea clams harvested in New Jersey waters shall be landed in New Jersey. No vessels shall fish in or land clams from [both] New Jersey [and Federal] waters [from the same fishing trip] **on the day or days it is assigned to fish in Federal waters.**

3. (No change.)

4. A licensed vessel shall notify the [Nacote Creek Shellfish Office] **Marine Enforcement Unit, Bureau of Law Enforcement** of the Division of Fish, Game and Wildfish, of [their] **its** intended fishing location each day it fishes in state waters. The notification shall be made by phone by calling (609) [441-3284] **441-3474.** The telephone call shall be made by the captain of the vessel or his designee prior to [when the vessel fishes] **fishing** in State waters **and prior to change of location.**

5.-6. (No change.)

7. All sea clam cages or containers must be tagged with tags furnished by the Division before leaving the vessel. Tags shall not be removed until the cages or containers are emptied at the processing plant, at which point said tags will be discarded.

(f) (No change.)

(g) Miscellaneous provisions are as follows:

1. Bait clams:

i. (No change.)

ii. License and permit required: A **Sea Clam Bait** license for the taking of sea clams shall be required for the taking of bait clams. In addition, the special permit issued pursuant to Chapter 24, Title 58, of the New Jersey Statutes Annotated from the Division of Water Resources shall be required.

iii. (No change.)

iv. Season and time: [Except for Sundays] The season for taking of bait clams only shall extend throughout the year. The time for taking bait clams shall be [Monday] **daily, Sunday** through Saturday **from November 1, through May 31** between 6:00 a.m. and 6:00 p.m. [from October 1 to April 30] and **Monday through Saturday** from half-hour before sunrise to 4:00 p.m. [during the period May 1 through September 30] **from June 1 through October 31.**

v. (No change.)

2. Rebuttable presumptions: The presence of a dredge overboard at any other time or in any of the prohibited ocean areas or both shall be rebuttable evidence of a violation of the provisions of this regulation. Any malfunction of gear causing the dredge to be left overboard in prohibited areas or at prohibited times, or both, shall be reported immediately to the [Nacote Creek Shellfish Office] **Marine Enforcement Unit** of the Division of Fish, Game and Wildlife.

3.-4. (No change.)

(h) (No change.)

(i) Licensees shall pay a fee of [ten cents $0.10] **fifteen cents ($0.15)** for each bushel, or its equivalent, of the sea clams harvested from the waters of this State. The Department shall use such monies for the conservation, protection, management, and improvement of the sea clam resource and industry.

(j)-(l) (No change.)

(a)

DIVISION OF ENVIRONMENTAL QUALITY

The Following Proposals are Authorized By:

Robert E. Hughey, Commissioner,
Department of Environmental Protection.
Authority: N.J.S.A. 13:1D-5, 13:1D-9, 26:2C-8, 26:2C-8.1, 26:2C-8.2, and 26:2C-8.5.

Public hearings concerning the proposals will be held at the following times and locations.

December 5, 1984
10:00 A.M.
Sheraton Inn
195 Route 18 (½ mile east of exit 9, New Jersey Turnpike)
East Brunswick, New Jersey

December 6, 1984
10:00 A.M.
N.J. Casino Control Commission
Public Meeting Room (Second Floor)
Tennessee Avenue and Boardwalk
(use Boardwalk entrance)
Atlantic City, New Jersey

Interested persons may submit, in writing, data, views, or arguments relevant to the proposals on or before December 7, 1984. The Department has prepared a Basis and Background document for the proposals. Submissions by interested parties, any inquiries about submissions and responses, and requests for copies of the Basis and Background document should be addressed to:

Herbert Wortreich, Assistant Director
Division of Environmental Quality

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New Jersey Department of
Environmental Protection
CN 027
Trenton, New Jersey 08625

Copies of this notice, of the proposed regulations, and of the basis and background document are being deposited and will be available for inspection during normal office hours until December 7, 1984 at:

Atlantic County Health Department
1200 Harding Highway
Mays Landing, New Jersey 08330

N.J. Bureau of Air Pollution Control
Room 1108, Labor and Industry Building
John Fitch Plaza
Trenton, New Jersey 08625

N.J. Bureau of Air Pollution Control
Northern Field Office
1259 Route 46
Parsippany, New Jersey 07054

N.J. Bureau of Air Pollution Control
Southern Field Office
100A Larwin Road
Cherry Hill, New Jersey 08034

N.J. Bureau of Air Pollution Control
Metropolitan Field Office
1110 Raymond Boulevard—Fifth Floor
Newark, New Jersey 07102

Warren County Health Department
151 West Washington Avenue
Washington, New Jersey 07882

The Department of Environmental Protection thereafter may adopt the proposals without further notice (see N.J.A.C. 1:30-3.5). The adoptions become effective upon publication in the Register of a notice of adoption. The adopted rules become operative 180 days after the Commissioner signs said notice of adoption (see N.J.S.A. 26:2C-8.2).

Control and Prohibition of Air Pollution from Diesel-Powered Motor Vehicles

Proposed Amendments: N.J.A.C. 7:27-14
Proposed Repeal: N.J.A.C. 7:27-14.2
Proposed New Rule: N.J.A.C. 7:27-14.3

DEP Docket No. 067-84-10.

This proposal is known as PRN 1984-614.

Summary

Emissions from diesel-powered motor vehicles contain many specifically known and suspected pollutants. One category, particulates, often referred to on a mass basis as Total Suspended Particulates (TSP) or, in the visible range as smoke, is a principal component of diesel emissions. On June 18, 1971, the State of New Jersey implemented an inspection/maintenance (I/M) program for the control of visible smoke from heavy-duty (above 6,000 lbs.) diesel-powered vehicles and diesel-powered autobuses.

N.J.S.A. 26-2C-8.1 to 8.5 empowers the New Jersey Department of Environmental Protection to promulgate emission standards and test procedures for both public highway operation and inspection. The Division of Motor Vehicles (DMV) enforces inspection rules for heavy-duty diesel-powered vehicles and the Department of Transportation (DOT) has enforcement authority for the inspection of diesel-powered autobuses. Enforcement of public highway rules is directed by the State and local police. Also, regional and local health agencies can enforce certain sections of these rules.

In Schwerman Trucking Co. v. DEP, 125 N.J. Super 14 (1973), the Appellate Division of the Superior Court of New Jersey upheld the arguments of the trucking industry which challenged the legal basis of N.J.A.C. 7:27-14.2 entitled "Public Highway Standard". This subsection was challenged on the basis that a no visible smoke standard was inconsistent with the Department's enabling legislation which requires the adoption of vehicle emission standards which would not require vehicle or engine modification. The court ruled that the established standard is not attainable without modification of the vehicle and that N.J.A.C. 7:27-14.2 is, therefore, void and unenforceable. The Department did not appeal the decision nor has it proposed, until this time, repeal of the public highway standard.

This proposal will therefore: (1) repeal the public highway standard (N.J.A.C. 7:27-14.2) and (2) establish a standing vehicle idling limitation (N.J.A.C. 7:27-14.3).

The department at this time does not plan to repropose the public highway standard. However, the establishment of a three minute idling limitation (five minutes when the ambient temperature is equal to or below 32°F) for diesel-powered vehicles including both trucks and autobuses, should reduce the annoying and adverse health effects of excessive diesel odors and exhaust resulting from idling vehicles in New Jersey urban areas.

The proposed revision to the inspection procedures is necessary to reflect actual test procedures (N.J.A.C. 7:27B-4.4) necessary to effectively examine newly manufactured autobuses designed with vertical exhaust outlets. No changes in the stringency of the test is provided; however, because the vehicle test loading conditions are less than the existing test procedure, the smoke opacity standard is being adjusted (from 40 percent to 12 percent opacity) to compensate.

N.J.A.C. 7:27-14 is referenced in New Jersey's 1973 State Implementation Plan for the Attainment of the Total Suspended Particulates (TSP) National Ambient Air Quality Standard. Inclusion of this regulation in the SIP is based upon the assumption that visible smoke indirectly correlates with particulate emissions. The United States Environmental Protection Agency is currently considering amending the TSP National Ambient Air Quality Standard by adopting a particulate standard for particles less than 10 microns in size. It is known that the great proportion of diesel particles fall within this size range. Once EPA has adopted a particle standard, the Department will proceed to propose appropriate amendments to N.J.A.C. 7:27-14.

These revisions are being proposed simultaneously with proposed adoption of revisions to N.J.A.C. 7:27-15 entitled "Control and Prohibition of Air Pollution from Gasoline-Fueled Motor Vehicles" and N.J.A.C. 7:27B-4 entitled "Air Test Method 4, Testing Procedures for Motor Vehicles". Comments regarding all three proposals will be accepted during the public hearings previously referenced.

Social Impact

The social impact of this proposal is positive in the sense that adoption of the proposed standard along with the adop-

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tion of the revised test procedures will allow the New Jersey Department of Transportation to more readily examine diesel-powered autobuses for smoke emissions. The current test procedure is cumbersome when used to examine buses with vertical exhaust outlets. Consequently, DOT is frequently unable to examine these vehicles with a smokemeter. Rather, these vehicles have been subjectively examined on the basis of a visual inspection. Adoption of this proposal and the revised test procedure will allow DOT to apply the uniform test procedure during all examinations. Further, adoption will provide legal strength to DOT's enforcement activities. In addition, the proposed idle standard provides a positive social impact by reducing diesel odors and air contaminants for populations of urban areas.

Economic Impact

There is no economic impact resulting from this proposal. Although the standard is proposed to be more stringent, the accompanying proposed revisions to the test procedure will result in approximately the same number of vehicles failing to comply with the standard. As noted above, the standard and procedures are being proposed for revision in order to facilitate testing of buses with vertical exhaust outlets. As is the case under current standards, owners of vehicles which fail to pass the test will have to pay for the necessary repairs of their vehicles.

Environmental Impact

There will be minimal environmental impact as a result of the proposed opacity change for the same reasons found in the discussion of the economic impact. The proposed amendments are intended to modify vehicle test procedures to allow the DOT to more readily examine diesel powered autobusses for smoke emissions. Due to changes in bus design, specifically the presence of vertical exhausts, current testing standards are cumbersome and difficult to perform. However, the proposed revised standards will be less representative of actual driving conditions than present standards. In order to compensate for this, the proposed standards are more stringent. The date which has been collected in the Basis and Background Report demonstrates that the proposed changes will result in approximately the same test results which have been obtained under current standards. There will be a positive impact from the proposed idle standard in that diesel odors and air contaminants in urban areas will be reduced.

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

SUBCHAPTER 14. [DIESEL SMOKE] **CONTROL AND PROHIBITION OF AIR POLLUTION FROM DIESEL-POWERED MOTOR VEHICLES**

7:27-14.1 Definitions

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

. . .

["Chassis dynamometer" means a device constructed in such a manner as to stimulate highway driving conditions on a stationary motor vehicle.]

"Department" means the Department of Environmental Protection.

. . .

"Diesel-powered motor vehicle" means a [self-propelled] vehicle [designed primarily for transporting persons or property on a public street or highway] which is **self**-propelled by a compression ignition type of internal combustion engine **and which is designed primarily for transporting persons or property on a public street or highway;** for purposes of this Subchapter, passenger automobiles and motorcycles are excluded.

. . .

"Idle" means the motor vehicle operating mode consisting of a non-loaded, throttled engine speed at the revolutions per minute specified by the manufacturer.

"Motor vehicle" means all vehicles propelled otherwise than by muscular power, excepting motorized bicycles and such vehicles as run only upon rails or tracks.

["MPH" means miles per hour.]

. . .

["Operating mode" means a procedure for operating a diesel-powered motor vehicle or a diesel-powered engine during measurement of smoke opacity in the exhaust emissions.]

. . .

["RPM" means revolutions per minute.]

. . .

["Smokemeter" means a device constructed in such manner as to measure smoke opacity by light obstruction between a light source and photoelectric cell which will indicate the per cent opacity of smoke at a point approximately six inches from the engine exhaust outlet. The device shall be of design meeting "Specification for Diesel-Powered Vehicle Smokemeter" on file with the State Commissioner of Environmental Protection and approved for use in accordance with manufacturer's recommended procedures for calibration, mounting and maintenance.]

[7:27-14.2 Public highway standard

No person shall operate any diesel-powered motor vehicle or permit any diesel-powered motor vehicle which he owns to be operated upon the public highways of the State if the vehicle, when in motion, emits visible smoke in the exhaust emissions within the proximity of the exhaust outlet, for a period of more than five seconds.]

7:27-[14.3] **14.2** Inspection standard

(a) Any motor vehicle propelled by a diesel-powered engine which is subject to inspection **by the owner or lessee** at the premises or places of business of the owner or lessee **as required** by the Division of Motor Vehicles as a condition of compliance with said inspection shall not emit smoke in the exhaust emissions in excess of the 20 percent smoke opacity standard **as determined according to the inspection procedure** [set forth in Table 1] **established at N.J.A.C. 7:27B-4.3.**

(b) Any **diesel-powered** autobus [propelled by a diesel-powered engine] which is subject to **the** inspection [at the premises or places of business of the owner or lessee by] **rules and regulations** of the [Public Utilities Commission] **New Jersey Department of Transportation (reference N.J.S.A. 48:4, and N.J.A.C. 16:53)** as a condition of compliance with said inspection shall not emit smoke in the exhaust emissions in excess of the **12** percent smoke opacity standard **as determined according to the inspection procedure** [set forth in Table 2] **established at N.J.A.C. 7:27B-4.4.**

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[INSPECTION STANDARDS
VEHICLES SUBJECT TO INSPECTION
BY THE DIVISION OF MOTOR VEHICLES
(Reference P.L. Title 39:8-10)

Type of Inspection	Operating Mode*	Smoke Opacity Standard
Self inspection authorized by Division of Motor Vehicles at the premises or places of business of the owner or lessee	(1) Vehicle driven on chassis dynamometer with simulated load by power absorption	20%
	-alternate-	
	(2) Vehicle driven in low gear with simulated load by braking action	20%

* PROCEDURES:

(1) VEHICLE DRIVEN ON CHASSIS DYNAMOMETER WITH SIMULATED LOAD BY POWER ABSORPTION—with smokemeter firmly positioned on the exhaust outlet and vehicle positioned on the chassis dynamometer proceed with the following steps:

STEP 1 With vehicle on a chassis dynamometer under no power absorption, select a gear ratio which will produce a maximum vehicle speed of 45-60 MPH at governed engine RPM.

STEP 2 With engine running at governed engine RPM, apply power absorption load to the dynamometer until such loading reduces the engine RPM to 80 per cent of the governed speed, the peak smoke opacity measured over a period of 5 to 10 seconds with the engine under such loading shall be the smoke opacity.

(2) VEHICLE DRIVEN IN LOW GEAR WITH SIMULATED LOAD BY BRAKING ACTION—with smokemeter firmly positioned on the exhaust outlet, proceed with the following steps:

STEP 1 Select a gear ratio which will produce a maximum speed of 10-15 MPH, at governed engine RPM, drive vehicle at 10-15 MPH at governed engine RPM.

STEP 2 Load the engine by applying brakes until engine RPM is lugged down to 80 percent of the governed engine RPM, the peak smoke opacity measured over a period of 5-10 seconds with the engine under such brake loading shall be the smoke opacity.

NOTE:

(a) All measurements are to be made after engines have been run a sufficient period of time to be at normal operating temperature.

(b) Separate measurements shall be made on each exhaust outlet on vehicles equipped with dual exhaust outlets.]

[TABLE 2
INSPECTION STANDARDS
VEHICLES SUBJECT TO INSPECTION
BY THE PUBLIC UTILITIES COMMISSION
(Reference P.L. Title 48:402.1 and
2.1A, Title 48:4-18)

Type of Inspection	Operating Mode*	Smoke Opacity Standard
Inspection of Public Utilities Commission at the premises or places of business of the owner or lessee	Autobus driven with rapid acceleration	40%

* PROCEDURES:

STEP 1. With smokemeter firmly positioned on exhaust outlet and transmission engaged, drive autobus by accelerating as rapidly as possible to approximately 20 MPH.

STEP 2. Release accelerator pedal and brake to full stop.

STEP 3. The peak smoke opacity measured during the acceleration to 20 MPH shall be the smoke opacity.

NOTE:

(a) All measurements are to be made after engines have been run a sufficient period of time to be at normal operating temperature.

(b) Separate measurements shall be made on each exhaust outlet on vehicles equipped with dual and separated exhaust outlets.

(c) A single, combined measurement shall be made on the exhaust outlets on vehicles equipped with dual, adjacent exhaust outlets.]

7:27-14.3 Idle standard

(a) No person shall cause, suffer, allow, or permit the engine of a diesel-powered motor vehicle to be in operation for more than three consecutive minutes if the vehicle is not in motion, except,

1. Where the ambient temperature is 32° (0°C) or less, the permitted period of operation shall not exceed five consecutive minutes.

(b) The provisions of (a) above shall not apply to:

1. Autobuses while discharging or picking up passengers; or

2. Motor vehicles stopped in a line of traffic; or

3. Vehicles whose primary and/or secondary power source is utilized in whole or in part for necessary and definitively prescribed mechanical operation other than propulsion, passenger compartment heating or air conditioning; or

4. Motor vehicles waiting on line to be inspected at State motor vehicle inspection facilities; or

5. Emergency motor vehicles in an emergency situation.

Control and Prohibition of Air Pollution from Gasoline-Fueled Motor Vehicles

Proposed Amendments: N.J.A.C. 7:27-15

DEP Docket No. 065-84-10.

This proposal is known as PRN 1984-612.

Summary

Among other known and suspected pollutants, motor vehicles emit significant amounts of carbon monoxide (CO) and hydrocarbons (HC), also referred to as volatile organic substances (VOS). Carbon monoxide is a poisonous gas at certain threshold concentrations. Hydrocarbons are a class of compounds which are one of several precursors which, in the presence of sunlight, form ozone and other highly reactive pollutants commonly referred to as smog. Certain center city areas in New Jersey exceed the National Ambient Air Quality Standards (NAAQS) for CO. The ozone NAAQS is exceeded throughout the State during specific days in the spring and the summer.

On July 5, 1982, the State of New Jersey implemented a Statewide annual automobile exhaust emissions inspection/maintenance (I/M) program for the control of CO and HC. The New Jersey Department of Environmental Protection (DEP) promulgated standards and test procedures for light-duty motor vehicles (6,000 lbs. and less). The test for emissions is performed on approximately 4,000,000 vehicles in the 37 State safety inspection stations operated by the New Jersey

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Division of Motor Vehicles (DMV), and since November 1983 in both State and Private Inspection Centers (PIC's).

N.J.S.A. 26:2C-8.1 through 8.5 authorize the department to establish standards and requirements for the control of air contaminants from motor vehicles. In addition, N.J.S.A. 39:8-1, 8-2 and 8-14 permit the Director of the Division of Motor Vehicles to designate licensed reinspection centers to conduct initial inspections for a fixed trial period. In 1983, N.J.S.A. 39:8-33 was enacted which requires the use of emission test equipment by licensed private inspection centers certified by DEP. Also, the legislation established criteria for the equipment specification including an automated system to control test sequencing; the automatic pass or fail decision; and the format for the test report and recorded magnetic tape file; an exhaust gas analysis portion; a device to accept and record vehicle identification information; and a device to provide a printed record of the test results to the consumer.

On May 30, 1984 the Legislature extended the trial period to June 1, 1986 but did not extend the May 1, 1985 deadline requiring all Private Inspection Centers to obtain the emission test equipment. (See P.L. 1984 c.48).

The emission standards for gasoline-fueled motor vehicles are established in N.J.A.C. 7:27-15, entitled "Control and Prohibition of Air Pollution from Gasoline-Fueled Motor Vehicles". N.J.A.C. 25:7-15 contains the definition for "Approved Exhaust Gas Analytical System" (Emission Test Equipment). The department now proposes to modify the definition to be consistent with use by Private Inspection Centers consistent with the statute. The department has already adopted final certification procedures to comply with this statutory requirement. As of October 1, 1984 three manufacturers have received final approval for certification. Two others have received preliminary certification.

At the time of the program's implementation, emission standards for heavy-duty vehicles (above 6,000 lbs) were not as yet developed. However, now the department is proposing emission standards in N.J.A.C. 7:27-15, and testing procedures in N.J.A.C. 7:27B-4 for commercial, as well as passenger vehicles.

Recent evidence indicates that the emission control effectiveness of motor vehicles equipped with advanced emission control systems may be drastically reduced or the devices rendered inoperative if those vehicles are repeatedly fueled with leaded fuel. Therefore, the department now proposes measures to prevent misfueling or tampering with emission control devices.

Emission standards were originally established on a graduated basis geared to the stringency of the control devices according to vehicle model year and gradually tightened such standards over time. Subsequent amendments to the program in June 1974, January 1975, April 1975, January 1976 and December 1976 extended these standards. More stringent standards (known as Phase II) were implemented in August 1975. No new standards have since been established. The phasing in of standards allowed the motoring public and the vehicle service industry time to gain experience with the testing system. Consistent with the requirements of the State Implementation Plan (SIP) for the Attainment and Maintenance of the Carbon Monoxide and Ozone National Ambient Air Quality Standard (NAAQS), the I/M program must provide for more effective emission control. The department determined that greater control effectiveness on vehicle equipped air pollution control devices is needed and is authorized by N.J.S.A. 26:2C-8.3.

Provisions of the Clean Air Act Amendments of 1977 extended the attainment deadline demonstration of the CO and ozone standard from December 31, 1982 to December 31, 1987. As a condition of this extension, the Act mandated that those states applying for such an extension, develop plans and bidding commitments to reduce CO and hydrocarbons (HC) emissions from both mobile and stationary sources. The SIP became the vehicle to achieve this goal.

On November 9, 1983 USEPA granted final approval of the New Jersey SIP. In the plan, the State committed to a series of measures to control both stationary and mobile sources prior to the December 31, 1987 attainment deadline. The measures are to be implemented in two rounds. The first consists of those measures which are considered to be Reasonably Available Control Technology (RACT). Those strategies committed to in the second round are considered beyond RACT and are more restrictive and judged less cost effective than the RACT measures. Proposed revisions contained herein are the mobile source RACT portions of the SIP. When enacted with proposed stationary source provisions which are not proposed at this time, the SIP projects attainment of the CO NAAQS Statewide and the ozone NAAQS in all but the New Jersey/New York/Connecticut Air Quality Control Region (AQCR) by the statutory deadline. The second round, if necessary, will consist of further stationary and mobile source controls which must be implemented prior to December 31, 1987.

Thus, as part of the State's commitment with the SIP, it is herein proposed to amend N.J.A.C. 7:27-15 to: 1) codify the technical specifications for the design of both private and State station system exhaust gas analytical systems (inspection test equipment), 2) establish standards for heavy-duty motor vehicles (6,000 lbs and greater), 3) establish standards to prohibit tampering of vehicle emission control apparatus and discourage the use of leaded fuel in vehicles equipped with catalytic converters, 4) tighten standards for 1981 model year vehicles and later and 5) establish an idling prohibition standard.

Finally, test procedures for conducting exhaust emission tests are proposed to be withdrawn from this subchapter and be made part of N.J.A.C. 7:27B-4 known as "Air Test Method 4, Testing Procedures for Motor Vehicles", which is also proposed in this Register. Test procedures for tampering and misfueling examination of light-duty gasoline-fueled motor vehicles are proposed for the first time in N.J.A.C. 7:27B-4. Other miscellaneous changes are proposed for N.J.A.C. 7:27-15 and N.J.A.C. 7:27B-4 to make this Subchapter consistent with other subchapters of the New Jersey Air Pollution Control Code.

Social Impact

The revised definition for exhaust emission analytical system references equipment specifications adopted by the department. These specifications require an analytical system with the capability of recording each test record and providing a hard copy of the inspection test for the motorist. When the motorist presents his vehicle for examination by a PIC, he will receive certification through an automatic receipt that his vehicle was inspected according to official emission test procedures. Also, the system will automatically compare the vehicle's emission test results with State standards for a determination of compliance with the standard. The result is that the motoring public will have greater assurance of an accurate vehicle emissions test. However, because the cost of this equipment is higher than what some PIC's may deem affordable, it can be expected that fewer PIC's will remain in the program. The public could experience some inconveniences in locating the remaining PIC's.

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Adoption of test standards for heavy-duty gasoline-fueled motor vehicles will eliminte the inequity of excluding New Jersey's truck population from the testing program. By incorporating the heavy-duty gasoline vehicles into the I/M program, trucking fleets wishing to retain self-inspection privileges will be required to purchase emission test equipment. Fleet mechanics will also need to become proficient with emission servicing methods through a special training program. Although some service job dislocation may be expected, the net employment impact will be minimal. The increase in the number of vehicles to be inspected per year is 315,000 vehicles. Private inspection capacity and increased State lane capacity are anticipated to offset this increase.

The USEPA has conducted national vehicle emission control system tampering surveys since 1979. These surveys have indicated that vehicle tampering is a widespread problem which circumvents the intent of hte Clean Air Act by reducing the effectiveness of the Federal Motor Vehicle Control Program. USEPA claims this problem is a threat to the attainment and maintenance of the CO and ozone national ambient air quality standards. The New Jersey tampering rate is lower than in many other areas of the nation. The department stresses a commitment towards a public awareness program and will support it with the proposed anti-tampering provisions. The result will be the assurance for each of New Jersey's motorists that others are operating vehicles which conform with the requirements of the Clean Air Act. This provision could also create a market for the repair or replacement of emission control devices including catalytic converters. No increase in testing lane capacity is anticipated at State or private inspection stations and no waiting time increases at State stations are anticipated.

The adoption of more stringent standards, as well as the DMV proposal to test vehicles after the first year of service (from the previous two years) will increase the number of inspected vehicles by 380,000 vehicles and will increase the rejection rate by about four percent. However, the standards are consistent with the performance warranty provision of the Clean Air Act, and EPA's warranty standards for these newer vehicles. The proposed standards will identify vehicles which qualify for coverage under the performance warranty regulations. The Federal performance warranty regulations specify that post-1980 model year light-duty vehicles which fail to comply with the requirements of an acceptable I/M test program during the first 24,000 miles or two years shall be warranted by the manufacturer for the necessary corrective maintenance.

Economic Impact

A significant cost to the service industry is the purchase and service of the DEP approved exhaust gas analytical equipment. The net cost for the purchase of this equipment by the approximately 3,800 licensed PIC's is $28,500,000. In addition, it is estimated that once the one-year warranty period for this equipment has expired, the owners will pay approximately $1,900,000 annually for service agreements and repairs. The owner can expect to amortize this cost through service fees for improved diagnostic capabilities and inspection repair charges, both of which will be borne by the motoring public.

The net cost for the proposed emissions test for all New Jersey registered heavy-duty gasoline-fueled vehicles including repair cost for the anticipated 35 percent rejection rate is $5.53 per vehicle. For the 315,000 vehicle population, NJDEP estimates the total annual cost for compliance with the proposed standards is $1,741,950.

The total annual cost for compliance with the anti-tampering proposal is $1,284,000. This cost includes $650,000 for the service/repair of an estimated 26,000 post-1980 model year light-duty vehicles with activated vehicle emission control system dashboard indicators. It is estimated that this service will be $25.00 per vehicle. It also includes an annual total cost of $643,000 for compliance by one percent of the vehicle population with the on-the-road anti-tampering examination standards. It is estimated that this correction will be $200.00 per vehicle to repair or replace a catalytic converter. Plus if required, another $100.00 to replace the fuel filler neck restrictor.

DEP estimates that 160,000 additional vehicles will be rejected for emissions resulting from the adoption of more stringent post-1980 model year standards. The total cost per rejected light-duty vehicle for compliance with I/M standards is $37.82. This amount includes vehicle repair, the motorist's time for repair and reexamination, the motorists travel cost for repair and reexamination, and the fines associated with driving a vehicle with an invalid inspection sticker. There will be an annual average fuel savings of $26.40/year/rejected vehicle. When the $26.40 is set off against the total repair cost, the net cost is $11.42.

Consequently, for the additional 160,000 light-duty vehicles which will be rejected as a result of the adoption of more stringent standards, the total annual cost is $1,827,200.

Therefore, the total incremental cost for the four major portions of this proposal is $33,353,150. $31,611,200 of this cost is expected to be borne by the motoring public, and $1,741,950 of this cost will be borne by the trucking fleets in the State of New Jersey.

Environmental Impact

The total emission reductions projected for this proposal are 565 metric tons per day for CO and 35 metric tons per day for HC. The environmental impact for each individual provision is estimated.

Adoption by the Department in 1983 of the Approved Exhaust Gas Analytical System specifications allows PIC's to perform a quality controlled emissions test during initial examination. The performance of a controlled test by the PIC's using the latest state-of-the-art emission testers conforms with the New Jersey SIP requirements. With the use of the licensed PIC's to supplement New Jersey's existing 37 State-operated inspection stations, the Department and DMV are able to expand the scope of inspection activities to include the other strategies previously discussed and also to reduce the two-year dealer exemption period to one year for new cars. Although no emissions reduction can be directly associated with the new equipment requirements, the use of this equipment enables DMV and DEP to implement and derive the benefit of the other mobile source control strategies.

The adoption of test standards for the heavy-duty gasoline-fueled vehicles will reduce the 1987 Statewide mobile source CO emissions inventory by 237 metric tons per day (MT/d). The same test standards will reduce the 1987 Statewide mobile source HC emissions by 12.5 MT/d. These figures represent 42 percent of the CO and 36 percent of the HC reductions of the RACT requirements as contained in the NJ SIP.

The 1987 Statewide CO mobile source reduction due to the RACT adoption of the anti-tampering proposal is 220 MT/d. The HC mobile source emission reduction for 1987 is 15.1 MT/d. These figures represent 39 percent of the CO and 44 percent of the HC reductions of the RACT requirements as contained in the NJ SIP.

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The adoption of more stringent I/M standards for the post-1980 light-duty gasoline-fueled motor vehicles plus the one year exemption reduction for new motor vehicles will reduce the 1987 Statewide mobile source CO emission inventory by 108 MT/d, and the Statewide HC emission inventory by 7.0 MT/d. These figures represent 19 percent of the CO and 20 percent of the HC reductions of the RACT requirements contained in the NJ SIP.

Collectively, the environmental impacts of these proposals plus additional control measures adopted by county and local transportation control agencies will allow New Jersey to demonstrate attainment of the CO NAAQS. For HC, implementation of this proposal will reduce the SIP's RACT commitment by about one third. With additional committed stationary source strategies, however, New Jersey is projected to demonstrate attainment of the ozone national ambient air quality standards in the Greater Philadelphia, New Jersey/Pennsylvania Interstate and Intrastate AQCR. However, the State will still be 12 percent short in attaining the NAAQS in the NJ/NY/Conn. AQCR.

Energy Impact

NJDEP anticipates no energy impact resulting from the upgrading of approved exhaust gas analytical system requirements in N.J.A.C. 7:27-15.1.

Research shows that implementation of an I/M program results in an approximate 0.4 percent annual fuel savings fleetwide. For New Jersey's 315,000 heavy-duty gasoline-fueled registered vehicles, this is equivalent to 2,100,000 gallons of fuel per year. This fuel savings is associated with improved engine efficiency, resulting from necessary collective maintenance to comply with the test standards. Therefore, there will be a positive energy impact resulting from the heavy-duty gasoline-fueled motor vehicle standards proposed at N.J.A.C. 7:27-15.4(b).

NJDEP estimates no energy impact as a result of adopting the proposed anti-tampering and misfueling standards proposed at N.J.A.C. 7:27-15.4(c).

The average fuel savings per rejected light-duty gasoline-fueled vehicle in an I/M program is approximately 4 percent/year. For the 160,000 post-1980 model year vehicles which will be rejected as a result of the adoption of more stringent standards, the savings is 3,840,000 gallons/year. Again, these savings result from improved engine operation associated with the collective maintenance necessary to comply with the test standards. Therefore, there will be a positive energy impact resulting from the revised post-1980 model year light-duty gasoline-fueled motor vehicle standards proposed at N.J.A.C. 7:27-15.4(b).

In total, the gasoline saved due to this proposal is estimated at 5,940,000 gallons per year.

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

SUBCHAPTER 15. CONTROL AND PROHIBITION OF AIR POLLUTION FROM [LIGHT-DUTY] GASOLINE-FUELED MOTOR VEHICLES

7:27-15.1 Definitions

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

"Approved exhaust gas analytical system" means a device for sensing the amount of air contaminants in the [exhause] **exhaust** emissions of a motor vehicle. For purposes of this Subchapter, this shall mean analyzing devices of the nondispersive infrared type sensitized to measure carbon monoxide at the 4.74 micron ban expressed as percent carbon monoxide in air and to measure hydrocarbons as hexane at the 3.41 micron band expressed as parts per million of hydrocarbons (hexane) in air. [The device shall be of a design meeting "Specifications For Exhaust Gas Analytical System" on file with the Commissioner of Environmental Protection and approved for use] **The device shall be approved by the Department as one which is in accordance with specifications contained in "Specifications For Exhaust Gas Analytical System For Use By New Jersey Division of Motor Vehicles Private Inspection Centers (PIC)" or "Specifications For Exhaust Gas Analytical System For Use By New Jersey Division of Motor Vehicles Operated Official Inspection Stations" and shall be used** in accordance with the manufacturer's recommended procedures for calibration and maintenance.

"Carbon monoxide **(CO)**" means [non-irritating] colorless, odorless, **tasteless** gas at standard conditions [which has the molecular form of CO] **having a molecular composition of one carbon atom and one oxygen atom.**

"Commissioner" means the Commissioner of the Department of Environmental Protection.

. . .

"Department" means the Department of Environmental Protection.

"Emission control apparatus" means any device employed by the vehicle manufacturer which prevents or controls the emission of any air contaminant, including associated components which monitor the function and maintenance of these devices.

. . .

"Gasoline-fueled motor vehicle" means any motor vehicle equipped to be powered by a hydrocarbon fuel other than diesel fuel, but including alcohol fuels and hydrocarbon-alcohol fuel blends.

"Heavy-duty motor vehicle" means any motor vehicle designed primarily for transportation of persons or property and registered as exceeding 6,000 pounds gross weight.

"Hydrocarbons **(HC)**" means compounds whose [molecular] **molecules** consist of atoms of hydrogen and carbon only.

"Light-duty **motor vehicle**" means any motor vehicle designed primarily for transportation of persons or property and registered at 6,000 pounds gross weight or less.

. . .

"Motor vehicle" means all vehicles propelled otherwise than by muscular power, excepting **motorized bicycles and** such vehicles as run only upon rails or tracks.

"Motorized bicycle" means a pedal bicycle having a helper motor characterized in that either the maximum piston displacement is less than 50 cubic centimeters or said motor is rated at no more than 1.5 brake horsepower and said bicycle is capable of a maximum speed of no more than 25 miles per hour on a flat surface.

. . .

"New motor vehicle dealer" means [a sales agency, his employees, and/or agents] **any person** licensed pursuant to N.J.S.A. 39:10-19 to sell new motor vehicles.

. . .

7:27-15.2 Public highway standard

(a) No person shall [operate] **cause, suffer, allow or permit the operation of** any [light-duty,] gasoline-fueled motor vehicle [or permit such vehicle which he owns to be operated] upon the public highways of the State if the vehicle emits

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visible smoke in the exhaust emissions or in the crankcase emissions **for a period in excess of three consecutive seconds.**

[(b) The provisions of this subsection shall become effective July 1, 1972.]

(b) No person shall cause, suffer, allow or permit the operation of any gasoline-fueled motor vehicle upon the public highways of the State if the vehicle emits hydrocarbons (HC) or carbon monoxide (CO) in the exhaust emissions in excess of standards as set forth in Table 1 when measured using an approved exhaust gas analytical system and the inspection test procedure established at N.J.A.C. 7:27B-4.5.

7:27-15.3 New motor vehicle dealer inspection compliance standard

(a) Any [light-duty,] gasoline-fueled new motor vehicle subject to inspection by any new motor vehicle dealer in accordance with regulations promulgated by the New Jersey Division of Motor Vehicles shall, prior to delivery by the new motor vehicle dealer to the ultimate purchaser, conform to the emission specifications prescribed by the manufacturer and/or such specifications as may be prescribed by the manufacturer in the new motor vehicle predelivery check list to assure proper functioning of [emission control devices] **the vehicle emission control apparatus.**

(b) Whenever emission specifications are not prescribed, the inspection standards as set forth in [Section 4(b) (Motor vehicle inspection standard) of this Subchapter] **N.J.A.C. 7:27-15.4(b)** shall apply to such new motor vehicles.

[(c) The provisions of this subsection shall become effective July 5, 1972.]

(c) Any new motor vehicle dealer, upon the sale of each new gasoline-fueled motor vehicle, shall furnish to the ultimate purchaser a written summary of Federal warranty regulations and their significance to the vehicle owner.

7:27-15.4 Motor vehicle inspection standards

(a) Any light-duty[,] or **heavy-duty** gasoline-fueled motor vehicle which is subject to inspection by the [Division of Motor Vehicles] **State of New Jersey** in accordance with the provisions of N.J.S.A. 39:8[-1], as a condition of compliance with said inspection, shall not emit visible smoke in the exhaust emissions or in the crankcase emissions **for a period in excess of three consecutive seconds** when [using] **undergoing** the [prescribed] inspection **test** procedure **established at N.J.A.C. 7:27B-4.5.**

(b) Any light-duty[,] **or heavy-duty**, gasoline-fueled motor vehicle which is subject to inspection by the [Division of Motor Vehicles] **State of New Jersey** in accordance with the provisions of N.J.S.A. 39:8[-1], as a condition of compliance with said inspection, shall not emit carbon monoxide (CO) [and/] or hydrocarbons (HC) in the exhaust emissions in excess of standards set forth in Table 1, when measured using an approved exhaust gas analytical system and the [prescribed] inspection **test** procedure **established at N.J.A.C. 7:27B-4.5.**

[(c) The provisions of this subsection shall become effective July 5, 1972, subject to the exception set forth in Section 5 (Exceptions) of this Subchapter.]

(c) Any light-duty, gasoline-fueled motor vehicle which is subject to inspection by the State of New Jersey in accordance with the provisions of N.J.S.A. 39:8, as a condition of compliance with said inspection, shall have properly functioning and properly maintained emission control apparatus as determined according to the inspection test procedure established at N.J.A.C. 7:27B-4.6.

[TABLE 1
INSPECTION STANDARDS
VEHICLES SUBJECT TO INSPECTION
BY THE DIVISION OF MOTOR VEHICLES
(reference N.J.S.A. Titles 39:8-1)

MODEL YEAR OF VEHICLE	EFFECTIVE July 5, 1972 CO (%)	HC (PPM)	EFFECTIVE August 1, 1975 CO (%)	HC (PPM)	EFFECTIVE CO (%)	HC (PPM)
Up to and including 1967	10.0	1600	8.5	1400	7.5	1200
1968-1969	8.0	800	7.0	700	5.0	600
1970-1974	6.0	600	5.0	500	4.0	400
1975-1976			*3.0	*300	2.0	200
1977 and later					**	

* Effective date October 1, 1976
** To be promulgated by amendment at a later date

PRESCRIBED INSPECTION TEST PROCEDURE

STEP 1: With the vehicle in neutral gear, all accessories off, handbrake secured, accelerate engine and observe for visible smoke in the exhaust emissions and crankcase emissions.

STEP 2: With the engine running at idle, insert sampling probe of gas analytical system into the engine exhaust outlet. The steady state levels measured as per cent carbon monoxide and part per million of hydrocarbons in the exhaust gas shall be the inspection test result.

NOTE: All measurements are to be made after engine has been operating a sufficient period of time to attain normal operating temperature.]

TABLE 1
EXHAUST EMISSION STANDARDS FOR GASOLINE-FUELED MOTOR VEHICLES SUBJECT TO INSPECTION BY THE STATE OF NEW JERSEY

Light-Duty, Gasoline-Fueled Motor Vehicles

MODEL YEAR	IDLE CO (%)	IDLE HC (ppm as hexane)
Pre-1968	8.5	1400
1968-1970	7.0	700
1971-1974	5.0	500
1975-1980	3.0	300
1981 & Later	1.2	220

Heavy-Duty, Gasoline-Fueled Motor Vehicles

MODEL YEAR	IDLE CO (%)	IDLE HC (ppm as hexane)
Pre-1968	8.5	1400
1968-1970	8.5	1200
1971-1974	6.0	700
1975-1978	4.0	500
1979 & Later	3.0	300

7:27-15.5 Operation of emission control apparatus

(a) No person shall cause, suffer, allow or permit any emission control apparatus installed on any motor vehicle to be disconnected, detached, deactivated, or in any other way rendered inoperable or less effective than designed by the original equipment manufacturer (except temporarily for the purpose of diagnosis, maintenance, repair or replacement).

(b) No person shall cause, suffer, allow or permit the operation on the public highways of any motor vehicle in which

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emission control apparatus installed on such vehicle has been disconnected, detached, deactivated, or in any other way rendered inoperable or less effective than designed by the original equipment manufacturer.

(c) No person shall cause, suffer, allow or permit the sale of any motor vehicle in which emission control apparatus installed on such vehicle has been disconnected, detached, deactivated, or in any other way rendered inoperable or less effective than designed by the original equipment manufacturer.

7:27-15.6 Idle standard

(a) No person shall cause, suffer, allow, or permit the engine of a gasoline-fueled motor vehicle to be in operation for more than three consecutive minutes if the vehicle is not in motion, except:

1. Where the ambient temperature is 32°F (0°C) or less, the permitted period of operation shall not exceed five consecutive minutes.

(b) The provisions of (a) above shall not apply to:

1. Autobuses while discharging or picking up passengers; or

2. Motor vehicles stopped in a line of traffic; or

3. Vehicles whose primary and/or secondary power source is utilized in whole or in part for necessary and definitively prescribed mechanical operation other than propulsion, passenger compartment heating or air conditioning; or

4. Motor vehicles waiting on line to be inspected at State motor vehicle inspection facilities; or

5. Emergency motor vehicles in an emergency situation.

7:27-[15.5] **15.7** Exceptions

[(a) Noncompliance with standards set forth in Section 4 of this Subchapter by any motor vehicle during the period July 5, 1972, to June 30, 1973, shall not be cause for rejection or reinspection.]

[(b)] **(a)** [The provisions of Section 3 and Section 4 of this] **This** Subchapter shall not apply to motorcycles or to motor vehicles with an engine displacement of less than 50 cubic inches **(819 cubic centimeters).**

[(c)] **(b)** Nothing in this Subchapter is intended to limit or deny the inspection of motor vehicles for exhaust systems in accordance with regulations established pursuant to N.J.S.A. 39:8-1, **39:8-2, 39:3-70, 39:3-76, and 39:10-26.**

7:27-[15.6] **15.8** Variances

[Whenever the Director, Division of Motor Vehicles, has reason to believe that any model year of vehicle (or classification of light-duty gasoline-fueled vehicles) up to and including 1967 cannot comply with the emission standards as set forth in Section 4 of this Subchapter, he shall so advise the Commissioner, Department of Environmental Protection, stating the manufacturer, model, year and classification of such vehicles. After consultation with the Commissioner, Department of Environmental Protection, the Director, Division of Motor Vehicles, may waive any inspection standards for such motor vehicles.]

Whenever either the Commissioner or the Director, Division of Motor Vehicles, has reason to believe that any vehicle or any vehicle class cannot comply with the provisions of N.J.A.C. 7:27-15.4(b), the Director, with the concurrence of the Commissioner, may prescribe alternative emission inspections standards for such vehicle or vehicle class.

Air Test Method 4: Testing Procedures for Motor Vehicles

Proposed New Rule: N.J.A.C. 7:27B-4

DEP Docket No. 066-84-10.

This proposal is known as PRN 1984-613.

Summary

On October 8, 1982, the New Jersey Department of Environmental Protection (DEP) submitted its required State Implementation Plan (SIP) Revision for the Attainment of the Carbon Monoxide and Ozone National Ambient Air Quality Standards to the U.S. Environmental Protection Agency (EPA). This submittal represents New Jersey's commitment for expanding and improving the vehicle emissions inspection/maintenance (I/M) program in order to provide greater mobile source emission reductions. These reductions are necessary to project attainment of the national ambient air quality standards by the mandated December 31, 1987 date. The enhancements to the I/M program include more stringent emission standards for post-1980 model year light-duty gasoline-fueled vehicles, emission standards for heavy-duty gasoline-fueled vehicles, and anti-tampering standards for light-duty gasoline-fueled vehicles. These standards have been proposed as amendments to N.J.A.C. 7:27-15.

In addition to preparing amendments to N.J.A.C. 7:27-15, the department has also prepared amendments to N.J.A.C. 7:27-14. These proposed amendments are for adoption of a more stringent smoke opacity standard for diesel-powered autobuses. Additionally, the department is proposing new procedures for testing smoke emissions from diesel-powered autobuses, since vehicle design changes to diesel-powered autobuses have made the previously established test procedures too difficult to administer. Although these amendments are not associated with DEP commitments outlined in the CO and ozone SIP, the department is proceeding with notice of these proposed amendments at the same time as notice for the proposed amendments to N.J.A.C. 7:27-15 for the convenience of public comment. Hearings will be held jointly to receive comments on the proposed amendments for both regulations.

During the preparation of the proposed amendments to both regulations, the department decided to use this opportunity for the purpose of standardizing the format of these two regulations in order to be consistent with the format of the other DEP air pollution control regulations. Consequently, the department is proposing amendments regarding the emission standards in N.J.A.C. 7:27-14 and 15. Testing procedures associated with the standards established by N.J.A.C. 7:27-14 and 15 are being deleted from N.J.A.C. 7:27-14 and 15 and being proposed in Chapter 27B, which contains the air testing procedures. Consequently, N.J.A.C. 7:27B-4, "Air Test Method 4, Testing Procedures for Motor Vehicles" will contain the exhaust emissions test procedures for diesel-powered motor vehicles subject to inspection by the New Jersey Division of Motor Vehicles (DMV), diesel-powered motor vehicles subject to inspection by the New Jersey Department of Transportation (DOT), gasoline-fueled motor vehicles subject to inspection by the state of New Jersey, and anti-tamper-

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ing examination procedures for light-duty gasoline-fueled motor vehicles subject to inspection by the state of New Jersey.

The emissions test procedures for gasoline-fueled motor vehicles proposed at N.J.A.C. 7:27B-4.5 will be applied to heavy-duty and light-duty gasoline-fueled motor vehicles.

The procedures proposed at N.J.A.C. 7:27B-4.6, concern the anti-tampering examination of light-duty gasoline-fueled motor vehicles. The 1982 New Jersey SIP Revision commits New Jersey to implementing reasonably available control technologies (RACT) for the attainment and maintenance of the carbon monoxide and ozone national ambient air quality standards (NAAQS). The U.S. Environmental Protection Agency has identified vehicle anti-tampering examination procedures as RACT for mobile sources. Consequently, the Department is proposing these procedures as part of New Jersey's SIP commitment for attaining the carbon monoxide and ozone NAAQS.

The test procedures proposed at N.J.A.C. 7:27B-4.4, for diesel-powered motor vehicles subject to inspection by DOT represent a revision of the existing procedures contained in N.J.A.C. 7:27-14.3(b). These revisions are necessary because many of the autobuses being manufactured have vertical exhaust outlets which interfere with existing established procedures. The proposed procedures will permit accurate smoke testing of either vertical or horizontal exhaust outlet systems.

Social Impact

The social impact of this proposal is positive in that new procedures will be adopted for the exhaust emission testing of heavy-duty gasoline-fueled motor vehicles and for anti-tampering examination of light-duty gasoline-fueled motor vehicles. These procedures and associated standards will serve to improve ambient air quality for New Jersey residents by reducing carbon monoxide and ozone concentrations. The proposals place the responsibility for maintaining and operating a properly equipped motor vehicle with the vehicle owner.

Economic Impact

The proposed test procedures and standards for heavy-duty gasoline-fueled motor vehicles will result in additional operating and maintenance costs for the vehicle operators. These costs include vehicle inspection time and repair of vehicles failing to meet the established standards. However, a portion of these costs is offset by a fuel savings associated with the required corrective maintenance. The proposed anti-tampering examination procedures for light-duty gasoline-fueled motor vehicles will result in additional costs for motorists of those vehicles which are identified as having been tampered with. However, these costs result only from deliberate actions to disable or otherwise render inoperative vehicle emission control systems designed and installed by the vehicle manufacturer as necessary original equipment. The proposed diesel-powered autobus test procedure will allow for more uniform testing of those vehicles which currently can only be visually examined. No incremental costs result from the adoption of the revised procedures.

Environmental Impact

The adoption of this proposal will result in a strong environmental impact by strengthening New Jersey's inspection and maintenance program. The proposed test procedures and accompanying standards in N.J.A.C. 7:27-14 will allow DOT to perform uniform examinations of diesel-powered autobuses regardless of the exhaust outlet configuration. This, in turn, will result in improved identification of diesel-powered autobuses needing corrective maintenance necessary to minimize the emission of particulates in the vehicle exhaust. The proposed heavy-duty gasoline-fueled emission test and light-duty gasoline-fueled anti-tampering examination procedures and accompanying standards established by N.J.A.C. 7:27-15 are identified in the 1982 New Jersey SIP revision as mobile source control strategies necessary for the attainment of the CO and ozone national ambient air quality standards by December 31, 1987.

Full text of the proposed new rule follows.

SUBCHAPTER 4. AIR TEST METHOD 4: TESTING PROCEDURES FOR MOTOR VEHICLES

7:27B-4.1 Definitions

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

"Autobus" includes all motor vehicles used for the transportation of passengers for hire.

"Carbon monoxide (CO)" means a colorless, odorless, tasteless gas at standard conditions having a molecular composition of one carbon atom and one oxygen atom.

"Chassis dynamometer" means a device constructed in such manner as a simulate highway driving conditions on a stationary motor vehicle.

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Crankcase emissions" means substances emitted into the atmosphere from any portion of the engine crankcase ventilation or lubrication system.

"Department" means the Department of Environmental Protection.

"Diesel-powered motor vehicle" means a vehicle which is self-propelled by a compression ignition type of internal combustion engine and which is designed primarily for transporting persons or property on public streets or highways; for purposes of this Subchapter, passenger automobiles and motorcycles are excluded.

"Emission control apparatus" means any device employed by the vehicle manufacturer which prevents or controls the emission of any air contaminant, including associated components which monitor the function and maintenance of these devices.

"Exhaust emissions" means substances emitted into the atmosphere from any opening downstream from the exhaust ports of a motor vehicle engine.

"Exhaust leak" means any condition of the exhaust system which permits exhaust emissions to escape into the atmosphere at any point between the exhaust ports of a motor vehicle engine and the outlet of the engine exhaust pipe.

"Gasoline-fueled motor vehicle" means any motor vehicle equipped to be powered by a hydrocarbon fuel other than diesel fuel, but including alcohol fuels and hydrocarbon-alcohol fuel blends.

"Heavy-duty motor vehicle" means any motor vehicle designed primarily for transportation of persons or property and registered as exceeding 6,000 pounds gross weight.

"Hydrocarbons (HC)" means compounds whose molecules consist of atoms of hydrogen an carbon only.

"Idle mode" means the vehicle test mode of the prescribed inspection test procedure, consisting of a non-loaded, throttled engine speed at the revolutions per minute specified by the manufacturer.

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"Inspector" means any person authorized by the State of New Jersey to enforce N.J.A.C. 7:27-14.2.

"Light-duty motor vehicle" means any motor vehicle designed primarily for transportation of persons or property and registered at 6,000 pounds gross weight or less.

"Motor vehicle" means all vehicles propelled otherwise than by muscular power, excepting motorized bicycles and such vehicles as run only upon rails or tracks.

"Motor vehicle safety specialist" means any person employed by the New Jersey Division of Motor Vehicles to enforce motor vehicle safety and emission test standards.

"Motorized bicycle" means a pedal bicycle having a helper motor characterized in that either the maximum piston displacement is less than 50 cubic centimeters, or said motor is rated at no more than 1.5 brake horsepower and said bicycle is capable of a maximum speed of no more than 25 miles per hour on a flat surface.

"MPH" means miles per hour.

"Opacity" means the property of a substance which renders it partially or wholly obstructive to the transmission of visible light expressed as the percentage to which the light is obstructed.

"Operating mode" means a procedure for operating a diesel-powered motor vehicle or a diesel-powered engine during measurement of smoke opacity in the exhaust emissions.

"Prescribed inspection test procedure" means a method prescribed by the Department for testing exhaust emissions from light and heavy-duty motor vehicles.

"RPM" means revolutions per minute.

"Smoke" means small gasborne and airborne particles, exclusive of water vapor, arising from a process of combustion in sufficient number to be observable.

"Smokemeter" means a device constructed in such a manner as to measure smoke opacity by light obstruction between a light source and photoelectric cell which will indicate the percent of opacity of smoke at a point approximately six inches from the engine exhaust outlet. The device shall be of design meeting "Specifications For A Smoke Opacity Meter" dated April 30, 1981, and on file with the Commissioner and approved for use in accordance with manufacturer's recommended procedures for calibration, mounting and maintenance.

7:27B-4.2 General instructions for all tests

(a) The inspector shall insure prior to each test that the test equipment is calibrated by checking and, if necessary, adjusting zero and span settings.

(b) All measurements are to be made after the engine is at normal operating temperature.

(c) Any vehicle found to exhibit an exhaust leak shall have said leak repaired before an approved test can be performed.

(d) Standard application of the smoke opacity test procedures is required on exhaust outlets on vehicles equipped with dual, adjacent exhaust outlets.

7:27B-4.3 Smoke opacity testing procedures for diesel-powered motor vehicles subject to the inspection rules and regulations of the New Jersey Division of Motor Vehicles

(a) The smoke opacity testing procedures for diesel-powered motor vehicles subject to self-inspection authorized by the Division of Motor Vehicles at the premises or places of business of the owner or lessee to determine compliance with N.J.A.C. 7:27-14.2(a), are as follows:

1. The vehicle driven on chassis dynamometer with simulated load by power absorption procedure requires that the smokemeter be firmly positioned on the exhaust outlet and that the vehicle be positioned on the chassis dynamometer before the inspector proceeds with the following steps:

i. With vehicle on a chassis dynamometer under no power absorption, select a gear ratio which will produce a maximum vehicle speed of 45-60 MPH at governed engine RPM;

ii. With engine running at governed engine RPM, apply power absorption load to the dynamometer until such loading reduces the engine RPM to 80 percent of the governed speed, the peak smoke opacity measured over a period of five to ten seconds with the engine under such loading shall be the smoke opacity.

2. The vehicle driven in low gear with simulated load by braking action procedure requires that the smokemeter be firmly positioned on the exhaust outlet before proceeding with the following steps:

i. Select a gear ratio which will produce a maximum speed of 10-15 MPH, at governed engine RPM, drive vehicle at 10-15 MPH at governed engine RPM;

ii. Load the engine by applying brakes until engine RPM is lugged down to 80 percent of the governed engine RPM, the peak smoke opacity measured over a period of 5-10 seconds with the engine under such brake loading shall be the smoke opacity.

7:27B-4.4 Smoke opacity testing procedure for diesel-powered autobuses subject to the inspection rules and regulations of the New Jersey Department of Transportation

(a) The smoke opacity testing procedure for diesel-powered autobuses subject to the inspection rules and regulations of the Department of Transportation to determine compliance with N.J.A.C. 7:27-14.2(b) shall be the following:

1. Position smokemeter against exhaust outlet using extension pole and magnet so that the optical axis of the sensor head is perpendicular to the smoke plume;

2. With engine at normal operating temperature, depress accelerator pedal slowly to obtain a fast idle (1200-1300 RPM);

3. Accelerate the engine from fast idle to maximum governed RPM by depressing the accelerator pedal as rapidly as possible;

4. As governed RPM is reached, release the accelerator pedal to allow engine to coast down to fast idle (1200-1300 RPM);

5. Repeat steps 3 and 4; (NOTE: Steps 3, 4, and 5 are to purge the engine.)

6. After the engine purge, repeat steps 3 and 4 three times in succession. After each successive measurement, record peak opacity reading and reset smokemeter. The average of the three peak smoke opacity measurements obtained with the smokemeter shall be the test result as measured using the standing acceleration test procedure.

7:27B-4.5 Exhaust emission testing procedure for gasoline-fueled motor vehicles subject to inspection by the State of New Jersey

(a) The exhaust emission testing procedure for gasoline-fueled motor vehicles to determine compliance with N.J.A.C. 7:27-15.2(b), and 15.4(a) and (b) shall be the following:

1. The smoke test shall be performed as follows:

i. Place the vehicle in neutral gear with all accessories off and the handbrake secured;

ii. Accelerate the engine and observe for visible continuous smoke in the exhaust emissions and crankcase emissions;

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iii. Visible smoke in the exhaust emissions or crankcase emissions for a period in excess of three consecutive seconds shall be a cause for rejection.

2. The emissions test at idle mode shall be performed as follows:

i. Engines shall be at normal operating temperature and not overheating (as indicated by gauge warning light or boiling radiator) with all accessories off;

ii. With engine operating in the idle mode and transmission in neutral, the sample probe shall be inserted at least six inches into the exhaust outlet;

iii. Record exhaust concentrations measured as percent carbon monoxide and parts per million hydrocarbons after stabilized readings are obtained or at the end of 30 seconds, whichever occurs first;

iv. These exhaust concentrations shall be the inspection test results.

7:27B-4.6 Light-duty gasoline-fueled motor vehicle emission control apparatus compliance examination procedure

(a) The examination of the motor vehicle emission control apparatus of light-duty gasoline-fueled motor vehicles to determine compliance with N.J.A.C. 7:27-15.4(c), when conducted during annual inspection, shall consist of the following:

1. A visual check of the emission control apparatus failure and service indicator on the interior driver control panel. The activation of such indicator shall be cause for vehicle rejection. Rejected vehicles shall be required to be properly serviced in order to deactivate the indicators and subsequently reexamined. The reexamination procedure shall be the same as the one used for the original examination.

(b) The examination of motor vehicle emission control apparatus of light-duty gasoline-fueled motor vehicles to determine compliance with N.J.A.C. 7:27-15.4(c), when conducted during random roadside inspection, shall consist of the following:

1. A visual check of the emission control apparatus failure and service indicator on the interior driver control panel. The activation of such indicator shall be cause for vehicle rejection. Rejected vehicles shall be required to be properly serviced in order to deactivate the indicators and subsequently reexamined. The reexamination procedure shall be the same as the one used for the original examination.

(c) The examination of the catalytic converter equipment on all post-1974 model year light-duty gasoline-fueled motor vehicles designed and marketed by the vehicle manufacturer with catalytic converters as original equipment to determine compliance with N.J.A.C. 7:27-15.4(c), when conducted during random roadside inspection, shall consist of the following:

1. A visual check to determine the presence of properly installed catalytic converters. The absence of such properly installed catalytic converters, shall be cause for vehicle rejection. Rejected vehicles shall be required to be properly equipped with catalytic converters certified by the U.S. Environmental Protection Agency and subsequently reexamined. The reexamination shall include presentation of a work order to document purchase and proper installation of a new catalytic converter.

(d) The examination of the catalytic converter equipment on all post-1985 model year light-duty gasoline-fueled motor vehicles to determine compliance with N.J.A.C. 7:27-15.4(c), when conducted during random roadside inspection, shall consist of the following:

1. An examination consisting of either the use of lead test paper to determine the presence of lead in the vehicle exhaust and/or a visual inspection for the presence of, or malfunction of the fuel filler neck inlet restrictor. Rejected vehicles shall be required to be properly equipped with new catalytic converters certified by the U.S. Environmental Protection Agency and, in the case of rejection for a missing or malfunctioning fuel filler neck inlet restrictor, shall be required to be properly equipped with a new fuel filler neck inlet restrictor. Reexamination shall include presentation of a work order to document purchase and proper installation of a new catalytic converter, and fuel filler neck inlet restrictor if applicable.

i. If the lead test paper examination is performed, the following steps are to be used:

(1) Turn engine off; the tailpipe is to be warm; clean section of inside of tailpipe.

(2) Remove test paper from package and moisten with three drops of distilled water.

(3) Immediately press moistened paper firmly onto cleared surface of tailpipe with finger or clip and hold for two to five minutes.

(4) Remove paper and allow to dry.

(5) The presence of lead in the vehicle exhaust as indicated by the lead test paper shall be cause for vehicle rejection.

ii. If the examination consists of a visual inspection for the presence of the fuel filler neck inlet restrictor, the following steps are to be used:

(1) Attempt to insert a dowel, with a diameter equivalent to that of a standard leaded fuel pump nozzle, into the fuel filler neck.

(2) The absence of the fuel filler neck inlet restrictor is verified if the dowel can be inserted and shall be cause for vehicle rejection.

HEALTH

(a)

COMMUNITY HEALTH SERVICES

Maximum Tolerance Standards for Ethylene Dibromide (EDB) Residues in Food Products Subject to Recall

Proposed Amendment: N.J.A.C. 8:21-2.40

Authorized By: J. Richard Goldstein, M.D., Commissioner, Department of Health.
Authority: N.J.S.A. 24:2-1 (L1966, C 74).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submission and responses, should be addressed to:

Kenneth Kolano, Chief
Food and Milk Program
Consumer Health Services
CN 364
Trenton, NJ 08625

The Department of Health thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adoption

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becomes effective upon publication in the Register of a notice of adoption.

The proposal is known as PRN 1984-585.

The agency proposal follows:

Summary

Ethylene dibromide (EDB) has been used as a pesticide in the growing, production, processing and storage of grain, grain-based products, and citrus for many years. Because of a variety of adverse health effects that have been demonstrated in animals exposed to EDB, there is a great concern about EDB's potential for causing serious health problems in humans. The United States Environmental Protection Agency announced an immediate suspension of further use of EDB in the production of grain products and recommended guidelines to the states for acceptable levels of EDB in foods. This proposal would lower the permissible EDB residue levels in foods which were previously adopted by the Department in February 1984 and represents an intermediate step in keeping with the goal of the Association of State and Territorial Health Officers, and an agreement between the northeastern states to reduce EDB residues in foods to zero by 1986.

The proposal also includes the establishment of a zero EDB tolerance for baby foods (that is, foods that are specifically intended for consumption by infants and toddlers as determined by the product label use directions or marketing approach). To date, the Department is aware of only one baby food product found in another state in which detectable EDB levels were found. However, infants and toddlers may be biologically more susceptible to the effects of EDB and other chemicals and the prolonged lifespan from exposure may increase the likelihood of development of exposure-related effects in later life.

Social Impact

The amended rule would help in the prevention of additional cancer cases by further minimizing the exposure to EDB contaminated food products. It is in the public interest to reduce or eliminate whenever possible causative cancer risk factors while simultaneously minimizing the disruption of the food supply.

Economic Impact

The standards established in the amended rule should not severely impact the vast majority of food products sold in the State. Based on the results of the sampling program conducted by this Department, as well as the results of samples analyzed by the United States Food and Drug Administration and other states, it is apparent that the food industry has made considerable progress in reducing EDB levels. Approximately one percent or less of grain-based food products would be expected to exceed the proposed levels. Failure to amend the rules may result in having the public exposed to high levels of a substance that may unnecessarily increase their long-term risk of cancer.

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

8:21-2.40 Maximum tolerance standards for ethylene dibromide (EDB) residues in food products subject to recall

(a) The Department of Health establishes maximum allowable levels of ethylene dibromide residues in the following types of food products:

1. For raw grain intended for human consumption [(] such as wheat, corn, oats, etc.[)], ethylene dibromide levels shall not exceed [900] **300** parts per billion;

2. For intermediate level products such as flour, various mixes for preparing baked goods, soft cereals and other products that would normally require cooking before eating, ethylene dibromide levels shall not exceed [150] **[50]** parts per billion;

3. For ready-to-eat products such as cold cereals, snack foods, bread, all baked goods, citrus fruits and vegetables, ethylene dibromide residues shall not exceed [30] **10** parts per billion; and

4. Baby foods, that is, those foods intended for consumption by infants and toddlers as determined by product labels, use directions or marketing approach shall contain no detectable level (that is, less than 1 part per billion) of EDB.

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

(a)

HEALTH ECONOMICS SERVICES

Standard Hospital Accounting and Rate Evaluation (Share)

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

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

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

Interested persons may submit in writing, data, views or arguments relevant to the proposed Rule on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Charles A. Buttaci, Director
Facilities Rate Setting
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625

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

This proposal is known as PRN 1984-586.

The agency proposal follows:

Summary

The Health Care Facilities Planning Act of 1971 (N.J.S.A. 26:2H-1 et seq.) mandated use of a uniform system of cost accounting for health care services (N.J.S.A. 26:2H-18c). Sections 18b and 18d of the Act provide further for approval of payment rates for health care services provided by government agencies (for example, Medicaid) and hospital services corporation (for example, Blue Cross). In establishing this system the Commissioners of Health and Insurance were required by law to consider the total costs of the health care facility. In April, 1975, the Standard Hospital Accounting

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and Rate Evaluation (SHARE), Rate Review Guidelines were established with the purpose of developing a hospital cost containment program whereby a "reasonable reimbursement" formula was developed.

Prior to the SHARE System, hospital reimbursement was controlled and administered by the Hospital Research and Education Trust (HRET), a subsidiary of the New Jersey Hospital Association. This represented a voluntary effort of New Jersey hospitals for cost containment.

The implementation of the SHARE System has enabled the Department of Health to effectively contain hospital costs through the regulatory system in comparison with states that are without a similar system.

Upon the implementation of a Prospective Reimbursement System based on Patient Case mix in New Jersey Hospitals in 1980 the SHARE Guidelines are applicable to the 18 Specialized and Rehabilitation hospitals only.

The SHARE Manual, N.J.A.C. 8:31A, contains Subchapters 1 through 10. Since the implementation of the SHARE System, amendments to the subchapters have been made as appropriate with the public comments being recognized in the New Jersey Register prior to the publication of the final adoption. In accordance with Executive Order No. 66(1978), which mandates sunsetting of the subchapters unless reviewed and readopted, each subchapter has been assigned an expiration date.

A brief review of the contents of the subchapters follows:

8:31A-1 Accounting

This subchapter cites the Health Care Facilities Planning Act of 1971 (N.J.S.A. 26:2H-1 et seq.) which mandates the use of a uniform system of cost accounting for health care services (N.J.S.A. 26:H-18c) and considerations to be given in the payment rate approval process. It specifies the accounting guidelines and principles to be followed to achieve the goal of a uniform data reporting procedure. This subchapter expired on August 18, 1983.

8:31A-2 Definitions

This subchapter assists the institutions in reporting costs in a uniform manner in accordance with the definitions as stated for general cost centers; inpatient and outpatient cost centers, ancillary and physician cost centers and definitions for reporting the cost of functions not elsewhere defined such as pensions, interest, education and research, etc. The subchapter expired on August 18, 1983.

8:31A-3 References

This subchapter references special cost considerations, abbreviations, certain definitions and certain reporting forms used in the SHARE system, for example, A = Actual; A and G = Administrative and General; BCT = Blue Cross Totals; and BY = Budget Year. These references assist the institution in the proper completion of the SHARE forms. This subchapter expired on August 18, 1983.

8:31A-4 Statistics

This subchapter contains the statistical definitions required for reporting on the SHARE forms by the hospital and includes units of service, admission classification by payor, visits, procedures and the application of relative value units for specific services rendered, such as laboratory and diagnostic radiology. This subchapter has no expiration date since no substantive changes have been made since the Executive Order No. 66 became effective in May, 1978.

8:31A-5 Reporting

This subchapter addresses the reporting objective of SHARE, which is to gather data from hospitals on a uniform basis to be used in the approval procedure for hospital rates for New Jersey Blue Cross and Medicaid. Specific instructions are given for the proper placement of costs on the SHARE forms. This subchapter expired on September 19, 1984.

8:31A-6 Rate Setting

This subchapter provides the hospitals with the computational procedures that are used by the Department of Health, under the SHARE System, to develop the data for calculation of the proposed Alternate and Global rates. This subchapter expires on January 1, 1986.

8:31A-7 Rate Review

This subchapter represents the principal part of the total Chapter as it elaborates on the formulation of the rate setting procedure; addresses the appeal process to be followed when a payment rate is not acceptable to the hospital; and specifies the peer comparison reasonableness test used in the development of an approved rate for the hospital by the analyst. A review of this subchapter is accomplished each year with appropriate amendments being proposed and adopted with a period of public comment allowed in the best interests of the health care consumers and the industry. All proposed amendments, comments and adoptions are published in the New Jersey Register. Proposed amendments for 1985 have received approval from the Health Care Administration Board (HCAB) and will appear in the New Jersey Register on October 15, 1984, with a comment period through November 14, 1984. This subchapter expires on February 6, 1989.

8:31A-8 Reports: Case-Mix

This subchapter specifies the data elements, required to be submitted by each hospital to the Department of Health for the purpose of making an assignment to the appropriate Diagnosis Related Group (DRG) based on a patient's discharge diagnosis. This information can be utilized in the development of a State standard cost per case when linked to the patient's hospital bill. This information is presently being used for Specialized and Rehabilitation Hospitals in the establishment of a uniform reporting data base. This subchapter expires on February 6, 1989.

8:31A-9 Inflation

This subchapter establishes the final economic factor and the methodology for retroactive adjustments to the interim economic factor for previous years. The proxies used and their source are displayed for hospital informational purposes. This subchapter expired on January 17, 1984.

8:31A-10 Miscellaneous

This subchapter has five subsections that are reserved for future use and the remaining subsection states the procedure to be followed for the treatment of the distribution of net worth and/or surplus either on dissolution of the New Jersey Hospital Association Underwriters, Inc. or the withdrawal by one hospital. This Subchapter expired on July 20, 1984.

In consideration of the fact that all of the N.J.A.C. 8:31A subchapters are interrelated and form a total framework in which the ratesetting procedure is accomplished for Specialized and Rehabilitation Hospitals, it is desirable that a common expiration date pursuant to Executive Order No. 66(1978) be applied. N.J.A.C. 8:31A is known as the Stan-

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dard Hospital Accounting and Rate Evaluation (SHARE) manual and will be reviewed in its entirety, rather than on an individual subchapter basis.

Social Impact

The implementation of the SHARE ratesetting system has provided a protective measure for the consumer against escalating hospital costs and will continue to do so for the Specialized and Rehabilitation hospitals, since all others are regulated by the Diagnosis Related Group (DRG) Prospective Payment System under Chapter 83.

In the case of Specialized and Rehabilitation Hospitals, it is difficult to employ the method of ratesetting used in the DRG system, which operates on a case basis. Due to the unique population of Specialized and Rehabilitation Hospitals, it is difficult to establish an average length of stay. Therefore, SHARE guidelines, which operate on a per diem basis, are used by Specialized and Rehabilitative Hospitals.

Economic Impact

The requirement for an effective regulatory system for cost containment in Specialized and Rehabilitation Hospitals continues to exist. This system has been successful in controlling costs for the hospital, payor and consumer. Without the SHARE guidelines, the alternative would be voluntary cost containment on the part of the affected hospitals, which could possibly be subject to indiscriminate patient costs.

Full text of the proposed readoption can be reviewed at Facilities Rate Setting, New Jersey Department of Health, Room 600, John Fitch Plaza, Trenton, New Jersey, or the Office of Administrative Law, and appears in the New Jersey Administrative Code at N.J.A.C. 8:31A.

(a)

CONSUMER HEALTH SERVICES

Controlled Dangerous Substances Rescheduling of Sufentanil to Schedule II

Proposed Amendment: N.J.A.C. 8:65-10.1 and 10.2

Authorized By: J. Richard Goldstein, M.D., Commissioner of Health.
Authority: N.J.S.A. 24:21-3.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submission and responses, should be addressed to:

Lucius A. Bowser, R.P., M.P.H.
Chief
Drug Control Program
New Jersey State Department of Health
CN 362
Trenton, NJ 08625

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

This proposal is known as PRN 1984-587.

Summary

The Department of Health proposes to reschedule Sufentanil from Schedule I to Schedule II of the New Jersey Controlled Dangerous Substances regulations because the new analgesic drug has received Federal Food & Drug Administration approval for marketing as an adjunct anesthetic in surgical procedures within a hospital. The proposal would bring the rescheduled product into conformity with Federal regulations as adopted in the Federal Register, dated May 25, 1984, cited as 49 F.R. 103, May 25, 1984, page 22074.

Sufentanil, marketed by a New Jersey based pharmaceutical company, Jenssen Laboratories, a subsidiary of Johnson & Johnson Company of New Brunswick, New Jersey, may, because of the federally Schedule II designation, now be utilized in hospitals nationwide. Sufentanil provides for a smoother surgical episode in conjunction with normal anesthesiological procedures and its one time administration during such procedures could not lead to a narcotic dependency as might occur with other narcotic analgesics.

Social Impact

Sufentanil, because of its unique narcotic analgesic property and mode of administration during anesthetization procedures in a hospital setting, would advantageously impact upon a patient's safety in that the patient would tend to have a more responsive and uneventful surgical procedure. There would also be an impact upon the hospital medical community because the patient having been subjected to Sufentanil administration may not require any further narcotic analgesics.

Economic Impact

There would be an economic impact through the use of Sufentanil in a hospital surgical situation because it would shorten both the recovery room time and total hospital stay. After surgery it would decrease the use of standard narcotic analgesics. In addition, the patient's recuperative time at home would be shortened, thus bringing about further economic savings for the public.

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

8:65-10.1 Controlled dangerous substances: Schedule I
(a) (No change.)
(b) Opiates: (No change.)
1. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (listed by generic/established or chemical name with CDS code):

. . .
Racemoramide 9645
[Sufentanil ..... 9740]

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Tilidine 9750
Trimeperidine 9646

2.-6. (No change.)

8:65-10.2 Controlled dangerous substances: Schedule II

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

2. Opiates: Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, **dextorphan and levoproxyphene excepted,** (listed by generic/established or chemical name with CDS code):

. . .
Racemorphan 9733
Sufentanil 9740

3.-6. (No change.)

(a)

CONSUMER HEALTH SERVICES

Controlled Dangerous Substances Addition to Schedule IV

Proposed Amendment: N.J.A.C. 8:65-10.4

Authorized By: J. Richard Goldstein, M.D., Commissioner, Department of Health.
Authority: N.J.S.A. 24:21-3.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

Lucius A. Bowser, R.P., M.P.H.
Chief
Drug Control Program
New Jersey State Department of Health
CN 364
Trenton, New Jersey 08625

The Department of Health thereafter may adopt this proposal without further notice (see N.J.S.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 1984-609.

The agency proposal follows:

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Summary

The Department of Health proposes to add the depressant Triazolam to the provisions of Schedule IV of the New Jersey Controlled Dangerous Substances (C.D.S.) schedules to bring the State controlled substances into comformity with Federal schedules. There had been an oversight on the part of the Department of Health in not scheduling this substance in State regulations at the time it became final under Federal Law in December 1982 cited as 47FR57694. This product was approved for marketing in November 1982 and was placed immediately under the Federal Controlled Substances Act. The Commissioner of Health finds no objection to having this substance controlled under State regulations.

Practitioners and pharmacists have been treating this substance as a Schedule IV substance since its initial marketing and this proposal brings the State schedules into conformity with Federal regulations.

Social Impact

The proposed amendment will have no new or additional impact upon the general public or registrant practitioner in making Triazolam available for its intended medical purpose since practioners and pharmacists have already been treating Triazolam as a Schedule IV substance. This dispensing and prescribing patterns for Schedule IV substances are firmly established and the placement of this new substance into that Schedule would not affect the pattern of distribution.

Economic Impact

The proposal would not have any economic impact upon a practitioner, patient or supplier of the new substance because of its Federal Schedule IV status. Such action would not impact upon a practitioner's right to prescribe or a pharmacists right to dispense this substance. Recordkeeping and security requirements for this new substance is no different than that already established for other Schedule IV substances.

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

8:65-10.4 Controlled Dangerous Substances; Schedule IV

(a) (No change.)

(b) The following is schedule IV listing the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substances code numbers.

1. (No change.)

2. Depressants: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (listed by generic/established or chemical name with CDS code):

. . . . .

Phenobarbital	2285
Prazepam	2764
Temazepam	2928
Triazolam	**2887**

3.-4. (No change.)

(a)

DIVISION OF MENTAL RETARDATION

Manual of Standards for Private Licensed Facilities for the Developmentally Disabled

Proposed Repeal: N.J.A.C. 10:47
Proposed New Rule: N.J.A.C. 10:47

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

Authority: N.J.S.A. 30:1-12; 30:1-15; 30:1-15.1; 30:6D-1 et seq.

Interested persons may submit in writing data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submission and response should be addressed to:

Administrative Practice Officer
Division of Mental Retardation
CN 700
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 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 1984-601.

The agency proposal follows:

Summary

The Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., vests the responsibilities for licensing and regulation of health care facilities with the State Department of Health. N.J.S.A. 30:1-15 and N.J.S.A. 30:1-15.1, however, vests the New Jersey State Department of Human Services with the responsibility for inspection of private residential facilities for the developmentally disabled as necessary but at least once a year. These statutes also authorize the Commissioner of the Department of Human Services to set appropriate operating standards for these facilities. The proposed new standards set forth herein are proposed as minimum operating standards for private facilities serving the developmentally disabled in the State of New Jersey.

Since the publication of the current standards on August 1, 1975, significant legislation has addressed the rights of the developmentally disabled in New Jersey facilities (N.J.S.A. 30:6D-1 et seq.). The proposed revised standards reflect these legislative changes and revisions of applicable fire safety regulations. The thrust of the changes is to require facilities to set into motion appropriate mechanisms to safeguard the rights of the developmentally disabled. The requirement of an Individual Habilitation Plan on an annual basis for each client is a significant addition to the proposed revised standards. Although these changes are not reflected in the current standards, the facilities have been required to abide by them since the passage of legislative action. Therefore, the inclusion of

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these provisions now in the new rules passage will not impose significant additional requirements on private residential facilities, but rather, brings the standards into compliance with New Jersey Statutes. The current Manual of Standards is proposed for repeal and replacement by these new standards. With the exception of the requirements noted above, the rules have not undergone substantive changes but have been rewritten to clarify operational requirements. In summary, the revised standards more clearly define N.J.S.A. 30:6D-5 (Developmentally Disabled Rights Act) and 30:6D-9 (maximization of developmental potential) and do not impose significant additional requirements.

Social Impact

The proposed new rules are intended to upgrade the level of habilitative services available to the residents of the private facilities for the developmentally disabled. The social impact for the developmentally disabled clients served will be positive in that the Individual Habilitation Plan now mandated for each client by N.J.S.A. 30:6D-10 through 30:6D-12 establishes the need for a program of care, training, treatment and education commensurate with the functioning level of the individual.

Economic Impact

The economic impact to the private facilities should be minimal as there are no provisions for increased staff levels or major physical plant renovations. Likewise, the economic impact to the Division of Mental Retardation is negligible. Division staff will continue to monitor the private facilities on an annual or as-needed basis.

Full text of the repeal appears in the New Jersey Administrative Code at N.J.A.C. 10:47.

Full text of the proposed new rule follows.

CHAPTER 47

MANUAL OF STANDARDS FOR PRIVATE LICENSED FACILITIES OF THE DEVELOPMENTALLY DISABLED

SUBCHAPTER 1. GENERAL PROVISIONS

10:47-1.1 Scope

The Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., vests the responsibilities for licensing and regulation of health care facilities with the State Department of Health. N.J.S.A. 30:1-15 and Title 30:1-15.1, however, invests the New Jersey State Department of Human Services with the responsibility for inspection of private residential facilities for the developmentally disabled as necessary but at least once a year. These statutes also authorize the Commissioner of the Department of Human Services to set appropriate operating standards for these facilities. The standards set forth in this chapter are minimum operating standards for private facilities serving the developmentally disabled in the State of New Jersey.

10:47-1.2 Definitions

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

"Administrator" shall mean the chief executive officer of a non-proprietary institution or the manager of a proprietary institution.

"Classification of institutions" shall mean the identification of facilities according to the type of developmentally disabled persons treated. Such classification shall be by mental level, age, sex, and secondary handicap. Institutions may be licensed for more than one classification group only if specific treatment is provided for each group. Details of the classification shall be specified in the letter from the Commissioner, Department of Health, which accompanies the license.

1. Mental level: Classification of residents by mental level shall be made only through professional diagnosis.

i. There are two generally accepted scales for categorizing mental level—educational capabilities and measured intelligence. Although the scales are not interchangeable, there is correlation between them. Both are outlined here. Either may be used to identify the mental levels served by the institution.

(1) Education capabilities (Division of Mental Retardation, Standards for Public Institutions): For residents, chronological age range 5 through 20 inclusive:

(A) "Educable": Persons whose potential mental capabilities, although of inferior order, are capable of further development through education (minimum overall IQ of 50).

(B) "Trainable": Persons whose mental capabilities are significantly retarded but who, through training, may be capable of some degree of self-help, personal independence, and social and economic usefulness within a sheltered environment (maximum overall IQ of 49 to a minimum IQ of 24).

(C) "Sub-trainable": Persons who are markedly mentally retarded so as to be neither educable nor trainable and who are dependent on the institution for continuous personal care and supervision (maximum overall IQ of 24). This definition does not relieve the administrator of the institution from responsibility to provide education and training opportunities defined under N.J.A.C. 10:47-6.1(a).

(2) Measured intelligence: Four levels of deviation in measured intelligence are identified objectively by the American Association on Mental Deficiency (AAMD)† They correspond to ranges in IQ values on intelligence tests and have become the standard descriptive terms used to identify mental levels. The four levels are listed here with the corresponding IQ ranges of Stanford-Binet and Cattell Tests of Intelligence:

(A) "Mild Mental Retardation," IQ 67-52.

(B) "Moderate Mental Retardation," IQ 51-36.

(C) "Severe Mental Retardation," IQ 35-20.

(D) "Profound Mental Retardation," IQ 19 and below.

ii. Although there is no absolute correlation, in general children in the Mild ranges are considered Educable; children in the Moderate range and some in the Severe range are considered Trainable; others in the Severe range and those in the Profound range are considered neither educable nor trainable. It is important to remember that measured intelligence categories reflect current intellectual functioning as indicated by performance on an intelligence test. They are not meant to reflect potential or absolute level of intelligence. The categories of educational capabilities reflect current functioning with some consideration of potential.

2. Age: The minimum and maximum ages of residents accepted for treatment shall be specified in the license.

3. Sex: The license shall specify whether the institution shall admit males only, females only, or both males and females.

4. Secondary handicap: The license shall specify whether the institution may serve developmentally disabled persons who have additional handicaps of blindness, deafness, crippling or emotional disturbance.

†"Manual on Terminology and Classification in Mental Retardation" 1977, revision, page 19.

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"Commissioner" shall mean the Commissioner of the Department of Human Services.

"Department" shall mean the Department of Human Services.

"Developmentally disabled" means a disability which originated before 18 years of age, which has continued or is expected to continue indefinitely, which constitutes a substantial handicap, and which is attributable to mental retardation, cerebral palsy, epilepsy, autism, or other conditions found by the Commissioner of Human Services to give rise to an extended need for similar services.

"Individual Habilitation Plan" (IHP) is a plan written in terms of measurable goals and behaviorally stated objectives presenting an integrated program of individually suited activities, experiences or therapies necessary to achieve the optimal physical intellectual, social or vocational functioning of which the individual is capable and shall conform to the requirements of N.J.S.A. 30:6D-10 et seq.

"Institution" shall mean a private residential facility for the developmentally disabled, whether operated for profit or not, which is not maintained, supervised or controlled by any agency of the government, of the State, or any county or municipality and which maintains and operates facilities and collects fees for the residential care and habilitative training of four or more non-related developmentally disabled individuals for periods exceeding 24 hours. The term "institution" as used in these standards, includes residential schools, homes or other specialized facilities.

"License" is the authorization issued by the New Jersey State Department of Health, for a period of one year, to the proprietor of the facility providing residential services to developmentally disabled persons. Upon issuance or renewal, a fee of not less than $100.00 and not more than $500.00 shall be collected by the New Jersey Department of Health. A license may be denied, revoked, suspended or may be placed on provisional status for violation of the governing law or minimum standards promulgated thereunder (Chapter 136, Law of 1971, N.J.S.A. 26:2H-12).

"Mental deficiency" shall mean that state of mental retardation in which the reduction of social competence is so marked that persistent social dependency requiring guardianship of the person shall have been demonstrated or be anticipated. (N.J.S.A. 30:4-23). Basic criteria for the determination of mental deficiency are:

1. Mental retardation, substantiated by measured intelligence with I.Q. scores;
2. Reduced level of adaptive behavior with behavioral description;
3. Clinical and social factors.

"Mental retardation" shall mean a state of significant subaverage intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period (AAMD—Manual on Terminology and Classification in Mental Retardation, N.J.S.A. 30:4-23).

"Resident" shall refer to the developmentally disabled person admitted to or seeking admission to a residential facility.

"Sponsor" shall mean the responsible adult (usually a parent or legal guardian) or agency who authorizes placement of the developmentally disabled person in the institution and who retains continuing responsibility for the resident.

SUBCHAPTER 2. LICENSURE PROCEDURE

10:47-2.1 General provisions

(a) When used in this subchapter, the term "Commissioner" shall mean the Commissioner of the New Jersey State Department of Health and "Department" shall mean the New Jersey State Department of Health.

10:47-2.2 Certificate of Need

(a) According to Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq. and amendments thereto, a health care facility shall not be instituted, constructed, expanded, or licensed to operate except except upon application for and receipt of a Certificate of Need issued by the Commissioner.

(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:

Review and Comment Program
Division of Health Planning and
Resources Development
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625

10:47-2.3 Application for licensure

(a) Following acquisition of a Certificate of Need, any person, organization, or corporation desiring to operate a facility shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

Licensing, Certification and Standards
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625

(b) 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:

Number of Beds	Fee
1-99	$100.00
100-199	$200.00
200-299	$300.00
300-399	$400.00
400-999	$500.00

(c) Any person, organization, or corporation considering application for license to operate a facility shall make an appointment for a preliminary conference at the Department with the Licensing, Certification and Standards Program.

10:47-2.4 Newly constructed or expanded facilities

(a) The application for license for a new facility shall include written approval of final construction of the physical plant by:

Health Facilities Construction and
Monitoring Program
Division of Health Planning and
Resources Development
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625

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(b) A final on-site inspection of the construction of the physical plant shall be made by representatives of the Health Care Facilities Construction and Monitoring Program and the Health Facilities Inspection Program, to verify that the building has been constructed in accordance with the final architectural plans approved by the Department.

(c) Any health care facility with a construction program, whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction and Monitoring Program of the Department for review and approval prior to the initiation of any work.

10:47-2.5 Surveys and temporary license

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility meets the standards contained in this chapter.

(b) The facility shall be notified in writing of the findings of the survey, including any deficiencies found.

(c) The facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to occupancy.

(d) A temporary license may be issued to a facility when the following conditions are met:

1. An office conference for review of the conditions for licensure and operation has taken place between the Licensing, Certification and Standards Program and representatives of the facility, who will be advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules and regulations pursuant thereto;

2. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;

3. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system;

4. Survey(s) by representatives of the Department indicate the facility meets these standards contained in this chapter;

5. Professional personnel are employed in accordance with the staffing requirements contained in this chapter;

6. No health care facility shall accept patients until the facility has the written approval and/or license issued by the Licensing, Certification and Standards Program of the Department. The facility shall accept only that number of patients for which it is approved and/or licensed;

7. Survey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and patient records and conferences with patients;

8. A temporary license may be issued to a facility for a period of six months and may be renewed as determined by the Department;

9. The temporary license shall be conspicuously posted in the facility;

10. The temporary license is not assignable or transferable and shall be immediately void if the facility ceases to operate or if its ownership changes.

10:47-2.6 Full license

(a) A full license shall be issued on expiration of the temporary license, if surveys by the Department have determined that the health care facility is operated as required by Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto, and by the rules and regulations pursuant thereto.

(b) A license shall be granted for a period of one year or less as determined by the Department.

(c) The license shall be conspicuously posted in the facility.

(d) The license is not assignable or transferable and it shall be immediately void if the facility ceases to operate or if its ownership changes.

(e) The license, unless sooner suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the licensure date. The facility will receive a request for renewal fee 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

(f) The license may not be renewed if local regulations or any other requirements are not met.

10:47-2.7 Surrender of license

(a) The facility shall directly notify each patient, the patient's physician, and any guarantors of payment concerned at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of license. In such cases, the license shall be returned to the Licensing, Certification and Standards Program of the Department within seven working days.

(b) A facility seeking a waiver of the standards contained in this chapter shall apply in writing to the Director of the Licensing, Certification and Standards Program of the Department.

(c) A written application for waiver shall include the following:

1. The nature of the waiver requested;

2. The specific standards for which waiver is requested;

3. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon full compliance;

4. An alternative proposal which would ensure patient safety; and

5. Documentation to support the application for waiver.

(d) The Department reserves the right to request additional information before processing an application for waiver.

10:47-2.8 Action against a license

(a) Violations of the following standards shall result in action to impose a fine: See 2.2(a); 2.4(e) and 2.5(d)6, above

(b) If the Department determines that operational or safety deficiencies exist, it may require that all new admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(c) The Commissioner may order the immediate removal of patients from a facility whenever he or she determines imminent danger to any person's health or safety.

(d) Standards (a) through (c) above shall apply to facilities with a temporary license and facilities with a full license.

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10:47-2.9 General requirements

(a) The facility shall provide nursing care and other health and health-related services, under the supervision of a physician, to patients for 24 or more consecutive hours.

(b) The facility shall comply with applicable Federal, State, and local regulations and requirements which concern private licensed facilities for the developmentally disabled.

(c) The facility shall comply with all applicable provisions of Chapters 136 and 138, P.L.1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto.

(d) The facility shall be responsible for providing or arranging services for patients as required by the standards contained in this chapter.

(e) The ownership of the facility and the property on which it is located shall be disclosed to the Department. Proof of this ownership shall be available in the facility. Any proposed change in ownership shall be reported to the Department in writing at least 30 days prior to the change.

(f) The facility shall comply with N.J.A.C. 8:31-26.1, Ownership and operation; convicted persons.

(g) The facility shall, upon request, submit in writing any documents which are required by this chapter to be approved by the Department to the Director of Licensing, Certification and Standards Program of the Department.

(h) All documents required by this chapter shall be retained for a period of at least three years after the date of the annual licensure inspection.

(i) All documents required by this chapter shall be made available, upon request, to patients, staff, and the public. Copies of these documents shall be provided, upon request, within a reasonable time, at a reasonable charge, and in accordance with the rules and regulations regarding confidentiality. If any of the requested documents contain information involving confidential corporate or business materials, such information may be deleted; however, if information is deleted for such reasons, the requesting party shall be so informed in writing by the administrator of the reasons for deletions.

SUBCHAPTER 3. ADMINISTRATIVE POLICIES

10:47-3.1 Management and organization standards

(a) The residential facility shall have available a copy of the **Manual of Standards for Private Licensed Facilities for the Developmentally Disabled** (N.J.A.C. 10:47) and other regulations relevant to the function of the facility.

(b) A residential facility shall allow the licensing authority to inspect all aspects of a program's functioning and to interview any staff member of the facility or resident in the care of the facility.

1. A residential facility shall make any information reasonably related to assessment of compliance with these requirements available to the licensing authority.

(c) A residential facility shall comply with all relevant requirements, including Division of Mental Retardation (DMR) circulars, unless a waiver for specific requirement(s) has been granted through a prior written agreement with the licensing authority. This agreement shall specify the particular requirement(s) to be waived, the duration of the waiver, and the terms under which the waiver is granted.

1. Waiver of requirements may be granted providing that such a waiver would present no danger to the health, safety, welfare, or rights of the residents and when strict enforcement of a requirement would place an undue burden upon the residential facility.

(d) A residential facility shall have a written statement specifying its philosophy, purposes, and program orientation, and describing both short and long-term aims. The statement should identify the types of services provided and the characteristics of the resident population to be served by the program.

1. The statement of philosophy and goals shall be re-evaluated periodically.

(e) A residential facility shall not permit public funds to be paid or committed to be paid to any corporation, firm, association, partnership, or business in which any of the members of the governing body of the facility, or the members of the immediate families of members of the governing body or executive personnel have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the facility.

(f) In a non-proprietary facility, there shall be a Board of Directors, Board of Trustees, or other similar governing body responsible for the facility's management, control, and operation, the welfare of the residents, and the formulation of administrative policy.

1. A residential facility shall have a governing body which includes representatives of the community in which the facility is located, representatives of the parents, and providers of residential services.

i. The names and addresses of all board members shall be supplied to the licensing agency;

ii. The professional background of each member shall be provided; and

iii. Changes in membership shall be reported as they occur.

2. The governing body shall elect from its membership a president or chairperson, vice president, secretary, and treasurer. It shall have the power to appoint such officers and committees as it may require to assist in carrying out its functions.

i. It shall conduct regular meetings and such special meetings as are required;

ii. Minutes shall be recorded and readily available to representatives of the appropriate licensing agency;

3. The governing body of a residential facility shall designate a person to act as Chief Administrative Officer of the facility and shall delegate sufficient authority to such a person as to manage the affairs of the facility effectively.

i. The Chief Executive Officer, in conjunction with the governing body, shall be responsible for the general direction and establishment of policies concerning the operation of the facility and welfare of its residents.

4. The governing body of a residential facility shall ensure that the facility;

i. Is in continual compliance and conformity with all relevant laws and/or regulations, whether Federal, State, local or municipal, affecting the operation of the facility;

ii. Is in continual compliance and conformity with the terms of all leases, contracts, or other legal agreements to which the facility is a party;

iii. Is maintained, staffed, and equipped in such a manner as to effectively implement the program of that facility;

iv. Is adequately funded and fiscally sound. To this end, the governing body shall be responsible for:

(1) The review and approval of the facility's annual budget;

(2) The review of an annual report completed by an independent auditor. This audit shall be made available upon request to any public agency which provides funds to the facility and the licensing agency.

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v. Consults with the licensing agency prior to making any substantial alteration in the program provided by the facility or the physical plant.

(g) A proprietary facility operated by any owner, partnership, or corporation for mentally retarded persons shall certify to the licensing authority the names, addresses, occupations or professions of all the owners and the extent of financial interest of each.

(h) A proprietary facility shall have documents which fully identify its ownership. A corporation, partnership, or association shall identify its officers and shall have, where applicable, the charter; partnership agreement; constitution; articles of association; and/or by-laws of the corporation, partnership, or association.

(i) Any change in the ownership or the identity of the person or persons owning and operating such a facility shall be reported to the licensing authority within 15 days of the date on which such change occurs.

(j) In instances where the owner of the facility assigns the responsibility for management to another individual, the preceding requirements of this section relative to the governing body of the residential facility shall apply to the administrator.

10:47-3.2 Administrative standards

(a) A residential facility shall assemble and maintain an administrative procedures manual which incorporates all of the written procedures and policies designed to implement the facility's objectives.

1. The administrative procedures manual shall describe the policies and procedures of the major operating units, be kept current, and shall be available to all interested parties.

2. A table of organization shall be incorporated in the administrative procedures manual to clearly identify the responsibility for major functions and lines of authority.

(b) A procedure shall be available that specifies one individual responsible for the overall operation of the facility at any specific time. The procedure shall provide a schedule of continuous coverage, identify responsibility, and assure that a log of major activities and unusual events is maintained.

(c) A written procedure providing round-the-clock accountability of residents shall be implemented.

(d) A written procedure shall be available to provide rapid, effective action in cases where a resident is discovered to be missing.

(e) The facility shall have a written statement of policies and procedures concerning the rights of residents that assure the civil and legal rights of all residents in accordance with N.J.S.A. 30:6D-4.

1. The facility shall ensure that each resident admitted is fully informed of his rights and responsibilities as a resident and of all rules and regulations governing resident conduct and responsibilities.

i. Such information must be provided prior to or at the time of admission or, in the case of residents already in the facility, upon the facility's adoption or amendment of resident right policies, and its receipt must be acknowledged by the resident in writing.

ii. In the case of a mentally retarded individual, the resident's signature must be witnessed by a third person.

2. The rights mentioned in (e)1 above shall include, but not necessarily be limited to, the right of the client to:

i. Register and vote at elections;

ii. Free exercise of religion;

iii. Receive and send unopened correspondence and, upon request, to obtain assistance in the writing and reading of such correspondence;

iv. Private visitations and private telephone conversations without prior notice to the facility during such reasonable hours as may be established by the facility with interested parties;

v. Reasonable opportunities for interaction with members of the opposite sex;

vi. Confidential handling of personal and medical problems.

(f) A reward and restriction program shall be developed, written and implemented providing procedures for effective re-enforcement in the continual process of developing the highest degree of self-reliance in the resident.

1. Provision for treatment of residents manifesting behavior problems shall be included in this procedure.

(g) Chemotherapy shall not be used for the convenience of staff, as a substitute for programs, as punishment, or in quantities that interfere with an individual's habilitation program.

(h) Corporal punishment shall be prohibited.

(i) Residents shall not discipline other residents except as part of an organized self-government program, for which written policies are formulated.

(j) Seclusion and isolation (that is, the placement of a resident alone in a locked room) shall be prohibited.

(k) The residential facility shall have a written policy that defines the use of mechanical restraints, the staff members who may authorize its use, and a mechanism for monitoring and controlling its use.

1. This policy shall be approved by the licensing agency prior to implementing; any subsequent modifications shall also be approved.

2. The residential facility shall provide classes of instruction as necessary to insure appropriate staff are familiar with such aspects of restraints as are necessary in the proper performance of their duties. Documentation of such training shall be maintained.

(l) Restraints shall not be employed as punishment, for the convenience of staff, or as a substitute for programs.

1. Totally enclosed cribs and barred enclosures shall be considered restraint devices.

(m) Mechanical supports used in normative situations to achieve proper body position and balance shall be designed and applied under supervision of a professional staff member designated by the administrative officer. Such use shall be documented in the resident's file.

(n) Each resident must be free from chemical and/or mechanical restraints unless the restraints are:

1. Authorized by a physician in writing, except in an emergency, for a specified period of time but not to exceed 12 hours.

i. An emergency situation requiring immediate application of mechanical restraints, in the absence of written authorization by a physician, shall be considered an unusual incident and an investigation must be filed in accordance with (t) below.

(o) Mechanical restraints shall only be applied by properly trained staff.

1. Residents in mechanical restraints will be checked by authorized trained staff every 15 minutes. Provisions shall be made for residents in restraints to be released and afforded the opportunity for motion and exercise for a period of not

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less than 10 minutes during each 2 hours in which the restraints are employed, except during usual sleeping hours.

2. A record of the physical checks conducted at least every 15 minutes shall be maintained, complete with the name or initial of the staff person checking the device and the times applied and terminated.

(p) The physician shall make a qualifying note when restraints are ordered specifying: the type of restraint ordered, justification, duration and any contraindications of which staff need to be aware.

(q) A facility which uses chemical restraint shall ensure that such restraint is administered by means of intramuscular injection by properly licensed personnel.

1. There shall not be standing orders related to the use of chemical restraint.

2. The facility shall ensure that each administration of chemical restraint is specifically ordered by a physician who has personally examined the resident.

3. The resident shall be monitored continuously by a person trained and qualified to observe potential adverse side effects.

4. The physician ordering the chemical restraint shall examine the resident within a 48 hour time period.

(r) When a resident requires physical or chemical restraint on more than four occasions during any 30 day period, the facility shall hold an immediate meeting of the members of the team that developed the resident's Individual Habilitation Plan to discuss the appropriateness of the resident's program at the facility.

1. Such meeting shall be held within 24 hours of the fourth incident requiring restraint.

(s) Behavior modification programs involving the use of time-out devices or the use of aversive stimuli shall be reviewed in accordance with the current policy of the Division of Mental Retardation.

1. Written permission from the Director, Division of Mental Retardation, shall be obtained before the implementation of any individual behavior modification program using time-out or aversive stimuli.

(t) There shall be a written procedure to ensure the investigation of each alleged mistreatment of a client or an unusual incident/accident. The procedure shall contain, but not be limited to, the following information:

1. The name of the client(s), date, and time of the incident;

2. Name of the persons involved, including participants and witnessess;

3. A description of the incident to include any medical treatment;

4. Appropriate sanctions that were invoked when the allegation was substantiated;

5. Any corrective actions taken to prohibit a reoccurrence;

6. The incident shall be reported to the licensing agency within 24 hours, and a copy of the written investigation forwarded to the licensing agency within 72 hours;

7. In the case of minors, allegations of abuse shall be reported to the local district office of the Division of Youth and Family Services or the Office of Child Abuse Control, 800-792-8610.

(u) Special reports to the licensing agency shall include but not be limited to:

1. Report of any fire of major property damage;

2. Any unusual prevalence or outbreak of contagious communicable disease;

3. Quarterly admission and discharge reports;

4. Accident reports, incorporating corrective measures adopted;

5. Changes in key administrative staff, as identified by the licensing agency, including the professional background on new staff.

10:47-3.3 Admission and release

(a) The facility shall have a written description of admission policies and criteria for admission which shall include chronological age, level of mental development, physical condition, and fees for admission and care.

(b) The written description of admission policies, criteria and fees shall be provided to all placing agencies and shall be available to the parent(s) or guardian of any resident referred for placement.

(c) The facility may not admit an individual as a resident unless his needs can be met by the facility's established programs.

(d) The facility shall establish and make available written procedures concerning admission, readmission, and release of a resident.

(e) The number of residents admitted to a facility shall not exceed its licensed capacity nor its provision for adequate programming.

(f) The following written reports shall be available for new admissions:

1. Complete psychological examination conducted not more than one year prior to admission;

2. Complete medical examination conducted within the past 48 hours;

3. Evaluation for an initial living unit and program assignment.

(g) Within a period of 30 days after admission, the facility's interdisciplinary evaluation team shall engage in a systematic and comprehensive evaluation of the resident.

1. The evaluation shall include consideration of the advisability of continued residence in the facility and/or alternate programs.

(h) Each resident shall have an annual interdisciplinary review of his status by all relevant personnel, including both professional and direct care staff, to include recommendations for programs to be implemented. From this review, the Individual Habilitation Plan must be developed.

(i) Prior to the planned discharge of a resident, the facility, in conjunction with the agency or person(s) responsible for the resident, shall formulate an aftercare plan specifying the supports and resources to be provided to the resident. Aftercare plans are to be kept in the resident's case record.

(j) Prior to discharge, and whenever feasible, the interdisciplinary team shall meet with representatives of the agency designated as being responsible for the resident's programming after discharge.

(k) The facility shall ensure that an Individual Habilitation Plan is prepared for each resident scheduled for transfer at least 30 days prior to the time the actual transfer takes place.

(l) A residential facility shall have a written policy concernig emergency discharge of an individual and/or all other discharges not in accordance with a resident's habilitation plan.

1. This policy shall ensure that emergency discharges effected by the facility take place only when the health and safety of a resident or other residents might be endangered by the resident's continued placement at the facility.

2. When possible, residents who request discharge against the advice of the agency shall be referred to an appropriate social service agency.

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10:47-3.4 Personnel services

(a) The hiring, assignment, and promotion of employees shall be based on their qualifications and abilities, without regard to sex, race, color, creed, age, ethnic or national origin.

(b) A residential facility shall not hire, or continue to employ, any person whose health, educational achievement, emotional or psychological makeup impairs his or her ability to properly protect the health, safety or psychological well-being of the residents.

(c) All employees shall be medically determined to be free of communicable and infectious diseases at the time of employment and as necessary thereafter.

(d) A residential facility shall have written personnel policies and procedures; these shall be provided to all staff members and available to all persons seeking employment.

(e) The residential facility shall have a personnel file for each employee containing:

1. The application for employment and/or resume;

2. Reference letters from former employee(s) and personal references or notation of telephone contacts with such references;

3. Medical examinations, to include a recognized TB screening;

4. Professional credentials/certifications;

5. Semi-annual performance evaluations and/or personnel actions or other appropriate materials, reports, and notes relating to the individual's employment with the facility;

6. Employee's hiring and termination dates;

7. Documentation of training provided by the facility including restraint application and, for those staff having routine, daily resident contacts, current CPR and standard first-aid certifications.

(g) A residential facility shall maintain the personnel file of an employee for that employee's tenure or for a period of five years after termination.

(h) A residential facility shall have a comprehensive written plan for staff orientation, on-going training, development, supervision, and evaluation of all employees.

(i) A residential facility shall have complete written job descriptions for each job title within the facility. Each employee shall be given his or her job description.

(j) Inexperienced direct service staff shall be accompanied by experienced workers on initial tours of duty for at least a period of one month or such time as these staff person(s) are able to effectively safeguard the health and safety of residents in care.

(k) The administrator shall comply with Federal, State, and local laws, ordinances, rules and regulations pertaining to employment, including civil rights, social security, wages and hours, workman's compensation, employment of women and minors, and withholding taxes.

(l) A residential facility shall have adequate staff coverage at all times.

1. The on-duty ratio of direct care personnel for the day shift shall be at least 1 to 10.

i. Facilities sending residents out of the dormitory building most of the day for ongoing active treatment programs need not provide living unit staff for the residents during that period of time.

2. The on-duty ratio of direct-care personnel for the evening shift shall be at least 1 to 10.

3. Direct care staff shall be available on the premises at all times during the night shift.

i. When the resident population exceeds 20, the direct care staff ratio shall be at least 1 to 20.

4. Direct care staff coverage shall be increased accordingly in special situations including, but not limited to, residences housing multiple handicapped clients and clients who exhibit behavior problems which present a danger to self or others.

(m) A residential facility shall be responsible to obtain professional services required for the implementation of the Individualized Habilitation Plan of a resident when these services are not provided by employees of the facility.

(n) A residential facility shall have documentary evidence that all professionals providing services to the facility, by direct employment or on a fee for service basis, whether working directly with residents in care or providing consultation to employees of the facility, are appropriately qualified, certified, and/or licensed to provide the service(s) rendered.

(o) A residential facility which has volunteers working directly with clients shall have a written statement on the facility's utilization of volunteers.

1. Volunteers shall supplement but shall not be used in lieu of the services of paid employees.

2. Where volunteers are utilized, the facility shall provide:

i. Medical examinations as required for employee staff;

ii. Direct supervision by an experienced staff member;

iii. Orientation and training in the philosophy and goals of the facility;

iv. Awareness of the needs of the resident and the method of meeting those needs.

(p) A residential facility which accepts students for field placements shall have a written policy describing student placements. Copies shall be provided to each student and his or her school.

1. A residential facility shall ensure that students are supervised directly by an appropriate, qualified staff member acting as a liaison between the facility and the school making placements, unless other appropriate arrangements are made.

10:47-3.5 Records and reports

(a) A facility shall maintain a written record for each resident which shall include administrative, treatment, and educational data from the time of admission until the time the resident leaves the facility.

1. These records shall be retained for a minimum of 10 years after discharge.

2. All active records shall be maintained on the premises.

3. Individual records shall be conspicuously and appropriately identified and maintained in a central records file.

4. All entries on the complete record shall be current, legible, dated, and authenticated by the signature and identification of the individual making the entry.

(b) The facility shall maintain the confidentiality of all residents' case records. Employees of the facility shall not disclose or knowingly permit the disclosure of any information concerning the resident or his or her family, directly or indirectly, to any unauthorized person.

1. Without the voluntary, written consent of the parent(s) or guardian, the facility shall not release any information concerning a resident except to the resident, his parent(s) or guardian, their respective legal counsel, the Court, or an authorized public official in the performance of statutorily mandated duties.

(c) Individual records shall include the following pre-admission data:

1. The name, sex, race, religion, birthdate, and birthplace of the resident;

2. The name, address, telephone number of the parent(s) or guardian of the resident to include verification of the guardian for an adult.

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3. Previous placement history;
4. Documentation of the current custody and legal guardianship;
5. The resident's court status, if applicable;
6. A copy of the resident's birth certificate or a written statement of the resident's birthdate including the source of this information;
7. Consent forms signed by the parent(s) or a minor or court appointed guardian allowing the facility to authorize all necessary medical care, routine tests, immunization, and emergency medical or surgical treatment;
8. Allergies to medication;
9. Immunization history;
10. History of serious illness, serious injury, or major surgery;
11. Developmental history;
12. Current use of prescribed medication;
13. Medication history;
14. Contagion-free certificate.

(d) Individual records shall include the following admission data:
1. Date of admission;
2. Report of general medical examination by a physician within a week after admission;
3. An examination of the resident for physical injury and disease;
4. Vision and hearing tests;
5. A current assessment of the resident's general health;
6. Whenever indicated, referrals to an appropriate medical specialist for further assessment and/or treatment;
7. Report of a general dental examination;
8. Initial and subsequent Individualized Habilitation Plans;
9. Reports of initial psychological examination and all follow-up psychological examinations;
10. Education records and reports;
11. A record covering each period of restraint;
12. Reports of unusual or special incidents and/or accidents;
13. Reports of physical examinations, established diagnosis, and medical care plan;
14. Physician's orders prescribing medication treatment and/or therapy;
15. Physician's periodic progress notes on the physical and/or emotional and behavioral status of the resident and course and results of treatment;
16. Pertinent nurse's or clinical notes;
17. Reports of clinical laboratory, X-ray, operation, autopsy, and other diagnostic services;
18. Reports of accidents and illnesses;
19. Admission dental record and record of subsequent dental care provided;
20. Progress notes of ancillary services including podiatry, physical therapy, optical, speech and hearing, etc.;
21. Height and weight records, where indicated;
22. Medication administration record including name and strength of drug, date and time of administration, dosage administered, route of administration and signature of the person administering the drug. (Initials may be used after the individual's full name signature appears at least once on each page of the document);
23. Immunization record;

(e) Individual record shall include the following discharge records:
1. Date of discharge, reason for discharge, and the name, telephone number, and address of the person or agency to whom the resident was discharged;
2. A summary of services and progress providing during care.

SUBCHAPTER 4. RESIDENT LIVING

10:47-4.1 Living unit

(a) The resident living unit environment shall be appropriate to the resident's mental level, chronological age, physical handicap and behavior of the resident, ranging from open and permissive to maximum protection or custody.
1. A residential living unit shall be structurally designed to accommodate the physical and programmatic needs of the residents.
2. Residents of grossly different ages, developmental levels, and social needs shall not be housed in close physical proximity, unless such assignment is planned to promote the growth and development of all those assigned.

(b) Residents shall be assigned responsibilities in the living units commensurate with their interests, abilities, and developmental plans, in order to enhance feelings of self-respect and to develop skills necessary for independent living.
1. Chore assignments shall not be used as an unpaid substitution for staff.
2. Chore assignments shall not be in conflict with other scheduled habilitative activities.
3. Residents who are capable shall be allowed free use of all living areas within the living unit.
4. There shall be a daily activity schedule in each separate living unit which indicates both programmatic and leisure time activities.
i. The schedule shall reflect periods of free time. Periods of free time shall not exceed three continuous hours.
5. Residents shall be provided a range of indoor and outdoor opportunities daily, on a year-round basis.
i. Such opportunities shall be in accordance with the interests, needs, and abilities of the resident, and reflected in the resident's Individualized Habilitation Plan.
6. A residential facility shall utilize the recreational resources of the community whenever appropriate. The facility shall arrange the transportation and supervision required for maximum usage of community resources.
7. Provisions shall be made for socially acceptable co-educational activities appropriate to the resident's ages and developmental levels.

(c) Residents who are determined capable shall be instructed in the free and unsupervised use of communication processes.
1. The facility shall permit a resident to receive and send mail. Staff shall not read residents' mail unless the resident requests the assistance of the staff.
2. The facility shall be equipped with a sufficient number of telephones (either pay or free) for the residents' use and shall have written procedures for the residents' use of these telephones for either incoming or outgoing calls.
3. The facility shall provide opportunities for a resident to visit with parent(s), guardian, family, or significant others, with due regard for personal privacy.
i. A facility shall permit visits in accordance with the resident's Individual Habilitation Plan and the facility's published visitation policy.
4. A resident's use of communication processes may be restricted only when such restriction forms a necessary com-

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ponent of the resident's Individualized Habilitation Plan. Such a restriction must be reviewed at least quarterly.

(d) Procedures shall permit and encourage the possession and use of money by residents who are determined capable.

1. Consultation shall be provided on the use of funds in performing cash and check transactions.

2. Money earned, received as a gift, or received as allowance by a resident shall be deemed to be that resident's personal property.

3. Limitations may be placed on the amount of money a resident may possess when such limitations are duly recorded in the resident's Individualized Habilitation Plan.

4. The facility shall maintain a separate accounting system for residents' money.

(e) The facility shall allow a resident to have his or her own personal belongings.

1. Provisions shall be made for the protection of residents' personal property.

2. An inventory of each resident's personal property shall be conducted annually and kept at the facility.

(f) Multiple handicapped and non-ambulatory residents housed in other than medical surgical units shall:

1. Spend a major portion of their waking day out of bed;

2. Spend a portion of their waking day out of their bedroom areas;

3. Have planned indoor and outdoor activity and exercise periods;

4. Be rendered mobile by various methods and devices (training, surgery, wheelchair, etc.).

(g) The facility shall have set routines for waking residents and putting them to bed in accordance with their age and developmental level.

(h) The facility shall ensure that each resident has ready access to a responsible, awake staff member throughout the night.

(i) The facility shall provide each resident with his or her own dresser or other adequate storage space for private use, and a designated space for hanging clothing in proximity to the bedroom occupied by the resident.

(j) The residents shall be allowed to decorate their living areas.

10:47-4.2 Hygiene

(a) Residents shall be trained to exercise maximum independence in hygiene and grooming practices, according to their ability.

1. Baths or showers shall be provided daily.

2. Residents confined to their beds shall be cleansed a minimum of once a day, and as often thereafter as is necessary.

3. Natural and artificial teeth shall be cleaned at least twice daily.

4. There shall be opportunity for shampooing and cutting of toenails and fingernails as necessary.

5. Male residents shall have the opportunity for daily shaving.

(b) Individual toilet articles, such as hairbrush, comb, toothbrush, razor, soap, wash cloth and towel, shall be supplied to each resident and kept in a separate receptacle.

1. Wash cloths and towels shall be replaced at least three times a week on an as-needed basis to assure cleanliness and freedom from odors.

2. The use of common wash cloths, towels, and other toilet articles for the residents is prohibited.

3. Individual toilet articles shall be stored in a sanitary manner.

(c) Female residents shall be helped to attain maximum independence in caring for menstrual needs.

(d) Every resident who does not eliminate appropriately and independently shall be engaged in a toilet training program, unless medically contraindicated.

1. Dietary adaptations shall be made to promote normal evacuation and urination.

(e) A procedure shall be established for the medical referral of residents who do not maintain normal weights for observation and treatment.

10:47-4.3 Meals and food service

(a) A pleasant and home-like environment shall be promoted in the dining room. Dining room accommodations shall be a separate part of each housing unit.

(b) Each resident shall be provided with at least three meals daily.

1. Food shall be wholesome, prepared in the form that meets the medical and dietary needs of each resident, and attractively served.

2. Meals shall be served at appropriate times; morning, noon, and evening.

3. Snacks shall be provided for residents who desire them, unless medically contraindicated.

4. There shall not be more than a 14 hour span between the evening meal and breakfast the following day.

5. Residents shall not be routinely served meals in their bedrooms.

6. There shall be a reasonable variety of foods.

7. Foods returned from the residents' plates should be discarded.

(c) Each facility shall have one person responsible for menu planning and food service.

1. This person shall have a knowledge of food values and food needs for all types of residents cared for in the facility and shall be familiar with accepted food handling procedures and techniques in procuring, storing, preparing, and serving food in quantity food service operations.

(d) Menus shall be prepared at least one week in advance and copies retained on file for a period of two months.

1. Daily or weekly menus shall be posted in view of employees, residents, and visitors.

2. Any substitution of food from the menu must be of equal nutritional value and must also be indicated on the menu.

(e) The daily diet for each resident shall meet the Recommended Dietary Allowances of the National Academy of Sciences. The following are general guidelines.

1. Milk: One pint or its equivalent daily, which may be fresh fluid, whole or skim, evaporated, dry, or buttermilk, and may be used as a beverage or in cooking. A satisfactory substitute in proper quantities is acceptable.

2. Meat, poultry, fish, and eggs: Five ounces or its equivalent daily at two or more servings.

i. Two to three ounces of a lean, edible portion of meat, poultry, or fish served at least once daily;

ii. In addition, two or three ounces of a lean, edible portion of meat, poultry, or fish, or two eggs, or a satisfactory substitute in proper quantities shall be served at the other meals.

3. Vegetables and fruit: Four or more servings daily:

i. One serving of a citrus fruit or juice daily or a satisfactory vitamin C substitute in proper quantities;

ii. Three or more servings in proper quantities of other vegetables and fruits, including potatoes. This shall include some raw fruit and vegetable.

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iii. A serving of a dark green or deep yellow vegetable or a satisfactory vitamin A substitute in proper quantities shall be served at least every other day.

4. Breads and cereals: Four or more servings daily:

Only whole grain, enriched, fortified, or restored bread and cereal shall be used.

5. Other foods as needed to complete meals and to provide additional food energy and other food values shall be served, including some butter or fortified margarine at each meal.

6. Residents unable to swallow solid food shall have nourishing supplementary feedings between meals and at bedtime or more often to meet their nutritional requirements.

(f) No resident shall be denied a meal or snack for any reason except according to a doctor's order or his or her Individualized Habilitation Plan.

(g) Personnel shall be available to assist, encourage, and train residents in good eating habits.

10:47-4.4 Clothing

(a) Resident's clothing shall be age appropriate and seasonal.

(b) A resident's clothing must be individual and not shared in common.

(c) An annual inventory of each resident's clothing shall be maintained and recorded.

(d) Each resident shall have an adequate supply of properly fitted clothing to allow for laundering.

(e) Residents shall be trained and encouraged according to their capabilities to:

1. Select and purchase their own clothing as independently as possible, preferably utilizing community stores;

2. Select their daily clothing;

3. Dress themselves;

4. Change their clothes to suit the activities in which they engage;

5. Maintain (launder, clean, mend) their own clothing as independently as possible.

(f) The facility shall ensure that discharge plans make provisions for clothing needs at the time of discharge. All personal clothing shall accompany a resident upon discharge.

SUBCHAPTER 5. HEALTH SERVICES

10:47-5.1 General medical and health care

(a) Arrangements shall be made with at least one physician, licensed to practice in New Jersey, to assume the overall responsibility for the direction and provision of quality medical care.

(b) To insure the best possible care and treatment program, a physician shall:

1. Visit the facility at least every four months and whenever necessary,

2. Perform such examinations and administer and/or prescribe treatment as needed for preventive, routine, and emergency care;

3. Assume the responsibility for the maintenance of complete medical records as needed for routine and emergency care;

4. Each resident's prescribed medical program shall be reviewed and evaluated at least every four months and amended as prescribed by the physician;

5. Medical orders for medication and medical treatment shall be updated as necessary.

(c) There shall be provision for specialists' services in all pertinent fields of medicine including but not limited to special examination, laboratory, and X-ray work as needed.

(d) An accurate and complete individual medical record shall be maintained for each resident.

(e) Arrangements shall be made with a community hospital for the acceptance, as an in or out-patient, of any resident requiring hospital based services. Services may be defined as emergency, diagnostic, and/or treatment services.

1. Written approval for such treatment in emergency situations shall be obtained from the facility or guardian at the time of admission.

2. Written approval for other hospital treatment shall be obtained before treatment is rendered.

(f) There shall be an annual physical examination to include the Mantoux Skin Test for tuberculosis with subsequent follow-up chest X-rays for positive reactors and Mantoux Skin Tests for non-reactors.

(g) Dental examinations shall be made upon admission and at least annually or more often as necessary.

(h) Primary immunizations shall be given, as required, on admission and re-immunizations as pre-scheduled on a regular basis for diphtheria, tetanus, pertussis, polio, measles, and other diseases as identified consonant with acceptable medical practices and New Jersey Department of Health Regulations.

(i) Provision shall be made for the isolation of communicable disease and the prevention of its spread.

1. All such diseases shall be reported to State and local health authorities and the Chief, Bureau of Operations, Division of Mental Retardation.

2. Single room accommodations, which will not be included in capacity, shall be provided for observation purposes and for temporary isolation until transfer is made.

(j) There shall be written procedures readily available for staff members to follow in the event of a medical emergency.

(k) First aid material shall be readily available to provide proper first aid treatment.

(l) Other than first aid, no medication or treatment shall be administered by employees of the facility except on written orders of a licensed physician.

(m) The facility shall provide pharmaceutical services, both dispensing and consultant, either directly or through written contractual agreements.

(n) The facility shall have in writing and review annually the policies (including stop order policies), procedures, and methods for obtaining, dispensing, storing, administering, and usage of medications.

1. Complete compliance with Federal and State regulations governing the order, storage, dispensing, administration, recording and disposition of medication shall be maintained.

2. A unit dose or an individual prescription system of drug distribution shall be used for all medication.

3. All medication shall have the label affixed by the pharmacy.

4. All medications shall be ordered in writing and all orders shall be promptly sent to the dispensing pharmacy. In emergencies, the prescribing practitioner may order medication by directly telephoning the dispensing pharmacy.

5. Medications prescribed for one resident shall not be administered to anyone else.

6. Preparation of medication for administration shall be done in a well-lighted area away from traffic.

7. All medications shall be kept in a lockable cabinet, closet or medication cart. The storage area shall be locked at all times except when medications are being prepared for administration or being placed into storage.

8. Poisons and external preparations (including eye and ear medications) shall be stored separately from internal medications.

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9. Refrigeration shall be provided for storage of medications requiring cold storage. The refrigerator shall be maintained at a temperature between 36 degree F. -44 degree F.

10. Medications requiring refrigeration which are stored in a common refrigerator shall be kept in a locked box and properly labeled.

11. Discontinued and outdated medications and containers with worn, illegible, or missing labels shall be returned to the dispensing pharmacy promptly for proper disposition.

12. Each dose of medication administered shall be recorded in the resident's record.

13. All adverse drug reactions shall be reported to the prescribing practitioner immediately and a description of the incident shall be included in the resident's record.

(o) The application of modern antiseptic techniques shall be maintained in the handling of instruments, surgical supplies, syringes and needles, etc.

1. The supply of syringes and needles used to administer medication, immunizations, diagnostic tuberculin skin testing, laboratory and/or X-ray procedures etc., shall be retained in a locked area, closet, or drawer.

2. To avoid potential reuse, the syringes and needles shall be effectively destroyed after use in compliance with Chapter 113-Public Laws of 1973 (N.J.S.A. 2A-170-25.17).

i. For purposes of this Act the needle shall be broken from the hub or completely mangled and, in the case of the syringe, the nipple of the barrel shall be broken from the barrel or the plunger and the barrel melted.

(p) A residential facility which uses psychotropic medication shall have a written policy governing the use of psychotropic drugs at the facility.

1. A residential facility which uses psychotropic medication shall ensure that a resident is personally examined by the prescribing physician prior to commencing administration of a psychotropic drug.

2. Psychotropic medication shall not be used unless less restrictive alternatives have failed.

3. A residential facility which uses psychotropic medication shall ensure the use is in accordance with the guidelines of the Department of Human Services Administrative Order 2:13, Guidelines for Psychotropic Medication, which is adopted by reference.

(q) Physical therapy services as prescribed by the physician shall be made available to all residents who can benefit therefrom.

1. The provision of braces, walkers, crutches, special chairs and any other physical therapy equipment shall be made available when prescribed.

(r) Optical services shall be made available for residents requiring glasses or repair of glasses.

(s) Hearing and speech services shall be provided to include special therapy and hearing aids as prescribed.

SUBCHAPTER 6. HABILITATION SERVICES

10:47-6.1 Education, Training, And Therapy Services

(a) Education and training opportunities shall be provided to permit the individual, regardless of mental and physical handicap, to develop to the fullest extent of his or her potential.

1. Learning opportunities shall be given even to the least capable resident so that improvement in self-help and increased interest in the use and manipulation of objects in the resident's environment may be achieved.

(b) A residential facility shall have a written description of its total curriculum outlining the education program. This information shall be provided to the resident and his or her parent(s) or guardian prior to the resident's admission.

1. A residential facility shall not place a resident in an on-grounds educational program unless such program is appropriate to the resident's needs.

(c) The facility shall ensure that vocational preparation services are available to a resident. Such training and services shall be appropriate to the age and abilities of the resident.

(d) Whenever a resident is capable of being trained for a vocational placement in the community, the appropriate staff of the facility shall plan with the sponsor for such a goal and shall provide job training on a level suited to the ability of the individual.

(e) The facility shall ensure that every resident between the age of 5 and 21 attends an appropriate educational program.

1. A facility providing an organized education program shall be evaluated annually by the County Superintendent of Schools.

2. The size of classes shall be as follows:

i. Educable child: Not to exceed 15;

ii. Trainable child: Not to exceed 10;

iii. Day training eligible: Not to exceed 9.

(f) Psychological services shall be provided either by employees of the facility or through formal affiliation.

1. All new admissions shall be given a Psychological Evaluation within 30 days to determine intellectual development and mental and emotional characteristics.

2. Residents identified as needing psychotherapy shall be provided such treatment, utilizing the most appropriate up-to-date techniques available.

10:47-6.2 Individual Habilitation Plan

(a) Within 30 days of admitting a client in care, a private residential facility serving the developmentally disabled is required to develop an Individual Habilitation Plan (IHP) as required by Chapter 82 N.J.S.A. 30:6D-10.

1. The Individualized Habilitation Plan is a written statement setting forth clearly defined and measurable goals and behaviorally stated objectives describing an individualized program of care, training, treatment, education, and therapies designed to attain or maintain the optimal physical, social, educational, and/or vocational functioning of which the individual is presently or potentially capable.

2. The Individualized Habilitation Plan shall include each client's development and acquisition of:

i. Perceptual skills;

ii. Sensorimotor skills;

iii. Self-help skills;

iv. Communication skills;

v. Social skills;

vi. Self-direction;

vii. Emotional stability; and

viii. Effective use of time (including leisure time).

3. The Individualized Habilitation Plan should include the following elements:

i. Standard cover page;

ii. Statement of present level of functioning;

iii. Long term goals;

iv. Short term goals (obtainable in a year or less);

v. Behaviorally stated objectives;

vi. Method of achieving goals;

vii. Specific service with dates of initiation and anticipated duration;

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viii. Barriers to achieving goals.

(b) Each facility must have a written Evaluation Procedure and an Annual Review Procedure.

(c) A qualified staff member must be identified as the Habilitation Plan Coordinator.

(d) Each plan shall contain documentation of the participation of each member of an Interdisciplinary Team, professional and non-professional personnel who render on-going service to the client. The client must participate in decisions regarding his or her IHP, if capable.

1. If the client prefers not to participate in an IHP that includes active program, for example, a sheltered workshop program, because of advanced age, he will have the right to have an IHP designed to meet only his maintenance and medical needs.

2. The client's parent(s) and/or guardian or Guardianship Worker will also participate. Attempts to solicit their input should also be documented, should they fail to be active in their role.

(e) Current IHP's should be available for review by parents/guardian or Guardianship Worker upon request.

(f) The Post Institutional Care Plan, which details the future placement goal, should be attached to the IHP.

(g) The Individualized Habilitation Plan must be reviewed and rewritten by the Interdisciplinary Team at least annually.

(h) The current IHP shall be filed in the central record of the resident.

1. A copy of the current IHP shall be accessible to the direct care personnel working with the resident. This copy should contain monthly progress notes by each discipline providing service to the resident.

2. The Habilitation Plan Coordinator shall review and comment on monthly progress notes and verify implementation of the program.

(i) An active social and recreational program shall be established for the development and training of the resident to better equip him or her for everyday living.

1. Recreational services shall provide prescriptive as well as amusement forms of recreation.

2. Prescriptive recreation shall be a goal-oriented and structured program to modify, eliminate or reinforce specific physical, emotional, or social behaviors.

(j) A residential facility which has recreation staff shall ensure that such staff are apprised of and, when appropriate, involved in the development and review of service plans.

1. There shall be cooperative recreation activities held with other schools, community programs, and community organizations for all residents who can possibly profit from them.

2. Recreational activities shall be provided for each resident whether in living or hospital units, consistent with his or her interests, abilities and capabilities. Close liaison shall be maintained between therapy, education, training, and programs and the residential units of the facility.

(k) Periodic surveys of recreational needs and interests should be conducted by interviewing residents and unit staff with changes implemented according to the results of these surveys.

(l) Religious services and instruction shall be arranged consistent with the resident's capabilities.

1. No resident shall be required to attend religious services or instruction in a faith which conflicts with that of the resident, his or her parents, or guardian.

(m) The facility shall have available qualified social work staff for residents and families who require services.

(n) The facility shall have available qualified speech therapists for residents who require such services.

SUBCHAPTER 7. SUPPORT SERVICES

10:47-7.1 Physical Plant

(a) The facility shall maintain the grounds of the facility in an acceptable manner free from any hazard to health or safety.

(b) The facility shall ensure that all structures on the grounds of the facility are maintained in good repair and do not present any danger to health or safety.

1. All structures within the facility shall meet the requirements of Use Group Category I-2 of the New Jersey Uniform Construction Code.

2. Walls, ceilings, and floors of all areas accessible to residents shall be suitably decorated and satisfactorily furnished or covered for their intended use.

3. Safety windows or safety screens shall be installed where needed for the protection of residents.

4. Structures shall not have walls or ceilings surfaced with materials containing asbestos.

5. The facility shall not use lead base paint for any purpose within the facility, nor shall the facility purchase any equipment, furnishing, or decoration surfaced with lead based paint.

(c) Residents' personal preference shall be considered in choosing decorations and furnishings in living areas.

(d) All furniture and furnishings shall be maintained in good repair.

(e) Doors shall be outward opening and equipped with self-closing devices.

1. Doorways shall be placed so that traffic to and from any room shall not be through sleeping rooms, kitchens, bathrooms, or toilet rooms.

2. All closets, bedrooms and bathrooms shall be provided with doors that can be readily opened from both sides.

(f) All rooms used by clients shall be provided with proper ventilation without draft, either by means of outside windows that may be easily opened and closed, or by air conditioning.

(g) The facility shall ensure that there are sufficient and appropriate storage facilities.

1. The facility shall have securely locked storage areas for all potentially harmful materials. Keys to such storage areas shall be available only to authorized staff members.

2. Locked closets shall be provided for storage of janitors' supplies and equipment.

(h) All stairways and hallways shall be kept free and clear of obstructions at all times.

1. All stairways shall be adequately illuminated with electric lights controlled by switches at the top and bottom of the stairs.

2. Stairways shall be provided with well secured hand rails on both sides.

3. Stair treads shall have a non-skid surface.

4. All stairways leading from the first floor to floors occupied by residents shall be enclosed as approved by the State Fire Marshal.

(i) The facility shall ensure that each bedroom in the facility has a floor area of at least 70 square feet for each occupant.

1. The facility shall not use any room with a ceiling height of less than seven feet six inches as a resident's bedroom unless the room has a distinct area allowing a usable space with floor areas as required by (i) above.

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2. The facility shall not permit more than four residents to occupy a designated bedroom space.

3. The facility shall ensure that no resident over the age of five years shares a bedroom with a member of the opposite sex unless they are husband and wife.

4. The facility shall not use any room as a bedroom space unless it has a direct source of natural light.

(h) Each resident shall have his or her own bed. This bed shall be solidly constructed, no shorter than the resident's height and no less than 36 inches wide. The bed shall have a clean, comfortable, non-toxic fire retardant mattress and a box spring in good repair.

1. Cots or other portable beds are not to be used.

2. The mattress covering shall be moisture-proof when the resident's condition requires.

(i) The facility shall ensure that sheets, pillows, pillow cases, and blankets are provided for each resident in accordance with seasonal needs.

1. Bedding, whenever possible, shall be made of fire-retardant materials.

2. Sheets and pillow cases shall be changed at least weekly but shall be changed more frequently if necessary.

(j) All resident bedrooms shall be at ground level or above and shall be conveniently located to bathing and toilet facilities.

1. All rooms used by residents shall open to corridors, lobbies, or dayrooms, except where a utility room, toilet room, bathroom, or storage room opens directly off the room which it serves.

(k) The facility shall provide space for educational programming which is separate from living areas and which is clean, adequately illuminated, appropriately equipped, reasonably free from distractions, appropriately decorated, and properly maintained.

(l) The laundry room shall be separate from the kitchen and other working areas of the facility.

1. Regular laundering of residents' personal clothing shall be provided.

2. Solid linen shall not be transported through food preparation and storage areas.

3. Solid linen shall be collected and disposed of in a sanitary manner.

10:47-7.2 Sanitation And Safety

(a) A written statement attesting that the buildings and facilities meet local health requirements and the State Sanitary Code shall be acquired at least annually and filed for easy reference.

(b) The heating system shall comply with all local and State codes and regulations.

1. The facility shall take all reasonable precautions to ensure that heating, including hot water pipes, are insulated and installed in a manner that ensures the safety of residents.

2. The facility shall heat the spaces used by residents to a minimum of 68 degrees F.

(c) All rooms including hallways and stairways shall be lighted by natural light or electricity.

1. Night lights shall be provided in bathrooms, hallways, stairways, and other passage ways.

2. An auxiliary generator or battery type lighting shall be available for emergency purposes.

3. The facility shall provide adequate lighting of exterior areas (cottages and grounds) to ensure the safety of residents, staff and authorized visitors during the night.

(d) A residential facility using water from any source other than a public water supply must ensure that such water is annually tested by the appropriate State or Local authority in accordance with State or Local law.

1. The results of the most recent test report shall be kept on file.

2. Hot water accessible to children in a residential facility must be regulated to a temperature not in excess of 110 degree F. at the tap.

3. There shall be a sufficient supply of hot and cold water in the institution at all times.

(e) Provisions shall be made for the collection, storage, and disposal of garbage, refuse, ashes, and other wastes.

1. Garbage and rubbish which is stored outside shall be stored securely in non-combustible, covered containers and shall be removed on a regular basis, but not less than once every week.

2. All liquid waste shall be discharged into a municipal or public sanitary sewage system when such system is available.

i. If a private sewage system is necessary, the type, size, location, construction, and major repairs or alterations shall be approved by the New Jersey Department of Health.

(f) The facility shall have a minimum of one wash basin with hot and cold water, one flush toilet and one bathtub or shower with hot and cold water for every ten residents.

1. Bathrooms shall be so placed as to allow access without disturbing other residents during sleeping hours.

2. Each bathroom shall be properly equipped with toilet paper, disposable towels, soap, and other items required for personal hygiene.

3. The facility shall provide toilets and baths or showers which allow for individual privacy.

4. A bathroom in a residential facility shall contain mirrors secured to the walls at convenient heights and other furnishings necessary to meet the residents' basic hygienic needs.

5. Toilets, ash basins, and other plumbing or sanitary facilities in a residential facility shall be maintained in good operating condition, be free of chips or cracks, and shall be kept free of any materials that might clog or otherwise impair their operation.

(g) Toilet and hand washing facilities shall be provided for employees.

(h) Kitchens used for meal preparation in a facility shall be provided with the necessary equipment for the preparation, storage, serving, and cleanup of all meals of the residents and staff regularly served by such kitchen. All equipment shall be maintained in working order.

1. All equipment, countertops, preparation areas, and utensils used for eating, drinking, preparation and serving of food shall be kept clean, in good condition, and free from chips and cracks.

2. All utensils used for eating, drinking, preparation and serving of food or drink shall be washed after each use by any of the following methods:

i. Properly installed and maintained mechanical dishwasher of a type approved by the Department of Health;

ii. A three-compartment sink with a detergent wash, followed by a clean water rinse, and then the prescribed use of a chemical sanitizer; or

iii. A two-compartment sink with a detergent wash, a thorough rinse, followed by immersion in clean water for at least 180 degree F., or in a controlled chemical sanitizing rinse.

3. Serving dishes, glasses, and flatware shall be placed on clean racks to dry if dishwashers are not used and shall not be dried by the use of towels or cloths of any kind.

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(i) Equipment for special training and feeding requirements shall be available and used.

(j) All food and drink shall be prepared and served in a sanitary manner.

(k) All employees shall wear clean outer garments, shall be personally neat and clean in their habits, well-groomed, and shall keep their hands meticulously clean when handling food, drink, utensils, or food preparation equipment.

1. Food handlers shall not smoke or chew tobacco in food preparation areas and/or service areas except while seated at dining tables during their mealtimes.

2. Food returned from individual resident trays or plates shall be considered contaminated and shall not be served again.

3. Pets shall not be permitted in any area where food or drink is handled, stored, prepared and/or served.

(l) Storage and refrigeration of foods shall be in accordance with guidelines supplied by State, County, and local health regulatory agencies.

1. Prepared food stored in a refrigerator or in dry storage area shall be kept covered.

2. All refrigeration units shall be provided with an interior thermometer, and the temperature should not exceed 42 degree F. when the unit is in use.

(m) Since kitchens constitute hazardous areas, they shall be isolated, insofar as possible, from other quarters.

1. Doors leading to adjacent areas shall swing in one direction only, shall be self-clothing, tight-fitting, and equipped with positive latch.

2. Such doors shall be constructed according to specifications approved by the State Fire Marshal.

(n) Kitchen exhaust fans, filters, and metal ducts shall be kept free of grease and dirt at all times, and metal ducts from such fans shall extend at least two feet beyond the building.

1. Areas around kitchen ranges shall be kept free of grease at all times.

2. In the event that metal hoods and exhaust ducts are installed directly over kitchen ranges, construction standards of the National Fire Protection Association shall be followed.

(o) The facility shall ensure that the grounds and buildings of the facility are kept free from insects, rodents, and vermin.

1. All windows and doors, except those fire exit doors not used for ventilation, opening directly to the outside shall be provided with effective screens or insect repelling devices.

2. Safety precautions shall be observed in all rodent and insect control programs.

i. Any application of controlled pesticides shall be conducted by appropriately licensed persons.

(p) Monthly inspections shall be made of all physical facilities, equipment, and machinery to determine whether hazards exist.

1. A written report of such inspection shall be developed and filed for easy reference.

10:47-7.3 Transportation

(a) The facility shall ensure that each resident is provided with the transportation necessary for implementing the resident's Individual Habilitation Plan.

(b) The facility shall have means for transporting residents in cases of emergency.

(c) Any vehicle used in transporting residents of a facility, whether such vehicle is operated by a staff member or any other person acting on behalf of the facility, shall be properly licensed, inspected, and insured in accordance with the New Jersey State Motor Vehicle Codes.

(d) Any staff member of a facility or other person acting on behalf of the facility operating a vehicle for the purpose of transporting residents shall be properly licensed to operate that class of vehicle according to State law.

(e) The facility shall not allow the number of persons in any vehicle used to transport residents to exceed the number of passengers for which the vehicle is certified by the manufacturer.

(f) The facility shall ensure that there is adequate supervision in any vehicle used by the facility to transport residents.

(g) The following additional transportation arrangements are required for residential facilities serving handicapped, non-ambulatory residents:

1. A ramp device to permit entry and exit of a resident from the vehicle must be provided for all vehicles except automobiles used to transport physically handicapped children. A hydraulic lift may be utilized provided that a ramp is also available in case of emergency.

2. In all vehicles, wheelchairs shall be securely fastened to the floor.

3. In all vehicles except automobiles, the arrangement of the wheelchairs shall provide an adequate aisle space and shall not impede access to the exit doors of the vehicle.

10:47-7.4 Fire Safety

(a) An annual written statement acquired from the State Fire Marshal shall be on file stating that the building(s) are satisfactory for occupancy and meet the minimum requirements of the National Fire Protection Association's "Life Safety Code" or, in his opinion, does not adversely affect the life and safety of the occupants.

1. Deficiencies found during the inspection of the facility by the State Fire Marshal shall be corrected within time limits established by the Bureau of Fire Safety.

(b) An automatic fire detection system shall be installed in accordance with the requirements set forth by the State Fire Marshal.

(c) Any area used for the storage of combustible supplies and equipment (the contents of which are easily ignited, burn with an intense flame, and result in the production of dense smoke or fumes), shall be separated from other parts of the building by fire resistent construction which is approved by State and local fire authorities.

(d) New carpeting shall not be installed in resident rooms and corridors without prior approval of the State Fire Marshal.

(e) The boiler and heating room shall be separated from the rest of the building and enclosed with one hour rated material.

(f) Fuel burning space heaters and/or portable electric space heaters shall not be used in any facility.

(g) Non-ambulatory residents shall not be housed above the first floor of any facility without approval of the Director, Department of Health, irrespective of certificates of local authorities that local requirements have been met.

1. No resident shall be placed above the second floor in any building.

(h) The telephone number of the local fire department serving the facility shall be posted at each telephone.

(i) All exit ways leading to fire exits shall be properly illuminated by natural or artificial light 24 hours a day.

1. Signs bearing the word, "EXIT" in plain legible black letters shall be placed at each exit opening.

i. Additional signs shall be placed in corridors, where necessary, to indicate the direction of exit.

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ii. Letters shall be no less than six inches in height.

2. Letters of internally illuminated exit signs shall not be less than four and one-half inches in height.

3. All exit and directional signs shall be clearly legible by electric illumination when natural light fails.

(j) Fire escapes shall be necessary whenever two separate stairways leading directly to the exterior of the building from each floor occupied by residents are not provided.

1. Traffic areas leading to fire escapes must be kept free of obstacles at all times.

2. Fire escapes must be kept free of obstructions at all times.

3. Plans for all fire escapes and their specifications shall be approved by the State Fire Marshal prior to any actual construction and must show in detail all buildings adjacent to fire escapes.

4. Existing fire escapes shall be examined annually and repairs completed as recommended by the State Fire Marshal.

(k) Basements of residential buildings shall be kept in good order and reasonably clear of excess furniture and equipment, and shall never be used for indiscriminate storage. However, neat stocks in original containers will be permitted in basement storerooms.

1. Doors at the head of basement stairways shall be constructed according to specifications approved by the State Fire Marshal.

2. Basement ceilings shall be protected with material approved by the State Fire Marshal.

3. Side walls and ceilings enclosing basement stairways shall be protected with material approved by the State Fire Marshal.

4. Paint and other highly inflammable material should be stored outside residential buildings, but minimum supplies may be kept in basements if stored in closed metal cabinets or containers.

5. All basement electrical wiring shall be in Rom X cable or equivalent and all outlets shall be of approved type.

6. Smoke pipes from heaters to chimneys shall not pass within 18 inches of ceilings even though the ceiling may have been protected with metal lath and plaster.

7. Basements may be used for storage, laundry, heating, and water supply equipment and other utilities.

8. Basements may be used as activity rooms so long as they are dry, warm, and adequately illuminated with natural or artificial light and separated from laundry, heating, and other hazardous equipment.

i. Two means of egress must be provided if a basement is used as an activity room.

9. No unnecessary combustible partitions within basements are permitted.

(l) In all new installments of oil furnaces and equipment, tanks should be located outside the building.

1. In cases where oil burning equipment has already been installed in properties, the vent pipe and fill pipe should be located outside the building.

(m) The operator shall, on or before January 1 of each year, submit a written statement by a registered electrical inspector that the electrical circuits and wiring are satisfactory.

1. The electrical inspector's report should include the date of inspection and should give assurance that circuits are not overloaded, that all wiring and permanent fixtures are in good condition and that all portable electrical appliances, including lamps, are equipped with heavy duty cord in good condition.

2. There shall be no temporary wiring in the facility except approved appliances equipped with heavy duty cord in good condition.

3. No extension cords or "octopus" outlets may be used.

(n) Proper safeguards shall be taken against fires caused by smoking.

1. Smoking shall not be permitted in residents' sleeping rooms.

2. Ashtrays of non-combustible material and safe design shall be provided in all areas where smoking is permitted.

3. Smoking shall be prohibited in any room or compartment where inflammable liquids, combustible gases, or oxygen are used or stored and in any other hazardous locations.

i. Such areas shall be posted with "NO SMOKING" signs.

(o) There shall be an adequate number of fire extinguishers in the basement and on each floor of every residential building, as determined by the State Fire Marshal.

1. All fire extinguishers shall bear the seal of the Underwriter's Laboratories.

2. There shall be at least one portable fire extinguisher for each 2500 square feet of floor area in accordance to the recommendations of the National Fire Protection Association.

3. Extinguishers shall be recharged and inspected in accordance with the manufacturer's specifications.

i. Each extinguisher shall be labeled to show the date of such inspection and refilling.

ii. Each extinguisher shall be recharged when:

(1) It has been discharged;

(2) The gauge indicates it is not in a fully operable condition.

4. One portable fire extinguisher shall be placed next to the fire alarm box or telephone.

i. All other fire extinguishers shall be placed as directed by the local or State fire regulatory agency.

ii. Fire extinguishers shall be placed so as not to be obstructed by an open door.

5. The following types of fire extinguishers shall be provided:

i. In kitchen areas where a domestic range is utilized, a minimum five pound BC extinguisher with a 20 BC rating shall be provided.

ii. In kitchen areas where a commercial range is utilized, a hood and duct suppression (extinguishing) system shall be provided with both automatic and manual actuation. This system shall be installed in accordance with article 17 of the 1981 Basic Building Code.

iii. In the basement area a minimum 10 pound ABC extinguisher with a 40 BC rating shall be provided.

iv. Throughout the building, two and one-half gallon air pressurized water type extinguishers or a 2A ABC dry chemical extinguisher with a 40 BC rating shall be provided.

(p) All personnel and residents shall be instructed in fire prevention.

1. The use of fire protection equipment and devices (including fire extinguishers) shall be taught to all personnel.

2. Personnel and residents shall be familiar with procedures to be followed in the event of an emergency.

3. Such instruction shall be given to all employees prior to their duty assignment and should be repeated and reviewed at 12 month intervals.

(q) Every institution shall formulate, in writing, a plan for the evacuation of residents to areas of refuge completely away from the building, in the event of fire or any other type of disaster.

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1. All employees shall be instructed in their duties under this plan.

2. A diagram of each floor indicating corridors, line of travel, exit doors, location of fire extinguishers, and the exit each resident is to use shall be posted on each floor in view of all personnel.

3. Provisions shall be made for an emergency lighting system.

(r) Fire alarm systems shall be checked weekly by an employee designated by the administrator.

1. A weekly record shall be maintained showing the date checked, the name of the person checking the system, and whether or not the system is operative.

(s) Every building in which residents are housed or congregate shall have a fire drill at least once a month.

1. The drills shall be unannounced and held at various hours of the day and night.

2. A record shall maintained of the date of the drill, time required for evacuation, and the number of personnel and residents participating in the drill.

3. Arrangements shall be made to have a fire drill supervised by the local fire department at least annually and more often, when required.

(t) A formal, monthly fire inspection shall be conducted by an employee who is knowledgeable in the area of fire prevention and safety.

1. A record shall be kept of the date of the inspection and of any hazards or deficiencies noted.

2. This record shall be annotated by the administrator to indicate the date on which each hazard or deficiency was corrected.

(u) All facilities shall be inspected annually for fire protection by the State Fire Marshal.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Filings; Property-Liability Rate Counsel Participation

Proposed Amendment: N.J.A.C. 11:1-2.5
Proposed New Rules: N.J.A.C. 11:1-2.6, 2.7, 2.8

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

Authority: N.J.S.A. 17:1-8, 17:1C-6(e); 17:29A-14c(4)(a) & (b); 17:29A-23.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 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, 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 1984-619.

The agency proposal follows:

Summary

The Department proposes to amend 11:1-2.5 and to add three new sections to the existing subchapter. There are no changes proposed to N.J.A.C. 11:1-2.1 through 11.1-2.4.

The proposed amendment to N.J.A.C. 11:1-2.5 specifies that filings submitted to the Department of Insurance for approval must be simultaneously served on the Department of the Public Advocate, Division of Rate Counsel. This proposed amendment is intended to resolve occasional difficulties which arise as a result of delayed receipt of filings by the Department of the Public Advocate, Division of Rate Counsel, which has a right to intervene in the public interest under N.J.S.A. 17:29A-14. The proposed amendment requires certification of the submission by the insurer or rating organization. The proposed amendment to N.J.A.C. 11:1-2.5 contains a penalty provision. The remainder of the changes are editorial in nature.

Proposed N.J.A.C. 11:1-2.6 is a new section that provides definitions applicable to this subchapter as well as to the filing review procedures contained in N.J.A.C. 11:3-18.

Proposed N.J.A.C. 11:2.7 is a new section requiring that the Department of the Public Advocate, Division of Rate Counsel (Rate Counsel) express its intent to participate in the filing review proceeding within ten days of submission of the filing

Proposed N.J.A.C. 11:1-2.8 is a new section providing that Rate Counsel's and the filer's right to a contested case hearing will be deemed waived if Rate Counsel and/or the filer fails to request such a hearing 30 days from the filing.

Social Impact

The proposed amendment to N.J.A.C. 11:1-2.5 insures that the public interest in monitoring rate filings is protected by the Department of the Public Advocate, Division of Rate Counsel's, receipt of timely notification of all filings. Rate Counsel will be able to review such filings more promptly for possible intervention. Insurers and rating organizations must now certify compliance with the simultaneous submission requirement. This certification will have evidentiary value. The penalty provision will further protect the public interest by serving to deter non-compliance.

The proposed new sections N.J.A.C. 11:1-2.7 and 11:1-2.8 guarantee that Rate Counsel will have sufficient time to examine the filing and determine whether to request a contested case hearing, while the filer will be assured of timely review of its filing.

Economic Impact

The Department of Insurance will experience some costs in revising its existing transmittal form to comply with the new certification requirement. These costs will be absorbed in the general budget. The Department anticipates no direct economic impact on the public or on filers as a result of the proposed amendment.

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

11:1-2.1–11:1-2.4 (No change).

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11:1-2.5 [Notification] **Filing submissions; penalty**

A copy of [the] **any** filing with a duplicate covering letter shall be submitted **simultaneously** to the Department of Insurance and to the [Office] **Department** of the Public Advocate, Division of Rate Counsel, 744 Broad Street, [29th and] 30th Floor[s], Newark, New Jersey 07102. Both copies of the filing shall be accompanied by a transmittal form (copies of which can be obtained from the Department of Insurance, 201 East State Street, Trenton, New Jersey 08625) properly completed, [and] signed **and certified** by the person authorized by the [company] **insurer or rating organization** to make filings. **The Commissioner may impose a fine, pursuant to N.J.S.A. 17:29A-23, for failure to comply with the provisions of this section.**

11:1-2.6 Definitions

For purposes of this subchapter as well as N.J.A.C. 11:3-18, the following terms shall have the indicated meanings unless the context clearly indicates otherwise.

"Filing" shall include any:

1. Petition, application or submission requesting approval for the establishment or modification of rates, rating systems, rules or forms;

2. Application for surcharges; and

3. Excess profit data submissions.

"Simultaneous" shall be deemed to mean on the same day.

11:1-2.7 Rate Counsel participation

In insurance rate matters where the Department of the Public Advocate, Division of Rate Counsel (Rate Counsel) desires to participate in the proceedings, Rate Counsel shall file a written notification of participation with the commissioner within ten days of submission of a filing or amendment thereto by an insurance company or rating organization. A copy of the notification shall be sent to the filer.

11:1-2.8 Requests for contested case hearing; waiver

(a) In a matter arising from a filing where Rate Counsel and/or the filer seeks to request a contested case hearing, the request that a matter be certified for a contested case hearing shall be made within 30 days of filing.

(b) If a request that the matter be heard as a contested case is not made within 30 days of the filing, the right to request a contested case hearing shall be deemed waived. The right to participate in the filing review proceeding shall continue.

(c) Upon timely request by either Rate Counsel or the filer for a contested case hearing, the matter shall be certified and handled as a contested case.

(d) The commissioner may in his or her discretion certify any matter arising from a filing for a contested case hearing.

(e) If the matter is certified for hearing as a contested case, the hearing shall be conducted either by an administrative law judge or by the commissioner pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1-1 et seq.

(a)

DIVISION OF LICENSING

Administration
Insurance Licensing of Financial Institutions and Their Parent Companies, Subsidiaries, Affiliates, Service Corporations or Member Banks

Proposed Repeal: N.J.A.C. 11:1-10

Authorized By: Kenneth D. Merin, Acting Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1-8.1.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 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, 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 1984-593.

The agency proposal follows:

Summary

The Department proposes to repeal N.J.A.C. 11:1-10 because the statutory authority under which the subchapter was promulgated has been declared unconstitutional.

In order to maintain separation between lending institutions and the insurance business, and to minimize the possibilities of unfair competitive practices by lending institutions or their related companies, N.J.S.A. 17:6.6a and 17B:22-8(c) prohibited financial institutions from receiving or renewing an insurance agent's, broker's, or solicitor's license. However, the legislation permitted two exceptions to this prohibition. Lending institutions providing certain credit insurance were excepted and also finance companies affiliated with insurance companies were excepted.

A challenge was brought against the statutes in the case of ADA Financial Service Corp. v. State, 174 N.J. Super. 337 (App. Div. 1979). The court held that the exceptions drawn in

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the statutes bore no rational relationship to the objectives sought to be achieved by the legislation. The "invidious treatment" of similarly situated groups was ruled to render the statutes, and thus the rules promulgated thereunder, in violation of the Equal Protection Clauses of the United States and New Jersey Constitutions.

Since the statutory authority under which N.J.A.C. 11:1-10 was promulgated is no longer valid, the rules can no longer be enforced. The Department of Insurance proposes to repeal the subchapter so that it no longer appears in the Code.

Social Impact

The proposed repeal will benefit the Department by bringing Title 11 of the Administrative Code into compliance with the decision of the court in ADA. The repeal will benefit the public and lending institutions by clarifying any confusion as to eligibility for an insurance representative's license.

Economic Impact

Because the statutory authority for N.J.A.C. 11:1-10 was found unconstitutional this rule is not being implemented. Consequently, there will be no economic impact on the public, lending institutions, or other affected parties as a result of this repeal.

Full text of the proposed repeal appears in the New Jersey Administrative Code at N.J.A.C. 11:1-10.

(a)

DIVISION OF ADMINISTRATION

Insurance Group
Casualty Insurers; Personal Lines Insurance

Proposed Repeal: N.J.A.C. 11:2-10.1

Authorized By: Kenneth D. Merin, Acting Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1-8.1.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 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, 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 1984-594.

The agency proposal follows:

Summary

The proposed repeal removes from the Code a rule which, for a fixed time, limited an insurer's right to terminate agency contracts and individual policies relating to personal lines insurance.

N.J.A.C. 11:2-10.1 was promulgated in the early part of 1970 because of the rapid decrease in the availability of personal lines insurance, such as family automobile policies and homeowner's insurance. Insurers that no longer found it profitable to conduct such business in the State were restricting the market by terminating agency contracts and refusing to renew or cancelling individual policies of insurance.

N.J.A.C. 11:2-10.1 mandated that, for the period commencing June 29, 1970 and ending September 26, 1970, insurers had to give notice to the Commissioner of Insurance prior to cancelling an agency contract relating to personal lines insurance; and individual policies of personal lines insurance could only be cancelled or nonrenewed for specified reasons. The time period would allow the Legislature to put corrective legislation in place.

Since the effective period of the rule has lapsed, the Department proposes to remove it from the Code.

Social Impact

Since this rule expired by its own terms in 1970, neither insurers nor the public will be impacted by its repeal.

Economic Impact

The constraint imposed by this rule on insurance companies are no longer in effect and therefore no economic impact will result from its repeal.

Full text of the proposed repeal appears in the New Jersey Administrative Code at N.J.A.C. 11:2-10.1

(b)

DIVISION OF LICENSING

Approval of Insurance Schools and Company Training Programs

Proposed New Rule: N.J.A.C. 11:2-19

Authorized by: Kenneth D. Merin, Acting Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1C-6(e); 17:1-8.1; 17B:22-13(a) as amended by P.L. 1983, c.533, sec. 9.; 17:22-6.6.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 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

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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 1984-597.

The agency proposal follows:

Summary

The proposed new rule changes the present system or approving insurance education programs to provide for improved monitoring of insurance schools and company training programs.

The existing system requires insurance courses to be initially approved, and does not provide continuing standards of quality which have to be met or maintained by the schools or training programs offering the courses. The proposed new rule will require approval of the Commissioner every two years. The standards of quality which the institutions must meet include a minimum passing rate on the State examination, adequate facilities and qualified instructors. In addition, approval by the Commissioner will be withdrawn if the institution fails to maintain prescribed standards of quality.

N.J.A.C. 11:2-19.1 mandates that insurance schools and company training programs be approved by the Commissioner. N.J.A.C. 11:2-19.2 lists the standards which must be met by the schools and programs. N.J.A.C. 11:2-19.3 sets forth the procedure for obtaining and renewing approval. N.J.A.C. 11:2-19.4 lists the required contents of the certificate to be issued upon successful completion of a course. N.J.A.C. 11:2-19.5 contains grounds for denial or withdrawal of the Commissioner's approval.

Social Impact

The general public benefits from better educated insurance representatives. The proposed new rule would advance the public interest by assuring the continuing quality of insurance schools and company training programs. At the same time, students required to complete a course of studies in insurance will benefit because they will receive a thorough preparation taught by qualified instructors for the State examination. Insurance schools or company training programs will be held to stricter standards, with clear notice in N.J.A.C. 11:2-19 of what must be done and what standards they must maintain.

Economic Impact

Since the Commissioner presently approves insurance courses, the Department will incur no new administrative costs in approving schools or company training programs. However, requiring approval every two years will generate an increased administrative workload on Department personnel. These additional costs will be absorbed by the general budget. The $100.00 application fee every two years will create a minimal revenue to the Department.

The proposed new rule will place additional costs on the schools. Costs will include the application fee, maintenance of adequate facilities, and bond requirements, if any. There will be an economic impact on the students only if the additional costs to the schools are factored into the school's pricing system.

Full text of the proposed new rule follows.

SUBCHAPTER 19. APPROVAL OF INSURANCE SCHOOLS AND COMPANY TRAINING PROGRAMS

11:2-19.1 Requirement of approval

Courses of study in insurance programs, conducted either by insurance schools or company training programs, must be approved by the Commissioner of Insurance pursuant to the provisions of this subchapter.

11:2-19.2 Standards for insurance schools and company training programs

(a) Each insurance school or company training program approved or seeking approval by the Commissioner must:

1. Have a bona fide street address, corresponding telephone number, qualified instructor(s), facilities with sufficient lighting, desks or tables, and suitable quarters conducive to learning which meet all local building codes;

2. Be available to the public if approved as an insurance school. Insurance schools may not be established for recruitment purposes. If approved as a company training program, the student body may be limited to the company employees;

3. Meet the educational requirements set forth in N.J.A.C. 11:2-1.1, 11:2-1.3 and 11:2-1.5;

4. Issue to each student receiving a 70 percent minimum passing grade on the final examination of each course of studies taken a certificate conforming to the requirements set forth at N.J.A.C. 11:2-19.4;

5. Satisfy the Commissioner that the course of studies will be taught by a qualified instructor or instructors with at least five years of broad experience in insurance practice or insurance education;

6. Provide remedies for students who have failed the State examination, including review courses and second full courses at reduced rates;

7. Offer at least two continuing education courses each year, as approved by the Commissioner pursuant to N.J.A.C. 11:2-20.5.

(b) An approved insurance school or company training program must maintain an annual 70 percent passing rate on the State insurance examination for all of its graduates taking the State examination. A three-month probationary period may be allowed after any 12-month period in which the passing rate falls below 70 percent.

11:2-19.3 Application for approval and renewal of approval

(a) An insurance school or company training program seeking approval pursuant to this subchapter shall file an application with the Commissioner setting forth the following:

1. Name of the insurance school or company training program;

2. Street address or post office box;

3. List of courses which will be offered;

4. Name and signature of the individual designated as director of the school or program, who shall be in responsible charge of all its operations and the specific course of education to be conducted.

(b) An application shall be accompanied by:

1. Resumes of all instructors; and

2. An affidavit from each instructor attesting that he or she will follow a curriculum which meets the educational requirements of the Department of Insurance; and

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3. Such other information or documentation as the Commissioner, in his or her discretion, requires to verify or support the application.

(c) An application fee of $100.00 must be paid with the application.

(d) An application for approval of insurance schools, except accredited colleges and universities, shall be accompanied by a surety bond as issued by an insurance company authorized to do business in this State, conditioned for the protection of the contractual rights of insurance students enrolled in such school in an amount computed in accordance with the following formula:

1. The sum of the maximum number of students to be enrolled in the school's insurance courses at any one time during the calendar year, multiplied by the amount of tuition for insurance courses.

(e) Approval by the Commissioner will expire after two years. The procedure set forth in this section shall be used to renew approval.

11:2-19.4 Required contents of a certificate issued upon successful completion of a course of studies

(a) A certificate issued to a student who has successfully completed a course of studies must contain:

1. The school or company name;
2. The hours of study;
3. The school or company code;
4. The name of the student;
5. The student's signature; and
6. A signed statement of the instructor containing the information in (b) below.

(b) An instructor must affirm that:

1. The student was instructed for the prescribed number of hours;
2. The instructor is satisfied that the student knows the insurance material; and
3. The student has received a 70 percent minimum passing grade on the final examination.

11:2-19.5 Denial or withdrawal of approval

(a) Upon notification in writing with reasons for such action, the Commissioner may deny or withdraw approval if the insurance school or company training program fails to comply with any of the provisions set forth in N.J.A.C. 11:2-19 or otherwise demonstrates incompetency, dishonesty, unworthiness, or bad faith.

(b) Where the Commissioner denies or withdraws his or her approval of any insurance school or company training program, the school or company training program may request a hearing within 30 days of such notification.

(a)

DIVISION OF LICENSING

Continuing Insurance Education Requirement as Precondition to License Renewal

Proposed New Rule: N.J.A.C. 11:2-20

Authorized by: Kenneth D. Merin, Acting Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:22-6.12, as amended by P.L. 1983, c.533, sec. 17; 17B:22-9(d), as amended by P.L. 1983, c.533, sec. 6.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jasper J. Jackson, Director
Regulatory and Legislative 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 1984-596.

The agency proposal follows:

Summary

The proposed new subchapter, N.J.A.C. 11:2-20, imposes a continuing insurance education requirement on all licensed insurance agents, brokers, and solicitors pursuant to P.L. 1983, c.533, sec. 6 (Life and Health) and sec. 17 (Property and Casualty).

N.J.A.C. 11:2-20.1 imposes the continuing insurance education requirement on all insurance representatives. Insurance representatives must fulfill the requirement during every two-year license period as a prerequisite to license renewal. Applicants for license renewal must comply with the requirements of this proposed new rule in addition to any existing requirements for license renewal found in N.J.S.A. 17:22-6.12 and 17B:22-25.

N.J.A.C. 11:2-20.2(a) describes the computerized file in which each insurance representative's examination results and/or continuing insurance education credits are to be recorded.

N.J.A.C. 11:2-20.2(b) describes the content of the notice each insurance representative will receive 180 days before expiration of his or her license(s).

N.J.A.C. 11:2-20.2(c) provides that only insurance representatives whose files indicate fulfillment of the continuing education requirement at least 60 days before the expiration date of their license will receive license renewal applications. N.J.A.C. 11:2-20.2(c) also provides licensees with a procedure for challenging the accuracy of the Commissioner's record of their efforts toward fulfillment of the continuing insurance education requirement.

N.J.A.C. 11:2-20.2(d) describes the consequences of failure to comply with the requirements of this subchapter.

N.J.A.C. 11:2-20.2(e) provides a procedure for a licensee, in an extraordinary case, to seek and obtain a temporary waiver of the continuing insurance education requirement and a 90-day conditional renewal of license from the Commissioner.

N.J.A.C. 11:2-20.2(f) provides that holders of more than one license in the same authority need only fulfill the requirement once during each two-year license period for all licenses in the authority.

N.J.A.C. 11:2-20.3 and 11:2-20.4 provide two alternative methods of fulfilling the continuing insurance education requirement prior to license expiration.

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N.J.A.C. 11:2-20.3 allows fulfillment of the requirement by achieving a satisfactory score on the currently administered State insurance examination for the appropriate authority for example, life and health, property and casualty, etc.)

N.J.A.C. 11:2-20.4 allows fulfillment of the requirement by earning ten continuing insurance education credits through satisfactory completion of approved continuing education courses.

N.J.A.C. 11:2-20.5(a) requires that prospective continuing insurance education courses be approved by the Commissioner of Insurance.

N.J.A.C. 11:2-20.5(b) specifies the acceptable content of continuing education courses, supplies a list of sample topics for the courses, and excludes sales motivation courses from consideration for approval.

N.J.A.C. 11:2-20.5(c) provides procedures for insurance schools and company education programs to request and obtain approval of courses specifically established for purposes of fulfilling the continuing insurance education requirement.

N.J.A.C. 11:2-20.5(d) provides for discretionary approval, by the Commissioner, of courses and seminars which may be offered on an irregular or one-time basis by entities other than insurance schools or company education programs currently approved by the Commissioner. N.J.A.C. 11:2-20.5(d) also sets standards to be applied by the Commissioner in approval determinations.

Social Impact

The proposed new rule places an affirmative responsibility on insurance representatives to update their skills in order to renew their licenses. The proposed new rule addresses a public need by protecting the interests of insurance consumers in making insurance decisions with the assistance of informed insurance representatives.

Economic Impact

In fulfilling the continuing insurance education requirement, insurance representatives will incur costs in the form of either examination fees or tuition. Insurance representatives will also be required to pay a nominal fee to an independent testing service for recordkeeping services. The Department of Insurance will incur administrative costs in monitoring compliance with the requirements of the proposed new rule and in approving courses and instructors. The Department expects these costs to be absorbed in its existing budget.

Full text of the proposed new rule follows.

SUBCHAPTER 3. CONTINUING INSURANCE EDUCATION REQUIREMENT AS PRECONDITION TO LICENSE RENEWAL

11:2-20.1 Continuing education requirement

All applicants for renewal of an insurance agent's, broker's or solicitor's license must fulfill a continuing insurance education requirement to be eligible for license renewal. The continuing insurance education requirement may be fulfilled by achieving a passing score on the State insurance examination for the appropriate authority (for example, life, health, property and casualty, automobile, bail bond, mortgage guaranty, credit, surplus lines or title insurance); or by completing approved continuing insurance education courses sufficient to earn ten continuing insurance education credits in the appropriate authority.

11:2-20.2 General provisions

(a) Examination scores and continuing education credits will be recorded and compiled by an independent testing service, (I.T.S.) pursuant to N.J.S.A. 17:22-6.9a and 17B-22-9.1. The independent testing service will maintain, at a nominal cost to each insurance representative, a computerized file in which examination scores and/or continuing education credits will be recorded, and will monitor the file for fulfillment of the continuing insurance education requirement.

(b) The I.T.S. shall provide the insurance representative with a notice, 180 days prior to the date of expiration of the affected license(s), that lists:

1. Examination scores and/or continuing insurance education credits on the licensee's record for the relevant license period; and

2. The dates of examination offerings available to the licensee for timely fulfillment of the continuing insurance education requirement.

(c) License renewal applications will be sent to insurance representatives only after the I.T.S. confirms that the required evidence of fulfillment of the continuing insurance education requirement has been submitted to the I.T.S. office on the insurance representative's behalf. If the I.T.S. does not receive this evidence at least 60 days prior to the expiration date of the affected license, the individual will be notified immediately of his or her failure to comply with the requirements of this subchapter.

1. Individuals contending that they have completed the continuing insurance education requirement and that they have been erroneously notified of their failure to fulfill the requirement may submit copies of their course credit certificates and/or examination scores along with a written explanation of the circumstances to the Commissioner. If the Commissioner determines that the requirement has in fact been met, the licensee will promptly receive a license renewal application.

(d) The licenses of individuals who fail to fulfill the requirements of this subchapter will expire unrenewed, except as otherwise provided in (e) below. The individual will be required to pass the State insurance examination and reapply with an original application to reinstate the license.

(e) In extraordinary cases, a licensee who fails to fulfill the continuing insurance education requirement may make a written request to the Commissioner for a temporary waiver of the continuing insurance education requirement and a conditional renewal of license.

1. The request must be made within 10 days of receipt of the 60-day notice provided for in (c) above.

2. The request must include a detailed explanation of the circumstances surrounding the failure to fulfill the requirements of this subchapter. The Commissioner reserves the right to require other evidence that may be necessary in individual cases.

3. The Commissioner, in his or her discretion, will grant temporary waivers and conditional license renewals for good cause shown. The Commissioner's determination will be based on an evaluation of the following:

i. Any negligence on the part of the licensee;

ii. The effect of the determination of the public (for example, hardship to customers of the licensee, etc.);

iii. The effect of the determination on the integrity of the continuing insurance education requirement; and

iv. The legitimacy of the reasons offered for noncompliance with the requirements of this subchapter.

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4. If the Commissioner determines that a temporary waiver is appropriate, he may grant a 90-day renewal of license conditioned upon fulfillment of the continuing education requirement within that period. The Commissioner may grant one additional 90-day conditional renewal of license.

(f) Holders of more than one license in the same authority (for example, property/casualty agent and property/casualty broker) need only fulfill the continuing education requirement once during each two-year license period for all licenses in the authority. Examination scores and continuing education course credits are valid only for two years, and may be used only once for each license.

11:2-20.3 Examination

(a) The applicant for license renewal may fulfill the continuing insurance education requirement by achieving a passing score on the currently administered State insurance examination for the appropriate authority. The examination is administered by an independent testing service pursuant to N.J.A.C. 11:2-1.6.

1. A passing score is one representing the correct answering of at least 70 percent of the examination questions.

2. The licensee must take the examination on or before one of the dates listed on the 180-page notice (see: N.J.A.C. 11:2-20.2(b)2), so that the test results can be recorded in the licensee's file no later than 60 days prior to the expiration date of the affected license.

3. The licensee will receive a score report within 15 business days of the examination date including whether or not he or she achieve a passing score on the examination.

11:2-20.4 Approved course credits

(a) The applicant for license renewal may fulfill the continuing insurance education requirement by completing approved continuing insurance education courses sufficient to obtain ten continuing insurance education credits.

1. Proof of continuing insurance education credits must be in the form of course credit certificates (see: N.J.A.C. 11:2-20.5(c)3).

2. Upon satisfactory completion of each approved course, the instructor must promptly send the course credit certificate to the I.T.S. and issue a copy of the certificate to the student.

3. Course credit certificates must be received by the I.T.S. no later than 60 days prior to the expiration date of the affected license.

11:2-20.5 Course approval

(a) In order to be an acceptable source of continuing insurance education credits, prospective continuing insurance education courses must be approved by the Commissioner of Insurance. Approval must be renewed every two years.

(b) Continuing insurance education courses must consist of insurance-related subjects. Sales motivation courses are specifically excluded from consideration for approval. Courses must be at least three hours in length. Sample topics include:

1. Accounting;
2. Finance;
3. Insurance topics;
4. Loss control;
5. New Jersey insurance laws and regulations;
6. New Jersey licensing procedures;
7. Policy content/benefits;
8. Professional ethics;
9. Rating;
10. Tax laws; and
11. Underwriting.

(c) Insurance schools or company training programs currently approved pursuant to N.J.A.C. 11:2-19 must prepare and submit a separate request for continuing educational approval to the Commissioner, along with outlines and supporting information concerning continuing insurance education courses (see: N.J.A.C. 11:2-19.1(a)7).

1. The request must be accompanied by:

i. The name and address of the school or program;

ii. The identification number of the school or program, if any;

iii. The insurance authority(s) within which the course falls;

iv. The title and a brief description of the course;

v. The number of class hours; and

vi. The proposed credit assignment.

2. The request and accompanying information must be submitted to the Commissioner at least 90 days prior to the beginning of the registration period for the course, at the following address:

Insurance Education Specialist
Division of Licensing
Department of Insurance
201 East State Street
CN 325
Trenton, NJ 08625

3. The Commissioner will review the submitted materials and respond with approval or disapproval within 30 days of receipt of the request. Prospective courses will be evaluated to determine whether they are insurance-related, and reasonably calculated to improve the professional competence of the students. If the Commissioner determines that the prospective courses meet the aforementioned standards, they will be approved and assigned continuing insurance education credits. Course credit certificates in the form to be specified by the Commissioner must be promptly sent to the I.T.S. and issued to the student upon satisfactory completion of approved continuing insurance education courses.

(d) The Commissioner may, in his discretion, approve and assign continuing insurance education credits to seminars and other courses offered by entities other than approved insurance schools or company training programs. Such seminars and courses will be evaluated according to the procedures and standards of (a)-(c) above.

(a)

DIVISION OF ADMINISTRATION

Underwriting Guidelines

Proposed New Rule: N.J.A.C. 11:2-21

Authorized by: Kenneth D. Merin, Acting Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e); N.J.S.A. 17:22-6.14a1, 2 and 3; N.J.S.A. 17:22-6.16, 6.16a.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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Jasper J. 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 1984-630.

The agency proposal follows:

Summary

N.J.S.A. 17:22-6.14a1 provides, all "property and casualty insurers doing business in New Jersey shall, upon request of the Commissioner of Insurance, file with the Department of Insurance a copy of their current underwriting guidelines . . . [s]uch guidelines, amendments or modifications shall not be arbitrary, capricious or unfairly discriminatory."

The proposed new subchapter is intended to effectuate the provisions of N.J.S.A. 17:22-6.14a1, 2 and 3, including those quoted above.

Proposed N.J.A.C. 11:2-21.1, .2 and .3 provide, respectively, purpose, scope and definitions sections for the subchapter.

N.J.A.C. 11:2-21.4 requires that all insurance companies writing private passenger automobile and homeowner's insurance in New Jersey file annually, for informational purposes, their current underwriting guidelines with the Commissioner of Insurance, with additional filings to be made upon any modification.

N.J.A.C. 11:2-21.5 prohibits the use of underwriting guidelines not filed with the Commissioner in accordance with N.J.A.C. 11:2-21.4. Section 5 also specifically prohibits the use of additional unwritten or "oral" guidelines.

N.J.A.C. 11:2-21.6 requires that nonrenewal of an insurance policy because of failure to meet current underwriting guidelines must be substantiated by identification of the specific guideline(s) in question, and must provide the factual basis for failure to meet the underwriting standard.

N.J.A.C. 11:2-21.7 imposes an affirmative obligation on insurance representatives of property and casualty insurers to report to the Commissioner of Insurance any violations of the provisions of this subchapter.

N.J.A.C. 11:2-21.8 and .9 provide for penalties, hearings and severability.

Social Impact

Promulgation of the proposed new subchapter will assist the Commissioner of Insurance in monitoring insurer compliance with N.J.S.A. 17:22-6.14a1, 2 and 3.

The cited statutory provisions are consumer-oriented and the proposed new subchapter will facilitate protection of the consumer interest in underwriting guidelines which are not arbitrary, capricious or unfairly discriminatory.

The proposed new subchapter increases insurer accountability to the public in requiring publication of current underwriting guidelines, and in requiring written reasons, referenced to specific guidelines, for refusal to renew insurance policies.

Economic Impact

Maintenance and review of underwriting guideline files will impose a burden on the Department of Insurance, but it is expected that increased costs will be absorbed in the existing budget.

Filing of underwriting guidelines and written reporting of nonrenewals imposes some burden on the insurers, but it is expected that any costs will be minimal.

There will be no economic impact on policyholders as a result of the proposed new subchapter.

Full text of the proposed new rule follows.

SUBCHAPTER 21. UNDERWRITING GUIDELINES

11:2-21.1 Purpose

This subchapter is intended to effectuate the provisions of N.J.S.A. 17:22-6.14a1, 2 and 3 by requiring that private passenger automobile and homeowner's insurance underwriting guidelines be filed for informational purposes with the Commissioner of Insurance. The subchapter is also intended to protect the interests of the insured, in accordance with N.J.S.A. 17:22-6.14a2, by specifying that in every case of policy nonrenewal, the insurer must provide the reason(s) to the insured for such nonrenewal, referenced to the specific underwriting guideline(s) underlying the refusal to renew.

11:2-21.2 Scope

This subchapter shall apply to all property and casualty insurers writing private passenger automobile and homeowner's insurance in New Jersey.

11:2-21.3 Definitions

"Renewal" or "to renew" means the issuance and delivery by an insurer, at the end of the policy period, of a policy superseding a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond the policy period or term; provided, however, that any policy with a policy period or term of less than one year shall, for the purpose of this subchapter be considered as if written for a policy period or term of one year, or any policy with no fixed expiration date, shall, for the purpose of this subchapter, be considered as if written for successive policy periods or terms of one year.

"Underwriting guideline" means a standard or criterion developed by an insurer for application in determining the insurability of a particular risk and shall include any such set of standards.

11:2-21.4 Reporting of underwriting guidelines

(a) Current underwriting guidelines employed by insurers to determine insurability for private passenger automobile and homeowner's insurance shall be filed annually with the Commissioner of Insurance no later than July 1 of each year.

(b) Filings shall be organized by line of insurance and shall clearly indicate any other sublines used by the insurer in application of specific guidelines.

(c) Additional filings shall be made immediately upon any modifications of existing, previously filed underwriting guidelines.

11:2-21.5 Unreported underwriting guidelines prohibited

Use of any underwriting guideline not reported to the Commissioner of Insurance pursuant to N.J.A.C. 11:2-21.4 is prohibited. Use of unwritten or "oral" underwriting guidelines is specifically prohibited.

11:2-21.6 Written reason(s) for nonrenewal

(a) Any notice of nonrenewal issued to the insured must be accompanied by the specific reason or reasons for nonrenewal, in writing, and must identify the facts and underwriting guideline(s) upon which the nonrenewal is based.

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(b) This section shall not apply when the named insured, or an insurer, or an agent or broker authorized by the named insured, has mailed or delivered written notice to the insurer that the policy has been replaced or is no longer desired.

11:2-21.7 Insurance representative responsibility

It shall be the responsibility of every licensed property and casualty insurance representative to report to the Commissioner of Insurance any breach of a provision of this subchapter which comes to his or her attention. This section shall also apply to insurance company representatives responsible for direct writing of policies.

11:2-21.8 Penalties: hearings

(a) Failure to comply with the provisions of this subchapter shall constitute a violation of the insurance laws of this State and shall subject any person so failing to comply to the penalties provided by law, including the provisions of N.J.S.A. 17:22-6.16, regarding the revocation and suspension of licenses.

(b) Any hearings conducted under this section shall be held in accordance with 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. 1:1-1 et seq.

11:2-21.9 Severability

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

(a)

DIVISION OF MARKETPLACE REGULATION AND CONSUMER ASSISTANCE

Insurance Group
Advertisement of Life Insurance and Annuities

Proposed New Rule: N.J.A.C. 11:2-23

Authorized by: Kenneth D. Merin, Acting Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e); 17B:30-1 et seq.; 17B:30-15.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 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.

This proposal is known as PRN 1984-621.

The agency proposal follows:

Summary

The proposed new subchapter, N.J.A.C. 11:2-23, provides rules to govern the advertisement of life insurance and annuities. The proposed new subchapter, derived from the National Association of Insurance Commissioners (NAIC) model regulation, is intended to remedy the problems caused by false and misleading advertising.

N.J.A.C. 11:2-23.1, 23.2 and 23.3 contain, respectively, the purpose, scope and definitions of the proposed new subchapter.

N.J.A.C. 11:2-23.4 requires that advertisements within the scope of the proposed new subchapter must be truthful and not misleading. This section describes the test by which advertisements will be reviewed under the proposed new subchapter and prohibits the use of certain terms if their use will have the tendency to mislead. The section also rejects the notion that the availability of pre-sale inspection of policies or an offer to refund premiums to dissatisfied purchasers remedies misleading statements.

N.J.A.C. 11:2-23.5 prohibits advertisements which circumvent the provisions of the proposed new subchapter and contains various disclosure requirements concerning aspects of life insurance and annuity contracts.

N.J.A.C. 11:2-23.6 requires that each advertisement clearly identify the name of the insurer and the policy or policies being advertised. This section also requires that descriptions of policy provisions and features in an advertisement be clearly referenced to the described policy.

N.J.A.C. 11:2-23.7 prohibits advertisements that exaggerate the licensing status of an insurer or imply that competing insurers may not be so licensed. The section further prohibits advertisements containing false or misleading statements regarding the insurer's financial status, its status in the insurance industry or its operations. In certain circumstances, this section permits the inclusion of recommendations and/or endorsements by government entities or commercial rating systems in advertisements.

N.J.A.C. 11:2-23.8 states that all advertisements are the responsibility of the sponsoring insurer and requires that insurers maintain control over the content, form and method of distribution of all their advertisements. This section requires each insurer maintain a file of its advertisements distributed in New Jersey and describes the required contents. This section also requires certain insurers to file certification of compliance with the provisions of this subchapter.

N.J.A.C. 11:2-23.9 provides that failure to comply with the provisions of this subchapter constitutes a violation punishable under the insurance laws.

N.J.A.C. 11:2-23.10 concerns severability of the proposed new subchapter's provisions.

Social Impact

The proposed new subchapter promotes competition among insurers in advertisements and on the merits of the products advertised. Detailed guidelines will facilitate regulatory oversight of life insurance advertising in New Jersey. By increasing disclosure and clarity in advertisements, the proposed new subchapter will protect the public from misleading advertisements, and will permit the public to form a clearer

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understanding of the products advertised. Thus, the proposed new subchapter will allow insurance consumers to compare the merits of the various life insurance products on a meaningful basis.

Economic Impact

Insurers may incur some costs in revising their advertisements to comply with the proposed new subchapter. The Department of Insurance anticipates no additional cost in monitoring compliance with the proposed new subchapter. The Department does not anticipate any economic impact on consumers as a result of this rule.

Full text of the proposed new rule follows.

SUBCHAPTER 23. ADVERTISEMENT OF LIFE INSURANCE AND ANNUITIES

11:2-23.1 Purpose

The purpose of this subchapter is to implement N.J.S.A. 17B:30-1 et seq. through guidelines intended to assure a full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts.

11:2-23.2 Applicability

(a) This subchapter shall apply to any life insurance or annuity advertisement distributed in this State.

(b) Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the insurer.

(c) This subchapter shall also apply to agents and brokers to the extent that they are responsible for the advertisements of any policy.

11:2-23.3 Definitions

"Advertisement" means material designed to create public interest in life insurance or annuities or in an insurer, or to induce the public to purchase, increase, modify, reinstate or retain a policy, and for the purpose of this subchapter, includes:

1. Printed and published material, audiovisual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio and television scripts, billboards and similar displays;

2. Descriptive literature and sales aids of all kinds issued by an insurer or agent, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters;

3. Material used for the recruitment, training and education of an insurer's sales personnel, agents, solicitors, and brokers which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate, or retain a policy; or

4. Prepared sales talks, presentations, and material for use by sales personnel, agents, solicitors, and brokers.

"Advertisement" for the purpose of this subchapter shall not mean:

1. Communications or materials used within an insurer's own organization and not intended for dissemination to the public;

2. Communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate, or retain a policy;

3. A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged; provided that the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage; or

4. Any disclosure required under any rules currently in force or subsequently adopted in New Jersey governing specific aspects of the sale or replacement of life insurance including, but not limited to, rules dealing with life insurance cost comparison indices, deceptive practices in the sale of life insurance, and replacement of life insurance policies.

"Insurer" shall include any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's fraternal benefit society, and any other legal entity which is defined as an "insurer" in the insurance laws of this State or which issues life insurance or annuities in this State and is engaged in the advertisement of a policy.

"Policy" shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement which provides for life insurance or annuity benefits.

11:2-23.4 Form and content of advertisements in general

(a) Advertisements shall be truthful and not misleading in fact or by implication. Words or phrases the meaning of which is clear only by implication or by familiarity with insurance terminology shall not be used. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception. The advertisement shall not have the capacity or tendency to mislead or deceive.

(b) Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Commissioner of Insurance from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(c) No advertisement shall use the terms "investment," "investment plan," "founder's plan," "charter plan," "expansion plan," "profit," "profits," "profit sharing," "interest plan," "savings," "savings plan," or other similar terms in connection with a policy when they have the tendency to mislead a purchaser or prospective purchaser into believing that he will receive something other than a policy or some benefit not available to other persons of the same class and equal expectation of life.

(d) The fact that the policy offered is made available to a prospective insured prior to consummation of the sale or that an offer is made to refund the premium if the purchaser is not satisfied does not remedy misleading statements.

11:2-23.5 Disclosure requirements

(a) All information required to be disclosed by this subchapter shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure, or presented in an ambiguous fashion, or intermingled with the context of the advertisements so as to be confusing or misleading.

(b) No advertisement shall omit material information or use words, phrases, statements, references, or illustrations if such omission or such use has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable, or State or Federal tax consequences.

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(c) When an advertisement refers to any dollar amount, period of time for which any benefit is payable, cost of policy, or specific policy benefit or the loss for which such benefit is payable, it shall also disclose those exceptions, reductions and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity and tendency to mislead or deceive.

(d) An advertisement for a policy containing graded or modified benefits shall prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, such fact shall be prominently disclosed.

(e) An advertisement for a policy with non-level premiums shall prominently describe the premium changes.

(f) Advertisements referring to dividends must comply with the following requirements:

1. An advertisement shall not utilize or describe dividends in a manner which is misleading or has the capacity or tendency to mislead;

2. An advertisement shall not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, they must be based on the insurer's current dividend scale and the illustration must contain a statement to the effect that they are not to be construed as guarantees or estimates of dividends to be paid in the future; and

3. An advertisement shall not state or imply that illustrated dividends under a participating policy and/or pure endowments will be or can be sufficient at any future time to assure, without the further payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains:

i. What benefits or coverage would be provided at such time; and

ii. Under what conditions this would occur.

(g) An advertisement shall not state that a purchaser of a policy will share in or receive a stated percentage or portion of the earnings on the general assets of the company.

(h) In the event an advertisement uses "Non-Medical," "No Medical Examination Required," or similar terms where issuance of a policy is not guaranteed, such terms shall be accompanied by further disclosure of equal prominence and in juxtaposition thereto to the effect that issuance of the policy may depend upon the answers to the health questions.

(i) An advertisement shall not use as the name or title of a life insurance policy any phrase which does not include the words "life insurance" unless accompanied by other language clearly indicating that it is life insurance.

(j) An advertisement shall prominently describe the type of policy advertised, such as group, term, whole life, etc.

(k) An advertisement of an insurance policy marketed by direct response techniques, such as direct mail or toll-free telephone, shall not state or imply that because there is no agent or commission involved there will be a cost saving to prospective purchasers unless such is the fact. No such cost savings may be stated or implied without justification satisfactory to the Commissioner of Insurance. Such justification must be available to the Commissioner upon request.

(l) Testimonials or endorsements by third parties must comply with the following requirements:

1. Testimonials used in advertisements must be genuine; represent the current opinion of the author; be applicable to the policy advertised, if any; and be accurately reproduced. In using a testimonial the insurer adopts all of the statements contained therein. The statements are deemed to be made by the insurer, and are subject to all the provisions of this subchapter.

2. If the individual making a testimonial or an endorsement has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, such fact shall be disclosed in the advertisement; and

3. An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by a group of individuals, society, association, or other organization unless such is the fact and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the insurer, or receives any payment or other consideration from the insurer for making such endorsement or testimonial, such fact shall be disclosed in the advertisement.

(m) An advertisement shall not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any such statistics used in an advertisement shall be identified therein.

(n) Advertisements referring to introductory, initial, or special offers and enrollment periods must comply with the following requirements;

1. An advertisement of an individual policy or combination of such policies shall not state or imply that such policy or combination of such policies is an introductory, initial, or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such is the fact. An advertisement shall not describe an enrollment period as "special" or "limited" or use similar words or phrases in describing it when the insurer uses successive enrollment periods as its usual method of marketing its policies;

2. An advertisement shall not state or imply that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy;

3. An advertisement shall not offer a policy which utilizes a reduced initial premium rate in a manner which overemphasizes the availability and the amount of the reduced initial premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable, all references to the reduced initial premium shall be followed by an asterisk or other appropriate symbol which refers the reader to that specific portion of the advertisement which contains the full rate schedule for the policy being advertised; and

4. An enrollment period during which a particular insurance policy may be purchased on an individual basis shall not be offered in New Jersey unless there has been a lapse of not less than three months between the close of the immediately preceding enrollment period for the same policy and the opening of the new enrollment period. The advertisement shall specify the date by which the applicant must mail the application, which shall be not less than 10 days and not more than 40 days from the date on which such enrollment period is advertised for the first time.

i. Paragraph 4 above applies to all advertising media, that is, mail, newspapers, radio, television, magazines, and periodicals, by any one insurer. The phrase "any one insurer" includes all the affiliated companies of a group of insurance companies under common management or control.

ii. Paragraph 4 above does not apply to the use of a termination or cutoff date beyond which an individual application for a guaranteed issue policy will not be accepted by an

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insurer in those instances where the application has been sent to the applicant in response to his or her request.

iii. Paragraph 4 above is also inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the New Jersey insurance laws for group, blanket, or franchise insurance.

iv. In cases where an insurance product is marketed on a direct mail basis to prospective insureds by reason of some common relationship with a sponsoring organization, this rule shall be applied separately to each sponsoring organization.

(o) An advertisement of a particular policy shall not state or imply that prospective insureds shall be or become members of a special class, group, or quasi-group and as such enjoy special rates, dividends, or underwriting privileges, unless such is the fact.

(p) An advertisement shall not make unfair or incomplete comparisons of policies, benefits, dividends, or rates of other insurers. An advertisement shall not falsely or unfairly describe other insurers, their policies, services, or methods of marketing.

(q) Advertisements of individual deferred annuity products or deposit funds must meet the requirements of N.J.A.C. 11:4-9.

11:2-23.6 Identification of insurer, plan and number of policies

(a) The name of the insurer shall be clearly identified, and if any specific individual policy is advertised it shall be identified either by form number of other appropriate description. An advertisement shall not use a trade name, an insurance group designation, name of a parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol, or other device or reference without disclosing the name of the insurer, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a policy.

(b) No advertisement shall use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols, or physical materials used by a governmental program or agency or otherwise appear to be of such a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with such governmental program or agency.

(c) When a choice of the amount of benefits is referred to, an advertisement shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of the benefits.

(d) When an advertisement refers to various benefits which may be contained in two or more policies, other than group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies.

11:2-23.7 Jurisdictional licensing and status of insurer; statements about the insurer

(a) An advertisement which is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond such limits.

(b) An advertisement may state that an insurer is licensed in the state where the advertisement appears, provided that it does not exaggerate such fact or suggest or imply that competing insurers may not be so licensed.

(c) Such advertisements by direct mail insurers shall indicate that the insurer is licensed in a specified state or states only, or is not licensed in a specified state or states, by use of some language such as "This Company is licensed only in State A" or "This Company is not licensed in State B."

(d) An advertisement shall not create the impression that the insurer, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its policy forms or kinds of plans of insurance are recommended or endorsed by any governmental entity. If a governmental entity has recommended or endorsed a policy form or plan, however, such fact may be stated if the entity authorizes its recommendation or endorsement to be used in an advertisement and if the advertisement clearly defines the scope and extent of the recommendation.

(e) An advertisement shall not contain statements, pictures, or illustrations which are false or misleading, in fact or by implication, with respect to the assets, liabilities, insurance in force, corporate structure, financial condition, age or relative position of the insurer in the insurance business. An advertisement shall not contain a recommendation by any commercial rating system unless it clearly defines the scope and extent of the recommendation.

11:2-23.8 Insurers' responsibility and control; advertising file; certificate of compliance

(a) All advertisements, regardless of by whom written, created or designed, shall be the responsibility of the insurer sponsoring the same.

(b) Every insurer shall at all times maintain complete control over the content, form and method of distribution of all advertisements of its contracts.

(c) Each insurer shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement of individual policies and typical printed, published or prepared advertisements of blanket, franchise and group policies hereafter distributed in this state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised.

(d) Such file shall be subject to regular and periodic inspection by the Department of Insurance.

(e) All such advertisements shall be maintained in said file for a period of not less than four years.

(f) Each insurer required to file an annual statement which is now or which hereafter becomes subject to the provisions of this subchapter must file with the Department of Insurance, together with its annual statement, a certificate executed by an authorized officer of the insurer wherein it is stated that to the best of his knowledge, information and belief the advertisements which were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of the insurance laws of this State as implemented and interpreted by this subchapter.

11:2-23.9 Failure to comply

Failure to comply with the provisions of this subchapter shall subject the offender to the penalties set forth under N.J.S.A. 17B:30-17 and any other penalty authorized by law.

11:2-23.10 Severability

If any provision or clause of this subchapter or the application thereof to any person or situation is held invalid, such

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invalidity shall not affect any other provision or application of the subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are declared to be severable.

(a)

DIVISION OF ADMINISTRATION

Automobile Insurance
Nonrenewal of Automobile Insurance Policies

Proposed Amendments: N.J.A.C. 11:3-8.1, 2, 3
Proposed New Rules: N.J.A.C. 11:3-8.4, 5, 6, 7

Authorized By: Kenneth D. Merin, Acting Commissioner, Department of Insurance.
Authority: N.J.A.C. 17:1-8.1, 17:1C-6(e), 17:22-6.14al, 2 and 3, 39:6A-3 and 39:6A-19.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 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 the proposal without further notice (see: N.J.A.C. 1:30-5.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-629.

The agency proposal follows:

Summary

N.J.A.C. 11:3-8 contains procedures and requirements which are applicable to the nonrenewal of automobile insurance policies. On January 17, 1984, the Department of Insurance proposed several amendments to this subchapter (see: 16 N.J.R. 120(a)). Numerous comments on this proposal were submitted by insurers, industry trade organizations and consumers. These comments were carefully reviewed and analyzed. The amendments set forth in this proposal reflect the comments and recommendations submitted on the earlier proposal and include substantive modifications to the existing rule as well as revisions to the amendments previously proposed. In particular, the amendments to N.J.A.C. 11:3-8.2(a) and revisions to the proposed new rule N.J.A.C. 11:3-8.4, as described below, result from commentary on the January 17, 1984 proposal. Additional substantive modifications resulting from review of the existing rule as well as technical and editorial modifications are also included.

The proposed amendment to N.J.A.C. 11:3-8.1 (Scope) would eliminate language which now excludes automobiles owned by business entities and fleets from the requirements of this subchapter.

N.J.A.C. 11:3-8.2(a) concerns renewal offers and requires that an insurer offer renewal coverages at least as favorable to the insured as the expiring policy, subject to changes approved by the Commissioner. A 1977 amendment to this subsection clarified that this requirement included duration of the policy term and, also provided that insurers must permit policyholders to return to their prior duration of policy contract upon request. The Department's January 17, 1984 proposal, which contained an amendment removing this latter requirement, generated considerable negative comment from consumers. In addition to objecting to the elimination of this right, many insureds complained that the existing rule did not require insurers to provide notice of same. The current proposal retains the insured's right to reversion and, further, incorporates specific notice provisions.

This proposal also amends subsection (c) to clarify that the schedule of premium payment applicable to the policy qualifies as a "coverage limit or term" of the contract. Finally, the proposal restructures and recodifies subsection (a) into four subsections cited at N.J.A.C. 11:3-8.2(a) through (d).

The Department's earlier proposal amended existing N.J.A.C. 11:3-8.2(b) to mandate that nonrenewal notices contain a statement advising policyholders of their right to file a complaint with the Insurance Department and of their possible eligibility for coverage through the New Jersey Automobile Full Insurance Underwriting Association. This proposal, at N.J.A.C. 11:3-8.2(e)2, contains a comparable requirement and, further, directs insurers to furnish a copy of the Department's Consumer Complaint Form with each nonrenewal notice.

The proposed amendment, N.J.A.C. 11:3-8.2(g), clarifies that in any instance in which an insurer may nonrenew a policy pursuant to the provisions of the subchapter it may, in the alternative, condition the renewal upon a change in limits or elimination of any coverage not required by law.

N.J.A.C. 11:3-8.3 delineates specific standards or criteria which are applicable to the nonrenewal of any coverage included in an automobile insurance policy. This proposal adds two subsections which establish nonrenewal standards which are applicable only to comprehensive physical damage and towing and labor coverages.

N.J.A.C. 11:3-8.3(b) which has been recodified in the proposal as subsection (d) requires that an insurer submit to the Commissioner for prior approval any basis for nonrenewal not enumerated in the foregoing provisions of that section. Proposed amendments to this subsection include: (1) An extension from 90 to 120 days of the required submission to the Department of the nonrenewal request; (2) a specific requirement that the Department acknowledge receipt of such requests; and (3) a deemer provision applicable to the authorization of nonrenewals.

The proposed new section N.J.A.C. 11:3-8.4, provides additional standards of nonrenewal which are applicable to automobile policies covering certain categories of policyholders, specifically, first-time applicants for insurance and policyholders formerly insured through the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA) or New Jersey Automobile Insurance Plan (NJAIP). The rule specifics that such nonrenewals: (1) may not be arbitrary, capricious or unfairly discriminatory, and in particular, may not be based upon race, religion, age, sex or similar criteria; and (2) must be based upon a failure to meet current standards as

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contained in the insurer's underwriting guidelines. Nonrenewals authorized under this section are limited to a period of two years following policy insurance.

The purpose of this amendment is to encourage depopulation of the residual market by affording insurers greater underwriting flexibility with respect to these insureds. The Department's earlier proposal also provided for relaxation of nonrenewal requirements. However, that proposal would have permitted companies to nonrenew up to two percent of existing policies for failure to meet underwriting criteria.

The proposal at N.J.A.C. 11:3-8.5 contains record maintenance and reporting requirements. To monitor the effect of the rule, particularly with respect to depopulation efforts, as well as ensure compliance with its provisions, insurers are required to maintain certain records and file with the Department on an annual basis reports which indicate by rating territory the number of policies subject to this subchapter which voluntarily are issued, cancelled pursuant to N.J.S.A. 17:29C-7(B), nonrenewed or conditionally renewed pursuant to various sections of the rule.

Finally, at N.J.A.C. 11:3-8.7, the proposal specifies that in addition to any other penalties authorized by law, the Commissioner may after notice and a hearing, suspend or revoke the rights of an insurer under N.J.A.C. 11:3-8.4 of the rule. Further, this provision specifies that if the Commissioner determines that depopulation efforts are not being advanced, repeal of N.J.A.C. 11:3-8.4 may be proposed.

Social Impact

The proposed amendments to this subchapter which specify various notice requirements, such as that concerning reversion to prior duration of policy term, will ensure that policyholders are apprized of their rights. Notice of the availability of the Insurance Department for review of complaints concerning nonrenewals as well as the furnishing of Complaint Forms to these insureds will protect the public and facilitate handling of complaints. Insurers and policyholders will benefit thereby.

The proposed amendments to N.J.A.C. 11:3-8.3 which permit non-renewal of comprehensive and towing coverages will enable insurers to discontinue coverage based on excessive claims. At the same time, the standards set forth provide adequate protection to the general public. The revisions to N.J.A.C. 11:3-8.3(d), dealing with nonrenewals requiring the Commissioner's prior approval, should serve to facilitate consideration of such requests.

The proposed relaxation of nonrenweal requirements with respect to first-time applicants and former NJAIP or NJAFIUA insureds is designed to promote depopulation of the residual market. By extending underwriting flexibility to insurers with respect to these insureds for a specified period of time, insurers should be encouraged to issue voluntary policies. The limited applicability of this provision, unlike the Department's earlier proposal which permitted "underwriting" nonrenewals on all policies, subject to a two percent cap, will ensure continuation of the protections currently afforded to voluntary policyholders under the existing rule.

Economic Impact

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

Insurers will experience certain increased costs as a result of effecting compliance with various notice requirements of N.J.A.C. 11:3-8.2 and the record maintenance and reporting requirements prescribed at N.J.A.C. 11:3-8.5. The new standards set forth at N.J.A.C. 11:3-8.3(b) and (c) concerning nonrenewal of comprehensive and towing coverages should assist insurers in containing costs resulting from excessive claims.

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

Full text of the proposal follows:

SUBCHAPTER 8. NONRENEWAL OF AUTOMOBILE INSURANCE POLICIES

11:3-8.1 Scope

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

11:3-8.2 General provisions

(a) Every insurer shall make an offer to the insured named in a policy subject to this subchapter to renew such policy upon its expiration date, unless a valid notice of nonrenewal **or conditional renewal as specified in (g) below** has been sent by the insurer to the insured in accordance with this subchapter.

[Such] **(b) Each** renewal offer shall be in the usual form of either a renewal policy, a certificate, or a renewal bill. [and shall offer coverage at least as favorable to the insured as the expiring policy and at the same limits and terms including duration of the policy as apply to the expiring policy, subject to changes approved by the Commissioner that had become effective since the commencement of the current policy period. Payment by the insured in accordance with the terms stated in the billing notice or in accordance with terms agreed to with the company or producer shall constitute acceptance of the offer by the insured. The words "same limits" shall not preclude the insurer from offering physical damage coverage with a higher deductible than that in the expiring policy, provided the insured is informed that a lower deductible is available at an appropriate rate. Insurers must permit insureds to return to their prior duration of policy term upon request.] **Subject to changes approved by the Commissioner that had become effective prior to the expiration of the current policy, each renewal shall offer coverage, limits and terms at least as favorable to the insured as the expiring policy, including, but not limited to:**

1. Schedule of premium payments, if any; and

2. Duration of policy term;

i. Whenever an insurer, pursuant to changes approved by the Commissioner, alters the duration of the insured's policy term, the insurer shall permit the insured to revert to the prior duration of policy term upon request.

ii. The renewal offer shall include or be accompanied by a statement advising the insured of his or her right to revert to the prior duration of policy term.

(c) Payment by the insured in accordance with the terms stated in the billing notice or in accordance with terms agreed to with the company or producer shall constitute acceptance of the renewal offer by the insured.

(d) The requirements of (b) above shall not preclude the insurer from offering physical damage coverage with a higher deductible than that in the expiring policy, provided the insured is informed that a lower deductible is available at an appropriate rate.

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

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

2. Each notice of nonrenewal shall include or be accompanied by the statement prescribed in i below which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention. A copy of the New Jersey Department of Insurance Consumer Complaint Form shall also accompany each nonrenewal notice.

i. If you have reason to believe that our decision to nonrenew (or conditionally renew, as appropriate) your policy is not in compliance with New Jersey Regulation N.J.A.C. 11:3-8, you may file a written complaint with the New Jersey Department of Insurance, Division of Marketplace Regulation and Consumer Assistance, CN 325, Trenton, New Jersey 08625. In the event you wish to file such a complaint, we recommend that you contact the Insurance Department immediately. A New Jersey Department of Insurance Consumer Complaint Form is enclosed for your convenience.

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

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

(g) In any instance in which an insurer may, pursuant to the provisions of this subchapter, nonrenew an automobile policy, it may, in lieu of the nonrenewal and in compliance with such provisions, condition the renewal of the policy upon a change of limits or elimination of any coverage not required by law.

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

11:3-8.3 [Reasons for nonrenewal] **Standards of nonrenewal applicable to all automobile policies**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Leaving the scene of an accident;

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

(4) Driving while license is suspended or revoked.

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

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violations continues to be an operator of the automobile at the time of renewal.

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

5. Use of the automobile in professional racing.

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

i. A nonrenewal premised upon physical or mental impairment must be supported by a current medical examination. The medical examination report must clearly state the nature of the impairment and, in the case of a physical disability, the extent to which such disability adversely affects the ability to safely operate the automobile. In the event such a current medical examination report is not otherwise available, it must be secured by the insurer at its own expense.

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

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

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

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

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

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

(b) An insurer may issue notice of nonrenewal with respect to comprehensive physical damage coverage, including towing and labor coverage, if the insurer, during the 12-month period ended 90 days prior to the expiration of the current policy, has paid under such coverage claims each of which involve a loss payment by the insurer of at least $100.00, as specified in paragraphs 1 through 3 below:

1. For any policy which covers one car, regardless of the number of customary operators, more than four such claims;

2. For any policy which covers more than one car and has an equal number of customary operators, more than four such claims per car; or

3. For any policy which covers more than one car but does not have an equal number of customary operators, claims which exceed the number of cars by at least four.

(c) An insurer may issue notice of nonrenewal with respect to towing and labor coverage if the insurer, during the 12-month period ended 90 days prior to the expiration of the current policy, has paid claims under such coverage as specified in paragraphs 1 through 3 below:

1. For any policy which covers one car, regardless of the number of customary operators, more than four such claims;

2. For any policy which covers more than one car and has an equal number of customary operators, more than four such claims per car; or

3. For any policy which covers more than one car but does not have an equal number of customary operators, claims which exceed the number of cars by at least four.

[(b)] **(d) Except as provided at N.J.A.C. 11:3-8.4,** any refusal to renew **a policy or coverage, as applicable,** which is not based upon the [reasons] **standards** set forth in (a) **through (c)** above shall be submitted to the Commissioner of Insurance for review no later than [90] **120** days prior to the expiration of the policy. [No insurer shall issue such a nonrenewal to the insured unless the insurer has received the authorization of the Commissioner.] **The Commissioner shall, in writing, acknowledge receipt of any refusal to renew submitted pursuant to the subsection. The Commissioner shall, within 45 days of receipt, either disapprove or authorize issuance of any nonrenewal submitted by an insurer for review and acknowledged by the Commissioner pursuant to this subsection. If the Commissioner shall fail to either disapprove or authorize issuance of the nonrenewal within such 45-day period, issuance of the nonrenewal shall be deemed to be authorized.**

11:3-8.4 Additional nonrenewals based on underwriting guidelines

(a) An insurer may issue notice of nonrenewal based upon a failure to meet current underwriting standards as specified in such insurer's underwriting guidelines provided that such nonrenewals may be issued only with respect to a policy:

1. Issued by the insurer to any policyholder who is a first time applicant for automobile coverage; or

2. Issued by the insurer to any policyholder who was last insured through a statutorily mandated residual market insurance mechanism.

i. For the purposes of this section, the term "last insured" shall not include any instance wherein the policyholder has been terminated pursuant to N.J.S.A. 17:29C-7(B).

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

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

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

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

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

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

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

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

(c) Issuance of a notice of nonrenewal pursuant to this section shall be limited to a period of two years from the date as of which the policy becomes effective after first issuance.

11:3-8.5 Reporting requirements

(a) The Commissioner will review and monitor the operation of this subchapter to ensure compliance with its provisions, and further, to determine whether depopulation of the residual market is being effected through the utilization of the nonrenewal procedures specified at N.J.A.C. 11:3-8.4.

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

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

2. Voluntarily written by the insurer in each rating territory, specifying separately:

i. Policies issued to first-time applicants; and

ii. Policies issued to insureds previously insured through a statutorily mandated residual market mechanism.

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

4. Nonrenewed or conditionally renewed by the insurer in each rating territory, specifying separately:

i. Policies nonrenewed or conditionally renewed pursuant to N.J.A.C. 11:3-8.3.

ii. Policies nonrenewed or conditionally renewed pursuant to N.J.S.A. 11:3-8.4.

(c) Each insurer shall file with the Commissioner an annual report containing the information required to be maintained by (b) above. The report shall be in a format to be prescribed by the Commissioner.

1. Reports for the -month period ending December 31, 1985 and for each full calendar year thereafter shall be filed with the Commissioner annually on May 1 after the close of the preceding calendar year.

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

11:3-8.6 Severability

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

11:3-8.7 Penalties

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

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

(c) If the Commissioner determines that the goal of the residual market depopulation is not advanced through the implementation of N.J.A.C. 11:3-8.4, he may propose repeal of such section.

AGENCY NOTE: The Department intends to make the amendments to this rule operative approximately 30 days after the publication of the Notice of Adoption. The Department, accordingly, anticipates that the adopted amendments will apply to notices of nonrenewal or conditional renewal issued on or after such operative date.

(a)

DIVISION OF ADMINISTRATION

Submission of Private Passenger Automobile Rate Filings

Proposed New Rule: N.J.A.C. 11:3-16

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

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1; 17:29A-1 et seq.; 17:29A-4c(4)(a); 17:29A-5.2; 17:29A-36; 17:29A-37.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 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.

This proposal is known as PRN 1984-628.

The agency proposal follows:

Summary

The new subchapter, N.J.A.C. 11:3-16, is proposed in accordance with N.J.S.A. 17:29A-14c(4)(a). N.J.S.A. 17:29A-14c(4)(a) authorizes the Commissioner of Insurance to promulgate rules and regulations to establish standards for the submission of proposed filings, amendments, additions, deletions and alterations to the rating systems of filers, which may include forms to be submitted by each filer. Proposed N.J.A.C. 11:3-16 requires that every New Jersey private pas-

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senger automobile insurer and rating organization provide the Department of Insurance with specified data for every private passenger automobile rate filing.

N.J.A.C. 11:3-16.1 of the proposed new subchapter contains a statement of purpose and scope, requires a certification to accompany all private passenger automobile filings, and sets forth general requirements.

N.J.A.C. 11:3-16.2 contains a definitions section for the proposed new subchapter.

N.J.A.C. 11:3-16.3 sets forth general data requirements for all companies and rating organizations submitting private passenger automobile rate filings to the New Jersey Department of Insurance.

N.J.A.C. 11:3-16.4 requires that every private passenger automobile insurer and rating organization specify and display the experience period and the time period for which the proposed rates are expected to apply.

N.J.A.C. 11:3-16.5 sets forth certain criteria. Filers meeting any one of the six specified criteria must additionally provide the data described in N.J.A.C. 11:3-16.6.

N.J.A.C. 11:3-16.7 sets forth special requirements for all rating organization private passenger automobile rate filings. In particular, this section requires that every rating organization specify which companies' data are included in all data items and which companies are expected to utilize the proposed rates. It also specifies that expenses shall not be reflected in the proposed rates for voluntary market rates.

Social Impact

The proposed new subchapter will aid the Department of Insurance in its review of private passenger automobile rate filings by providing the Department with specific rate filing data as necessary. The proposed new subchapter will also aid insurers and rating organizations by providing them with guidelines to follow in preparing private passenger automobile rates. The proposed subchapter will benefit the consumer by providing more consistent data than is currently available for appropriate evaluation of the merits of each filing.

Economic Impact

There may be some initial economic burden on insurers and rating organizations in possible alteration of current data gathering techniques. This is a one-time expense. No direct economic impact on consumers is anticipated. The Department of Insurance will benefit from the proposed new subchapter by an anticipated reduction in the time needed for review of each rate filing. The proposed new subchapter will enable the Department of Insurance to perform more effectively its statutory mandate of regulating insurance rates.

Full text of the proposed new rule follows.

11:3-16. PRIVATE PASSENGER AUTOMOBILE RATE FILINGS

11:3-16.1 Purpose; scope; certification; general

(a) This subchapter is intended to provide data requirements for all private passenger automobile rate filings.

(b) This subchapter shall apply to all rating organizations and to all insurers making private passenger automobile insurance rate filings in this State.

(c) For purposes of this subchapter, classification relativities, classification definitions and territory definition changes must not be included with private passenger automobile rate filings.

(d) Every private passenger automobile rate filing submitted to the Department of Insurance shall be accompanied by the following certification signed by an officer of the filing entity.

Certification

I _____ certify that the attached filing complies with all statutory and regulatory requirements.

_____

11:3-16.2 Definitions

The following words and terms shall have the indicated meanings, unless the context clearly indicates otherwise.

"Collected premiums" means premiums charged by the company without adjustments for premiums written or earned and not received.

"On-level premiums" means premiums adjusted for rate changes subsequent to the initial transaction.

"Coverages" includes bodily injury liability, property damage liability, basic personal injury protection, collision, and comprehensive.

11:3-16.3 General information

(a) Each filer must provide the following information:

1. A list of all rate changes in the last three years by coverage with effective dates;

2. The policy period for which the company issues policies;

3. The proposed rate level changes by coverage with effective date;

4. The dates of the experience period underlying the proposed rate level changes;

5. The company's earned exposure in the State for the current and prior year;

6. The company's share of the voluntary market for the current and prior year;

7. For each territory the earned exposures, current and proposed base rates, and rate level changes;

8. The current and proposed Statewide average rate;

9. The average primary and secondary classification rating factors (separately) for the current and prior years;

10. The average age and symbol relativities (separately) for the current and prior years;

11. The company's actuarial gain or loss calculated in accordance with N.J.S.A. 17:29A-5.2;

12. Earned exposures by limit and the average increased limits factors for the liability coverage separately for the current and prior years;

13. Earned exposures by deductible for the physical damage coverage and the basic personal injury protection coverages for the current and prior years;

14. A list of any data quality problems which affect the experience;

15. A list of any proposed changes in underwriting or marketing practices which may affect applicability of the historical experience to the prospective rating period.

11:3-16.4 Time

(a) Every company and rating organization described in N.J.A.C. 11:3-16.1 shall comply with the following time requirements:

1. The maximum lengths of time between the midpoint of the experience period of N.J.A.C. 11:3-16.3(a)4 and the midpoint of the proposed rating period of N.J.A.C. 11:3-16.3(a)2 and 3 shall be:

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i. For filings using one year of experience, no more than 24 months;

ii. For filings using two years of experience, no more than 30 months; and

iii. For filings using three years of experience, no more than 36 months.

11:3-16.5 Criteria for applicability of data requirements of N.J.A.C. 11:3-16.6

(a) The provisions of N.J.A.C. 11:3-16.6 apply to all filers meeting any of the following criteria:

1. Current year market share as provided in N.J.A.C. 11:3-16.3(a)6 is greater than five percent; or

2. Any rate level change as provided in N.J.A.C. 11:3-16.3(a)3 is greater than plus or minus five percent; or

3. There is an actuarial gain or loss for the current or prior year as provided in N.J.A.C. 11:3-16.3(a)11 of more than five percent; or

4. Any territorial rate level change as provided in N.J.A.C. 11:16-3(a)7 is greater than plus or minus ten percent; or

5. The year-to-year percentage change in the data required by N.J.A.C. 11:3-16.3(a)9, 10 and 12 is greater than 20 percent;

6. There has already been one rate level change as provided in N.J.A.C. 11:3-16.3(a) within the 12-month period immediately preceding the proposed effective date of the proposed rate.

11:3-16.6 Special data requirements for filers meeting any of the criteria of N.J.A.C. 11:3-16.5

(a) If the filer meets any of the criteria of N.J.A.C. 11:3-16.5, the following data are required:

1. If the company uses premium in its rate level calculation, it must display direct written and earned premium by coverage and year of the experience period. The company must identify whether basic limits or total limits, and whether collected or on-level premiums are included;

2. If the company uses exposures in its rate level calculation, it must display written and earned exposures by coverage and year of the experience period;

3. The company must display its reserve amounts (case and incurred but not reported) by coverage by year by development period (unless calendar year data are used, in which case adjustments must be displayed) or if loss development factors are used it must display the factors by coverage by year by development period. The company must explain the basis for the selected reserves or factors;

4. The company must display its trend data by coverage and provide an explanation for the trend experience period, trend line, and trend amount selected;

5. The company must provide for the following expense information:

i. For each of the categories of expense: commissions; taxes, licenses and fees; other acquisition expenses, general administrative expenses, dividends, and unallocated claim expenses, identify the kinds of expense (as indicated on page 1 of the National Association of Insurance Commissioners Annual Statement Blank Insurance Expense Exhibit) included in each category;

ii. State whether the expenses of each category of i above are included in the proposed rates as a variable amount, flat amount, or combination of variable and flat amounts. Justification for the split between variable and flat amounts must be provided for each expense category; and

iii. Using final New Jersey expenses, demonstrate compliance with N.J.S.A. 17:29A-37.

6. The company must display the proposed allocation of the rate level change to territory, the data underlying the allocation, and must demonstrate compliance of the proposed territorial base rates with the requirements of N.J.S.A. 17:29A-36;

7. The company must display its calculation of the profit provision including its compliance with the Clifford Formula (In the Application of Insurance Rating Board, 63 N.J. 413 (1973)).

11:3-16.7 Special provisions applicable to rating organizations

(a) In addition to the provisions of N.J.A.C. 11:3-16.5 rating organizations must additionally:

1. Specify which companies' data are included in all data items;

2. Specify which companies are expected to utilize the proposed rates;

3. If companies in 1 above are not consistent for all data throughout the filing, all differences must be identified and explained;

4. Expenses (other than allocated claim expense) are not to be reflected. In other words, pure premiums are to be filed for voluntary market rates. Expenses are to be included for rates to be used by the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA) based on the expense experience of the member companies of the NJAFIUA and in accordance with N.J.A.C. 11:3-16.5.

(a)

DIVISION OF ADMINISTRATION

Rating Organizations
Automobile Rate Filings

Proposed New Rule: N.J.A.C. 11:3-17

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:29A-4.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 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.

This proposal is known as PRN 1984-631.

The agency proposal follows:

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Summary

At present, rate for 80 percent of the New Jersey private passenger automobile market are set by a rating organization known as the Insurance Services Office (ISO). As a result, there is insufficient price diversity in the automobile insurance rate marketplace. It is necessary to recall that the primary purpose for the formation of rating organizations, also known as "bureaus", was to serve insurers that did not have a sufficient volume of business to engage in independent ratemaking. However, over time large and medium size companies with a volume of business sufficient to engage in credible independent ratemaking became members of ISO. Such use of a bureau may result in approval of rates different from those justified by the actual statistical and financial experience of these companies.

The proposed new subchapter addresses this problem and guarantees compliance with the statutory standard that rates "are not unreasonably high or inadequate." N.J.S.A. 17:29A-4.

Subsection (a) requires that the rating bureau, upon filing for an approval of rates, simultaneously file both individual data for any member or subscriber with a two percent share of New Jersey's voluntary private passenger automobile market that has authorized the bureau to make rates on their behalf, and cumulative data for the remaining bureau members or subscribers.

Subsection (b) provides for a comparison between the average experience for bureau participants with that of any individual data submission.

Subsection (c) prohibits any company whose individual data is deemed to indicate experience substantially different from the bureau average from using the approved bureau rate because use of such rate would be in violation of the statutory standard of N.J.S.A. 17:29A-4.

Subsection (d) provides for determination of the appropriate rate for the remaining bureau members or subscribers.

Social Impact

The proposed new rule will benefit the public by promoting price diversity and renewed competition in the automobile insurance rate marketplace. Review of individual rate filings will result in an increase in the Department's work load. Submission of individual data may increase the work load of the rating bureau and those companies whose utilization of bureau rates are deemed violative of relevant statutory guidelines.

Economic Impact

The public will benefit economically when a lower rate is deemed appropriate for a company seeking to utilize the bureau rate. The bureau may experience an increase in expenses if called on to file and delete data of individual companies. Any additional expenses incurred by the department in evaluating individual filings will be absorbed by the general operating budget.

Full text of the proposed new rule follows.

SUBCHAPTER 17. RATING ORGANIZATIONS

11:3-17.1 Automobile rate filings

(a) Upon filing of a petition for the approval of private passenger automobile rates by a rating bureau, the bureau shall be required to simultaneously:

1. Submit a filing containing the individual statistical and financial loss experience and data of any member or subscriber with a share of New Jersey's voluntary private passenger automobile market equal to or in excess of two percent that has authorized the bureau to make rates on their behalf as of the effective date of this subchapter; and

2. Submit a filing containing the statistical and financial loss experience and data of all bureau member and subscribers for which individual data is not submitted under (a)1 above.

(b) Once the Commissioner has reviewed the rate filing containing the statistical and financial loss experience and data of all member and subscriber companies and has rendered a determination, pursuant to N.J.S.A. 17:29A-14, as to the appropriateness of the entire rate filing, the Commissioner shall review the individual company data submitted by the bureau to determine whether the experience therein was substantially different from the bureau average.

(c) If the Commissioner determines that any of the individual submissions indicate experience substantially different from the bureau average:

1. The approved bureau rate shall be deemed to violate the statutory standard of N.J.S.A. 17:29A-4 in respect to the individual insurer; and

2. The individual insurer shall be compelled to use such rate as indicated by its individual experience.

(d) Upon rendering a decision as to the individual submission pursuant to (c) above, the Commissioner shall issue a determination as to the approval or disapproval of the filed rate as applied to the remaining bureau members and subscribers.

(a)

DIVISION OF ADMINISTRATION

Filing Review Procedures

Proposed New Rule: N.J.A.C. 11:3-18

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

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:29A-7; 17:29A-10; and 17:29A-14.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 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, 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 1984-627.

The agency proposal follows:

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Summary

The proposed new subchapter, N.J.A.C. 11:3-18, is designed to provide informal procedures for matters arising from insurance filings that are determined not to be contested cases.

The intent of the proposed new subchapter is to provide clear guidelines which afford satisfactory due process protections within time frames abbreviated to satisfy the need for prompt determination of insurance filings.

The intervention of the Department of the Public Advocate, Division of Rate Counsel, and the resulting discovery requests, in the absence of procedural guidelines, have lengthened the time frame in which filings have been determined. The proposed new subchapter addresses this problem by imposing an abbreviated discovery period on these filing review proceedings. The other time limits prescribed in the proposed subchapter are designed to avoid the difficulties encountered when data provided in a filing become stale because proceedings extend over a prolonged period.

N.J.A.C. 11:3-18.1 outlines the purpose and scope of the proposed subchapter which applies to all non-contested cases, arising from filings, that are to be decided within the Department of Insurance.

N.J.A.C. 11:3-18.2 provides the applicable review procedures when the Department of the Public Advocate, Division of Rate Counsel (Rate Counsel) submits timely notification of intent to participate pursuant to N.J.A.C. 11:1-2.7.

N.J.A.C. 11:3-18.3 provides requirements for discovery applicable to filing review proceedings. It is designed to safeguard the exchange of information within a precise time frame. This will ensure timeliness of the data contained in the filing.

N.J.A.C. 11:3-18.4 sets forth motion practice procedures.

N.J.A.C. 11:3-18.5 provides the procedures applicable to review in those instances where Rate Counsel does not choose to participate.

N.J.A.C. 11:3-18.6 permits the Commissioner to deputize staff decision makers.

N.J.A.C. 11:3-18.7 places restrictions on ex parte contacts.

N.J.A.C. 11:3-18.8 provides guidelines to be followed in issuing a decision on the filing.

N.J.A.C. 11:3-18.9 provides for the manner of computing time periods and their alteration, where permitted.

N.J.A.C. 11:3-18.10 clarifies that final decisions are appealable pursuant to the New Jersey Court Rules.

N.J.A.C. 11:3-18.11 provides a mechanism for conversion of an informal filing review to a contested case hearing.

N.J.A.C. 11:3-18.12 provides for the severability of any provision deemed invalid.

Social Impact

The proposed new subchapter will facilitate the review of filings submitted to the Department of Insurance. The proposed new subchapter will maintain the flexibility of informal in-house proceedings while protecting the due process rights of the parties. This guarantee of a fair and speedy determination should benefit all involved.

Economic Impact

The proposed rule should result in a significant savings to filers, the Public Advocate and the Department. Filings will be determined in a timely manner, reducing the expense, in both time and money, of lengthy proceedings.

Full text of the proposed new rule follows.

SUBCHAPTER 18. FILING REVIEW PROCEDURES

11:3-18.1 Purpose; scope; definitions

This subchapter is designed to provide clear guidelines which afford satisfactory due process protections within time frames abbreviated to satisfy the need for prompt determination of filings submitted to the Department of Insurance. This subchapter shall apply to all non-contested cases arising from filings that are to be decided within the Department of Insurance. The definitions contained in N.J.A.C. 11:1-2.6 shall be applicable to interpretation of the provisions of this subchapter.

11:3-18.2 Procedure with Public Advocate Participation Conference

(a) Upon timely notification, pursuant to N.J.A.C. 11:1-2.7, of the Rate Counsel's intent to participate, the matter shall proceed as follows:

1. Within 30 days of the notification, Rate Counsel shall submit to the Commissioner a report and recommendations in respect to every issue raised by the filing. A copy of the report shall be sent to the filer;

2. Within 30 days of the notification, the staff of the Department of Insurance shall review the filing;

3. The filer shall respond to the report and recommendations submitted by Rate Counsel within 10 days of its receipt.

(b) At any time prior to the date for issuance of the proposed decision, the Commissioner, may schedule a settlement conference(s) in his or her discretion, or upon request of all parties, to attempt to resolve any or all of the issues raised in the filing. At the conference, the parties shall attempt to resolve all issues raised in the filing or to isolate those issues in dispute.

1. It shall be within the Commissioner's discretion to permit transcription of the record at conference proceedings.

2. If settlement is reached on all or any of the issues, the settlement shall be reduced to writing and signed by the parties.

(c) The decision shall be based upon the filing and supporting documents submitted by the insurance company or rating organization, the report and recommendations submitted by Rate Counsel and the response submitted by the filer. No evidentiary hearing or oral argument shall be scheduled.

11:3-18.3 Discovery

(a) All requests for discovery shall be made in writing within ten days of receipt of notification of Rate Counsel's participation.

(b) Any party may obtain discovery by one or more of the following methods:

1. Written interrogatories;
2. Depositions;
3. Production of documents; or
4. Requests for admissions.

(c) No later than five days from receipt of a notice requesting discovery, the receiving party either shall move for relief or shall provide the requested information, material or access.

1. Any application for relief from an enforcement of a request for discovery must be by written motion.

2. In considering a discovery motion, the Commissioner shall weigh the specific need for the information; its relevance and materiality; the extent to which the information is within the control of the party; undue hardship; and matters of expense, privilege and oppressiveness.

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11:3-18.4 Motions

(a) Where a party seeks an order of the Commissioner, the party shall apply by motion.

1. Each motion shall be made in writing unless it is made orally during a conference.

2. Oral motions must be reduced to writing and delivered to the Commissioner within two days of their making.

3. A copy of each motion shall be simultaneously served upon the Commissioner and all other parties.

4. No technical forms of motion are required; a party shall state the grounds upon which the motion is made and the relief or order being sought.

5. A party shall submit a proposed form of order with each motion unless this requirement is waived by the Commissioner.

(b) The opposing party shall have five days to respond, in writing, to the motion. The moving party shall have three days to reply in writing to the response.

11:3-18.5 Review absent participation by the Division of Rate Counsel

(a) If Rate Counsel fails to exercise the right to participate, the Department of Insurance shall have 15 days from the date of the filing submission to request any necessary additional information. The filer shall comply with such request within five days.

(b) The procedures provided elsewhere in this subchapter, to the extent that they do not conflict with the provisions of this section, shall apply to matters in which Rate Counsel has chosen not to participate.

11:3-18.6 Delegation of Commissioner's Authority

(a) It shall be within the Commissioner's discretion, pursuant to N.J.S.A. 17:29A-26, to designate a deputy commissioner or salaried employee of the Department to conduct the conference or review and to issue a written report to the Commissioner on the matter delegated. A copy of the report shall be mailed immediately to each party. Any reference to the Commissioner in this subchapter shall include said designee.

11:3-18.7 Prohibition on ex parte contact

No ex parte contacts shall be made, on substantive matters affecting the filing, between the Commissioner and any interested party while the filing is pending.

11:3-18.8 Decision

(a) In those matters where the Rate Counsel filed a timely notice of participation, the Commissioner shall issue a proposed decision within 30 days of expiration of the review period. If Rate Counsel did not file a notice of participation, the Commissioner shall issue a proposed decision within 30 days of submission of the filing.

(b) The proposed decision shall be based on sufficient and credible evidence, shall contain findings of fact and conclusions of law, and shall be in such form that it may be adopted as the final decision in the case.

(c) Copies of the proposed decision shall be immediately mailed to the parties.

(d) Written exceptions may be filed with the Commissioner no later than ten days after issuance of the proposed decision.

(e) Upon expiration of the exception period, the Commissioner shall render the final decision within 20 days. Such final decision shall be immediately mailed to the parties.

11:3-18.9 Time limits; computation and enlargement

(a) In computing any period of time fixed by rule or order of the Commissioner, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or legal holiday. In computing a period of time of less than seven days, legal holidays shall be excluded.

(b) A period of time fixed by rule or order for the doing of any act may be enlarged or shortened by the Commissioner's order for good cause shown.

1. Requests for extension of any period must be submitted in writing prior to expiration of the period.

2. A copy of any request for extension must be served upon each party.

3. Extensions shall not be granted if inattention or procrastination cause delay, but shall be granted if the delay is attributable to honest mistake, accident, or any cause compatible with proper diligence.

(c) The running of any time period may be tolled by order of the Commissioner if a filing is found not to comply with Department of Insurance requirements until such time as any irregularity is corrected.

11:3-18.10 Appealability

The final decision of the Commissioner shall be appealable pursuant to the New Jersey Court Rules.

11:3-18.11 Contested case

If, during the course of the informal procedures described in this subchapter, the Commissioner determines, in his or her discretion, that the matter is not susceptible to resolution by use of these review procedures, the matter shall be deemed a contested case to be decided pursuant to the rules provided in N.J.A.C. 1:1-1 et seq. All discovery and activity shall be memorialized and the entire case filed sufficiently annotated so as to avoid unnecessary duplication of litigant activity.

11:3-18.12 Severability

If any provision of this subchapter shall be held invalid, the remainder of the subchapter shall not be affected thereby.

(a)

DIVISION OF ACTUARIAL SERVICES, LIFE AND HEALTH

Actuarial Services
Anuity and Deposit Fund Disclosure

Proposed New Rule: N.J.A.C. 11:4-9

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:30-1 et seq.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5,

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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, 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 1984-616.

The agency proposal follows:

Summary

The recent questionable financial stability of some life insurance companies selling annuities has created concern among annuity holders. Their concern illustrates the need for information to enable annuity holders to assess accurately the risks and contract provisions involved in annuities. The proposed new rule endeavors to lessen these concerns by requiring disclosure to consumers before they purchase annuities. The sources of the proposed new rule are the National Association of Insurance Commissioners (NAIC) model regulation and the State of Wisconsin's regulation Ins 2.15.

N.J.A.C. 11:4-9.1 through 9.3 of the proposed new subchapter contain, respectively, a statement of the purpose of the subchapter, a statement of the scope of the subchapter, and a definitions section.

N.J.A.C. 11:4-9.4 delineates the information requirements of a Contract Summary. A Contract Summary is a description of various elements of the annuity contract, such as the guaranteed interest rate and the amount of guaranteed annuity payments. The Contract Summary must be provided to the buyer, at or before the purchase. The Constract Summary will also be available upon reasonable request, thus allowing intelligent comparison of various annuities.

N.J.A.C. 11:4-9.5 sets forth requirements for preparation of the Contract Summary. For example, the Contract Summary must be a separate document and zero amounts are to be displayed as zero, not as blank spaces.

N.J.A.C. 11:4-9.6 lists disclosure requirements to alert consumers to the available information. Among the provisions of this section is a requirement that the insurer or its representative deliver a copy of the New Jersey Buyer's Guide to Annuities before accepting the buyer's initial payment. The Buyer's Guide is a publication describing features of annuity contracts to assist the investor in deciding whether annuities match his or her financial needs. If an insurer does not market annuities through representatives and sends the Contract Summary and Buyer's Guide directly to the consumer at the time of contract delivery, the insurer must, among other things, guarantee a full refund during the 30-day period following receipt of these documents. The insurer must also alert the prospective buyer to his or her right to obtain a copy of the Buyer's Guide and Contract Summary prior to sale.

N.J.A.C. 11:2-9.7 establishes 10 general requirements, including a mandate that insurers maintain a file of all documents required by this subchapter. The file must contain one copy of each authorized form for at least five years after its last use. The section also places the obligation of due diligence on the insurer or its representative to assess the suitability of an annuity for the prospective buyer.

N.J.A.C. 11:2-9.8 states that infractions of this subchapter constitute omissions which misrepresent the terms of the annuity contract issued or to be issued or the benefits or advantages promised thereby.

N.J.A.C. 11:4-9.9 concerns severability of the proposed new subchapter's provisions.

The Appendix, also part of the proposed new subchapter, contains the mandated language of the New Jersey Buyer's Guide to Annuities. The Buyer's Guide is limited to this language. The Buyer's Guide explains annuities in understandable terms and calls attention to the main features of annuities. The Buyer's Guide also lists various criteria for comparing annuities.

Social Impact

The proposed new subchapter enables any buyer or prospective buyer of annuities to receive relevant and comprehensive information about this investment vehicle. The proposed new rule allows consumers to compare different annuities on a meaningful basis. The disclosure required by the proposed new rule presents the consumer with a standardized statement, the Contract Summary, on annuities.

The proposed new rule places an affirmative obligation on the insurer or its representative to use due diligence in assessing the suitability of an annuity for the prospective buyer.

The proposed new rule also aids the Department of Insurance in enforcing N.J.S.A. 17B:30-1 et seq., Trade Practices and Discriminations.

Economic Impact

The Department will incur the costs of enforcing the new rule. The Department expects to absorb these costs within existing budgetary resources.

Insurers offering these annuities will incur the costs of printing and distributing the New Jersey Buyer's Guide to Annuities and the Contract Summary required by the proposed new rule. Insurers will also incur some incidental costs, such as maintaining a file of Contract Summary forms used.

Full text of the proposed new rule follows.

SUBCHAPTER 9. ANNUITIES

11:4-9.1 Purpose

(a) The purpose of this subchapter is to require insurers to deliver certain information to prospective buyers of deferred annuity contracts or of deposit funds, riders, or provisions accepted in conjunction with insurance policies or annuity contracts. The required information is designed to help the prospective buyer select an annuity benefit appropriate to the prospective buyer's needs, improve the prospective buyer's understanding of the basic features of the plan under consideration and improve the prospective buyer's ability to evaluate the relative benefits of similar plans.

(b) This subchapter does not prohibit the use of additional explanatory material which is not in violation of this or any other New Jersey rule or statute.

11:4-9.2 Scope

(a) Except as provided in (b) below, this subchapter shall apply to any solicitation, negotiation or procurement of an annuity occurring within this State. This subchapter shall apply to any issuer of life insurance policies or annuity contracts, including fraternal benefit societies.

(b) This subchapter shall not apply to:

1. Any security subject to Securities and Exchange Commission requirements under 15 U.S.C. 77a et seq.;

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2. Group annuity contracts, at least 25 percent of whose cost is borne by the annuitant's employer or by an association of which the annuitant is a member. This exception shall apply only if the employer pays part or all of the premiums from funds not otherwise available to the annuitant;

3. Immediate annuity contracts;

4. Policies or contracts issued in connection with employee benefit plans, except for policies or contracts issued in connection with plans providing for the purchase of annuity contracts solely by reason of salary reduction agreements currently under section 403(b) of the Internal Revenue Code;

5. Individual retirement accounts and individual retirement annuities as currently described in section 408 of the Internal Revenue Code;

6. A single advance payment of specified premiums equal to the discounted value of a contract which is not an annuity;

7. Settlement options under life insurance or annuity contracts; and

8. Charitable annuities.

11:4-9.3 Definitions

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

"Annuity" means all contracts defined in N.J.S.A. 17B:17-5 and shall include all annuity contracts, deposit funds, riders, or provisions accepted in conjunction with insurance policies or annuity contracts.

"Contract Summary" means a written statement to be provided to the buyer by the insurer or its representative, describing the elements of the annuity in the manner set forth in N.J.A.C. 11:4-9.4.

"Controlling interest" means possession of the power to direct or cause the direction of the management and policies of an insurer whether through the ownership of voting securities or otherwise.

1. 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 insurer. This presumption may be rebutted by showing control does not exist in fact. The Commissioner may determine control exists in fact, notwithstanding the presence of a presumption to that effect.

"Deferred premium annuity" means any annuity in which the interval between issue date and the first benefit payment, measured in months, is greater than the scheduled interval between the first and second benefit payments.

"Effective yield" means the effective annual interest rate at which the accumulation of 100 percent of all gross considerations used to determine the values shown in the illustrations would be equal to the guaranteed and illustrated cash surrender value or at maturity value.

"Immediate annuity" means any annuity in which the interval between issue date and the first benefit payment, measured in months, is less than or equal to the scheduled interval between the first and second benefit payments.

"Loading amount" means a charge deducted from each premium paid.

"New Jersey Buyer's Guide to Annuities" means the publication which contains, and is limited to, the language set forth in the Appendix.

11:4-9.4 Contract Summary

(a) The Contract Summary shall include:

1. A prominently placed title, CONTRACT SUMMARY, followed by an identification of the annuity to which the statement applies;

2. The name, address, and business telephone number of the insurance representative or, if no representative is involved, a statement of the procedure to be followed in order to receive responses to inquiries;

3. The full name, home office or administrative office, and telephone number of the insurer;

4. An investor service rating of the insurer with a short description of the rating system. A.M. Best Company is an acceptable rating service;

5. The full name and home office or administrative office of each person or entity which has a controlling interest in the insurer;

6. A prominent statement that THE GUARANTEED INTEREST RATE IS % PER YEAR FOR THE FIRST CONTRACT YEAR AND % PER YEAR THEREAFTER;

7. A statement as to whether the annuity provides any guaranteed death benefits during the deferral period;

8. A prominent statement that the contract does not provide cash surrender values, if that is the case;

9. A statement of the method by which, upon surrender, the interest is determined (including the date for interest computation) and when the surrender will be made, including deferral periods;

10. The amount of the guaranteed annuity payments at the scheduled commencement thereof, based on a presumption that all scheduled premiums are paid and that there are no prior withdrawals from or partial surrenders of the annuity and no indebtednes to the insurer on the contract. There shall be a statement to that effect;

11. For the cash values guaranteed and illustrated, the surrender value after

i. 1 year;

ii. 3 years;

iii. 5 years;

iv. 10 years;

v. 20 years;

vi. Any other later year when surrender value (other than annuitization) is less than total gross contributions paid in; and

vii. At least one age from 60 through 65 or the scheduled commencement of annuity payments.

12. For annuities under which guaranteed cash surrender values at any point during the deferral period are less than the total payments made, a prominent statement that such contract or fund may result in loss if kept for only a few years and showing the number of years such a loss potential exists, together with a reference to the schedule of guaranteed cash surrender values required in N.J.A.C. 11:4-9.4(a)11;

13. A statement of all fees, charges, and loading amounts that will or may be deducted from initial or subsequent premiums made or from cash values or at or prior to annuitization. Such amounts include but are not limited to any surrender penalties, discontinuance fees, market value adjustments, transaction fees, and account maintenance fees.

11:4-9.5 Preparation of Contract Summary

(a) The Contract Summary must be a separate document.

(b) All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure.

(c) Any amounts which remain level for two or more contract years may be represented by a single number if it is clearly indicated what amounts are applicable for each contract year.

(d) Amounts in N.J.A.C. 11:4-9.4(a)10, 12 and (b)1 shall, in the case of flexible premium annuities, be determined either according to an anticipated pattern of premium payments or

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based on the assumption that amounts payable will be a specified level amount, such as $100.00 or $1,000 per year.

(e) If not specified in the contract, annuity payments shall be assumed to commence at age 65 or 10 years from issue, whichever is later.

(f) A dividend scale or excess interest rate which has been publicly declared by the insurer with an effective date not more than two months subsequent to the date of declaration shall be considered a current dividend scale or a current excess interest rate, until the effective date is reached.

(g) Zero amounts shall be displayed as zero and shall not be displayed as blank spaces.

(h) Values for a rider or provision must be shown separately from those for a basic contract.

11:4-9.6 Disclosure requirements

(a) The insurer or its representative shall provide, to all prospective buyers of annuities subject to this subchapter, a copy of the current edition of the New Jersey Buyer's Guide to Annuities and a properly filled out Contract Summary at the time of application for the annuity contract, or in the case of a rider or provision, at the time of application for the associated insurance policy or annuity.

(b) Insurers which do not market contracts through a representative may provide the Contract Summary and the New Jersey Buyer's Guide to Annuities at contract delivery so long as they:

1. Guarantee to the buyer the right to return the contract for a full refund of premium any time during a 30-day period commencing on the date the buyer receives the Contract Summary and the New Jersey Buyer's Guide to Annuities;

2. Alert the prospective buyer, in advertisements or direct mail solicitations, of his or her right to obtain a copy of the New Jersey Buyer's Guide to Annuities and a Contract Summary prior to the sale.

(c) The insurer or its representatives shall provide a New Jersey Buyer's Guide to Annuities and a Contract Summary to individual prospective buyers upon reasonable request.

(d) The insurer or its representative shall provide a Contract Summary at the time of application, or delivery if direct solicitation, if it has not been delivered beforehand.

11:4-9.7 General requirements

(a) Each insurer shall maintain at its home office or principal office a complete file containing one copy of each form or other material authorized by the insurer for use pursuant to this subchapter. Such file shall contain one copy of each authorized form or other material for a period of at least five years following the date of its last authorized use.

(b) A representative shall inform the prospective buyer, prior to commencing a sales presentation, that the representative is acting as an insurance representative and shall inform the prospective buyer of the full name of the insurer which the representative is representing to the buyer. In sales situations in which a representative is not involved, the insurer shall identify its full name.

(c) Individuals who derive their income solely from insurance commissions shall be prohibited from referring to themselves by using terms such as "financial planner," "investment advisor," or "financial consultant." No insurance representative may use these terms in such a way as to imply that the insurance representative is generally engaged in an advisory business in which compensation is unrelated to sales, unless such is the case.

(d) Any oral or written reference to dividends or to excess interest credits must include a statement that such dividends or credits are not guaranteed.

(e) Any sales presentation for an annuity subject to the provisions of this subchapter which purports to show a yield in excess of the guaranteed yield or any items of similar import must disclose in an at least equally prominent manner the effective yields in the event of surrender at the end of 5, 10, and 20 years and at maturity.

(f) The insurer or its representative shall exercise due diligence in determining the suitability of an annuity for the prospective buyer. The insurer will make such a determination based upon information furnished by the prospective buyer; the insurer shall make reasonable inquiry as may be necessary and feasible under the circumstances concerning the prospective buyer's annuity needs and means.

(g) A presentation of benefits shall not display guaranteed and non-guaranteed benefits as a single sum unless guaranteed benefits are shown separately in close proximity thereto and with equal prominence.

(h) Sales promotion literature and contract forms shall not state or imply that annuities are the same as savings accounts or deposits in banking or savings institutions. The use of policies or certificates which resemble savings bank passbooks is prohibited.

(i) If an annuity is placed through a representative, the insurer must guarantee to the buyer the right to return the contract for a full refund of premium any time during a 15-day period commencing on the date the buyer receives the annuity contract.

(j) The Contract Summary or any other sales material may include illustrations or financial information, provided the following requirements are met:

1. Illustrative annuity payments or cash values on a current basis, which, if shown, shall be on the same basis as for N.J.A.C. 11:4-9.4 (a)10 except for guarantees, and may not be greater in amount than those based on:

i. The rate on which the company bases its current earnings projections, limited to projections of no more than five years; or

ii. The return the insurer credited to comparable annuities or would have credited, if it had issued annuities and based on its own (or industry, if the insurer lacks such experience) investment experience, for a comparable past period. For example, assume the insurer wishes to project interest rates for the next 20 years. The insurer must use a rate not greater than the insurer credited or would have credited to comparable annuities for the past 20 years.

2. Upon request, the insurer will provide, without charge, its audited income statements illustrating the past five years' performance and audited balance sheets for two years' performance, beginning with the most recent annual statement. The income statements and balance sheets shall be on a basis consistent with those submitted to the New Jersey Department of Insurance.

11:4-9.8 Failure to comply

Failure to comply with the provisions of this subchapter shall constitute an omission which misrepresents the terms of any annuity contract issued or to be issued or the benefits or advantages promised thereby and shall subject the offender to the penalties set forth under N.J.S.A. 17B:30-17.

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11:4-9.9 Severability of provisions

If any provision of this rule or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect the provisions or applications of this rule which can be given effect without the invalid provision or application, and for this purpose the provisions of this rule are severable.

APPENDIX

NEW JERSEY BUYER'S GUIDE TO ANNUITIES

FOR THOSE WHO ARE UNFAMILIAR WITH ANNUITY PRODUCTS, YOUR FAILURE TO READ THIS BUYER'S GUIDE MAY COST YOU MONEY.

What is an Annuity?

An annuity is a written contract between you and an insurance company. You pay the insurance company premiums now and the insurance company will pay you at regular intervals later.

The contract provides a guaranteed future income to you after you make one or more premium payments to the insurance company. An annuity is **not** a life insurance policy. It is not a savings account either, and should not be used as a short-term investment.

IF YOU TAKE YOUR MONEY OUT OF THE ANNUITY AFTER A SHORT TIME, YOU MAY GET BACK LESS THAN YOU PUT IN.

The main reason for buying an annuity should be to provide future income, like a nest egg for retirement purposes. Before buying an annuity, you should:

- Decide how much income you will need in the future in addition to pensions, social security, savings accounts, and other investments.
- Decide how much your current income or savings you can afford to put aside for this purpose.
- Be sure you can meet the payment schedules so that you won't have to cancel the contract in the early years.

Types of Annuities

Annuities can vary widely. You should examine the different features before buying an annuity and match the features to your needs. Features can vary regarding:

1. The time payments are received. Annuity contracts may be either immediate or deferred. Most annuities are deferred annuities; you pay premiums to the insurance company over a period of time and receive payments at a later date, often many years later. With immediate annuities, payments start shortly after you pay the premiums.

Income payments are usually made to you monthly, but other payment schedules are available.

2. The amount of payments. Income payments can be fixed or variable. Most annuities sold to individuals are fixed annuities. A fixed annuity provides a guaranteed amount of income, such as $100 per month. A variable annuity provides income which can change, depending on the insurance company's separate account containing its investments.

The amount of annuity payments is based on both the value of the contract and the contract's "benefit rate" when the annuity payments begin. This "benefit rate" depends on your age and sex, and on the annuity form you have chosen.

3. The type of income payment received.

a. Straight life. The annuity is paid as long as the person receiving the payments (annuitant) is alive. There are no further payments made to anyone after the death of the annuitant.

b. Life with period certain. These annuities also make payments for life but have a "period certain," in which payments are usually guaranteed for a set period (usually 10 to 20 years). If the annuitant dies before the "period certain," the annuity payments will be paid to the annuitant's beneficiary for the rest of the "period certain."

For example, suppose you get a life with period certain annuity with payments of $100 per month and a "period certain" of 10 years. Your beneficiary is your spouse in this example. If you die at the end of seven years, your spouse will receive the $100 per month for the remaining three years. Under a straight life annuity, discussed above, the payments would stop at your death.

c. Joint and survivor. These annuities make payments as long as either of two named annuitants is still living. For example, suppose you and your spouse buy a joint and survivor annuity with payments of $100 per month. If you die, the payments continue to the spouse until your spouse dies.

In some variations, the amount of the annuity is decreased after the first annuitant's death. A "period certain" may also be available with this form of annuity.

4. Generally, the longer the expected payout period, the smaller the payments you will receive for the same amount of the premium. For example, if you pay a premium of $1,000 and the expected payout period is 10 years, the payments may be $10.00 per month. If the expected payout period is 20 years, however, the payments may be $5.50 per month.

5. The size and frequency of premium payments.

a. Scheduled premium annuities. These annuities specify how much and how often you must pay premiums.

b. Flexible premium annuities. These annuities allow you to pay as much as you wish whenever you wish, within specified limits.

c. Single premium annuities. These annuities require you to pay the company only one premium.

6. The cash surrender benefits. Except for immediate annuities, most annuities build up cash values which you will get back if you surrender (stop paying premiums) before payments begin. This amount varies from contract to contract. If you surrender in the early years, you may get back less than you have paid to the company.

7. The death benefits. Death benefits in a deferred annuity are usually equal to either the premium paid to the company or the cash value, whichever is greater.

Charges

Charges which the company makes also vary widely. Some charges may be fixed when the annuity is issued; others may be charged by the company from time to time. A typical contract might contain one or more of the following types of charges. Companies may refer to these charges by different names.

Percentage of premium charge. This charge, often called a "load," is deducted from each premium paid. The percentage may go down after the contract has been in force for a certain number of years or after total premiums paid have reached a certain level.

Contract fee. This is a flat dollar amount charged either at issue or annually.

Transaction fee. This is a charge per premium payment or other transaction.

Surrender charge. This charge is usually a percentage of the value of the contract or of premiums paid. The percentage may be reduced or eliminated after the contract has been in force for a certain number of years.

Which Annuity Should I Buy?

To decide which type of annuity fits your needs, ask yourself:

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- Am I sure that I can afford the premiums and that I won't have to cancel the contract within the early years?
- Do I want fixed or variable payments?
- Do I want an income only for myself or for someone else also?
- Do I want to pay one single premium, a series of set premiums, or a flexible series of premiums?

Finding a Good Buy

Buying an annuity is a major financial decision which should be considered carefully. Here are some tips to help you decide:

- Be quite sure that you can afford the premiums. Find out what happens if you stop paying premiums before benefits begin.
- You must be given a Contract Summary when you buy an annuity. You can get one now if you ask for it. By obtaining the Contract Summary for similar annuities from several companies, you can compare them and select the best buy.
- Use the Contract Summary to compare the size of income payments and benefits received under similar annuities, as well as the size of the premiums. You should also be aware of the size of the cash surrender values, how long you will be putting money in, and the way the benefits are paid.
- Be sure to distinguish between guaranteed and non-guaranteed values in the contract. "Illustrated" values are based on current interest and dividend levels which may or may not apply in the future. Compare annuities using both illustrated and guaranteed values.
- Check the size of the cash surrender values in the early years of the contract compared to the premiums paid in. If you surrender an annuity contract during the first few years, you often will get back less than you have paid.
- Be sure you know the "effective yields at maturity." These yields are the interest rates your total premiums will earn to equal the illustrated and guaranteed cash values for the year benefits begin. Sometimes higher interest rates are quoted, but these are applied to only part of your premiums.
- The "effective yields at maturity" are useful for comparing similar annuities and for comparison with any "yield" or "return" you may have been shown. Do NOT use these yields, however, to compare the annuity with alternative investments. The tax treatment of annuities can differ from that of other investments.
- When tax savings are illustrated, find out what assumptions are used. Be sure the assumptions apply in your case, or the illustration will be meaningless to you.
- The IRS's 5% penalty tax only applies to early withdrawals you make from some accounts during the first 10 years or until you reach age 59½. The IRS deems each early withdrawal to be from the interest earned first and this is taxable as regular income.
- If you are thinking of buying an individual retirement account (IRA), be sure that you are eligible for the IRA. Be sure that you understand what will happen if you lose your eligibility or are unable to continue paying premiums for some other reason.
- Find a professional who understands annuities as part of a total financial picture. You may want to get advice from several people before making a final decision.
- Ask the agent and company for an explanation of anything you do not understand.

If you have a specific complaint or cannot get the answers you need from an agent or company, please contact:

Department of Insurance
CN 325
Trenton, New Jersey 08625
Attn: Life and Health Complaints.

(a)

DIVISION OF ACTUARIAL SERVICES, LIFE AND HEALTH

Minimum Standards Required Disclosure Provisions

Proposed Amendment: N.J.A.C. 11:4-16.8

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:26-45, 17B:26A-1 et seq.

Interested persons may submit in writing, data, views or argument relevant to the proposal on or before December 5, 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.

This proposal is known as PRN 1984-618.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 11:4-16.8 alters two provisions of the rule to make it consistent with the proposed new rule N.J.A.C. 11:4-23, Medicare Supplement Policies and Contracts. The proposed amendments bring New Jersey into compliance with Federal requirements regarding Medicare Supplement policies and contracts (42 U.S.C. 1395ss).

The proposed amendment to N.J.A.C. 11:4-16.8(l)14 reflects the requirement that the insurer obtain a written receipt for the shopper's guide to health insurance from the person receiving it.

The proposed amendment to N.J.A.C. 11:4-16.8(l) requires that the outline of coverage state whether the Medicare Supplement policy or certificate covers certain costs. An example would be whether private duty nursing is covered.

Social Impact

The proposed amendments add protection for senior citizens. The written receipt for the shopper's guide and the

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description of certain coverage provide assurances that senior citizens receive relevant information about Medicare Supplement coverage.

Economic Impact

The Department of Insurance will incur the cost of enforcing the new rule. The Department expects to absorb these costs within existing budgetary resources.

Insurers offering Medicare Supplement policies will incur the costs of printing the written receipts of the shopper's guide and altering the policies to describe coverage in the specified areas.

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

11:4-16.8 Required disclosure provisions

(a) General rules include the following:

1.-13. (No change)

14. A shopper's guide to health insurance for senior citizens authorized by the Commissioner shall be furnished to each Medicare eligible person in connection with purchase of a health insurance policy other than a short-term nonrenewable policy. Delivery of the shopper's guide shall be made at the time of application except in the case of direct response solicitations where the shopper's guide shall be delivered with the policy. **Acknowledgement of receipt of the shopper's guide shall be obtained by the insurer.**

(b)-(k) (No change).

(l) An outline of coverage regarding Medicare supplement coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of N.J.A.C. 11:4-16.6(j). The items included in the outline of coverage must appear in the sequence set forth as follows:

(COMPANY NAME AND ADDRESS)
(POLICY NUMBER WHEN AVAILABLE)
MEDICARE SUPPLEMENT COVERAGE
OUTLINE OF COVERAGE

1.-3. (No change in text.)

4. (Statement that the policy (certificate) does or does not cover the following:)

i. Private duty nursing;

ii. Skilled nursing home care costs (beyond what is covered by Medicare);

iii. Custodial nursing home care costs;

iv. Intermediate nursing home care costs;

v. Home health care above number of visits covered by Medicare;

vi. Physician charges (above Medicare's reasonable charge);

vii. Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay);

viii. Care received outside of USA:

ix. Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for or the cost of eyeglasses or hearing aids.

[4.] **5.** (A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in [3] **4** above.)

[5.] **6.** (A description of policy provisions respecting renewability or continuation of coverage, including any reservation of right to change premiums.)

FOR ADDITIONAL INFORMATION ABOUT POLICY BENEFITS OR CLAIMS, TELEPHONE (COLLECT) (TOLL FREE) (LOCAL NUMBER)

(m)-(o) (No change).

(a)

DIVISION OF ACTUARIAL SERVICES, LIFE AND HEALTH

Actuarial Services
Medicare Supplement Policies and Contracts

Proposed New Rule: N.J.A.C. 11:4-23

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:35C-1 et seq., 17B:26A-1 et seq.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 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 08525

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 1984-617.

The agency proposal follows:

Summary

The United States Congress amended Title XVIII of the Social Security Act (42 U.S.C. 1395ss) to establish a combined Federal and State system regulating the sale of Medicare Supplement policies to individuals eligible for Medicare by reason of age. The New Jersey General Assembly, in N.J.S.A. 17:35C-5, C-6, and 17B:26A-2, A-5, and A-6, mandated that the Commissioner of Insurance promulgate regulations for Medicare Supplement contracts and policies. The mandated regulations must set standards for benefits and for loss ratios. The proposed new subchapter sets forth requirements for Medicare Supplement policies, contracts and certificates marketed in the State of New Jersey. Individual Medicare Supplement policies are covered in N.J.A.C. 11:4-16.8. N.J.A.C. 11:4-23 also requires a disclaimer to be printed on certain policies other than Medicare Supplement.

N.J.A.C. 11:4-23.1 through 23.3 of the proposed new subchapter contain, respectively, a statement of the purpose of

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the subchapter, a statement of the applicability and scope of the subchapter, and a definitions section. N.J.A.C. 11:4-23.3 defines "Medicare Supplement policy" to include Medicare Supplement contracts.

N.J.A.C. 11:4-23.4 limits the language used in Medicare Supplement policies. No policy may be advertised, solicited, or issued for delivery in New Jersey as a Medicare Supplement policy unless the policy contains definitions or terms conforming to this section.

N.J.A.C. 11:4-23.5 lists provisions which are prohibited from inclusion in Medicare Supplement policies. Such policies may limit or exclude only certain enumerated conditions but several of those limitations or exclusions cannot be more restrictive than those under Medicare. Medicare Supplement policies may neither duplicate the benefits of Medicare Part A or Part B nor may these policies exclude, limit, or reduce coverage or benefits for specifically named or described pre-existing diseases or conditions.

N.J.A.C. 11:4-23.6 sets minimum benefit standards. The section lists both prohibited and prescribed characteristics of Medicare Supplement policies. For example, a Medicare Supplement policy may not indemnify on a different basis against losses resulting from sickness as opposed to losses resulting from accidents. An example of a minimum benefit standard prescribed for Medicare Supplement policies is coverage of Part A Medicare hospitalization expenses not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.

N.J.A.C. 11:4-23.7 sets loss ratio standards. Medicare Supplement policies are expected to return, in the aggregate, benefits of at least 75 percent of the amount of premiums or subscription charges collected for group policies. The expected return for individual policies is 65 percent, subject to the same conditions as group policies.

N.J.A.C. 11:4-23.8 details required disclosure provisions. This section requires all issuers of Medicare Supplement policies to deliver to applicants an authorized "buyer's guide" to Medicare Supplement. Furthermore, any insurer or service corporation issuing Medicare Supplement policies for delivery in New Jersey must provide an "outline of coverage" to all applicants at the time the application is made. The outline describes the coverage offered by Medicare Supplement policies and requires statements that the policy does or does not cover certain types of care. The proposed new rule sets forth a prescribed form for the outline. Except for direct response policies, acknowledgement of receipt of the outline shall be obtained from the applicant.

N.J.A.C. 11:4-23.8 also places a requirement on issuers of certain policies other than Medicare Supplement policies. If a group health insurance policy or an individual or group subscriber contract issued for delivery in New Jersey to persons eligible for Medicare by reason of age is not a Medicare Supplement policy, then the policy must carry a disclaimer. The disclaimer must be in no less than 12-point type, must state that the policy is not a Medicare Supplement policy and must urge the applicant to review the Medicare Supplement Buyer's Guide if the applicant is eligible for Medicare.

N.J.A.C. 11:4-23.9 details the procedures an insurer or service corporation must use regarding Medicare Supplement policies written as a replacement for another accident and sickness policy. The notice presents some factors to consider before replacing a policy, such as pre-existing conditions which may not be covered immediately under a new policy. The insurer or service corporation, including direct response policies, must furnish the applicant with a notice regarding replacement of accident and sickness coverage. The proposed new subchapter prescribes the language of the notice. This notice must be sent prior to issuance or delivery of the Medicare Supplement policy, if the insurer or service corporation is not using a direct response method of marketing. A direct response insurer or service corporation must deliver the notice at the time of issuance of the policy.

N.J.A.C. 11:4-23.10 concerns the severability of the proposed new rule's provisions.

Social Impact

The proposed new subchapter establishes protections for New Jersey's senior citizens. The proposed new subchapter requires that senior citizens receive relevant information about Medicare Supplement policies. The "outline of coverage" required by the proposed new subchapter presents applicants with a clear statement of coverage provided by these policies. The required notice of factors to consider when replacing policies will allow applicants to decide intelligently whether to replace their policies with Medicare Supplement policies.

The proposed new subchapter allows Medicare Supplement policies to remain distinct from other sickness and health policies, alleviating some present confusion in the marketplace.

The proposed new rule brings the Department of Insurance into compliance with Federal and State requirements.

Economic Impact

The Department of Insurance will incur the cost of enforcing the new subchapter. The Department expects to absorb these costs within existing budgetary resources.

Insurers offering Medicare Supplement policies will incur the costs of printing and distributing the buyer's guide, the policy "outlines of coverage," and the replacement notices. Insurers offering other forms of group health insurance or individual or group subscriber contracts issued to persons eligible for Medicare by reason of age will incur the cost of printing the disclaimer that their policies are not Medicare Supplement policies.

Full text of the proposed new rule follows.

AGENCY NOTE: This rule shall become effective 120 days after adoption.

SUBCHAPTER 23. MEDICARE SUPPLEMENT POLICIES AND CONTRACTS

11:4-23.1 Purpose

This subchapter provides for the reasonable standardization of coverage and simplification of terms and benefits of Medicare Supplement policies, contracts and certificates issued on a group basis; to facilitate public understanding and comparison of such policies and contracts; to eliminate provisions contained in such policies which may be misleading or confusing in connection with their purchase or with the settlement of claims; and to provide for full disclosure in the sale of health insurance and service corporation coverages to persons eligible for Medicare by reason of age.

11:4-23.2 Applicability and scope

(a) Except as otherwise specifically provided, this subchapter shall apply to:

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1. All group Medicare Supplement policies and individual and group subscriber Medicare Supplement contracts delivered or issued for delivery in this State on or after the effective date;

2. All certificates issued under group Medicare Supplement policies or subscriber contracts, which policies or contracts have been delivered or issued for delivery in this State.

(b) This subchapter shall not apply to:

1. Individual health insurance policies delivered or issued for delivery in this State;

2. Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of this regulation; or

3. Medicare Supplement policies or subscriber contracts issued to employees or members as additions to franchise plans in existence on the effective date of this regulation.

11:4-23.3 Definitions

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

"Applicant" means:

1. In the case of a group Medicare Supplement policy, the proposed certificate holder;

2. In the case of an individual Medicare Supplement subscriber contract, the person who seeks to contract for hospital or medical service benefits;

3. In the case of a group Medicare Supplement subscriber contract, the person eligible for service benefit coverage.

"Certificate" means:

1. Any certificate issued under a group Medicare Supplement policy, which policy has been delivered or issued for delivery in this State;

2. Any certificate issued under an individual or group Medicare Supplement contract, which contract has been delivered or issued for delivery in this State.

"Medicare Supplement policy" means:

1. A group accident and sickness insurance policy which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare by reason of age. The term does not include:

i. A policy of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

ii. A policy of any professional, trade or occupational association for its members or former retired members, or combination thereof, if the association:

(1) Is composed of individuals who are actively engaged in the same profession, trade or occupation;

(2) Has been maintained in good faith for purposes other than obtaining insurance; and

(3) Has been in existence for at least 2 years prior to the date of its initial offering of the policy or plan to its members.

iii. Individual policies issued pursuant to a conversion privilege under a policy of group or individual insurance when the group policy includes provisions which are inconsistent with the requirements of this subchapter; or

2. A group or individual subscriber contract which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare by reason of age. The term does not include:

i. A contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees or combination thereof or for members or former members, or combination thereof, of the labor organizations; or

ii. A contract of any professional, trade or occupational association for its members or former or retired members, or combination thereof, if the association:

(1) Is composed of individuals all of whom are actively engaged in the same profession, trade or occupation;

(2) Has been maintained in good faith for purposes other than obtaining hospital or medical service benefits;

(3) Has been in existence for at least 2 years prior to the date of its initial offering of the contract or plan to its members.

iii. Individual contracts issued pursuant to a conversion privilege under a contract of group or individual service benefits when the group or individual contract includes provisions which are inconsistent with the requirements of this subchapter.

11:4-23.4 Policy definitions and terms

(a) No group insurance policy or individual or group subscriber contract may be advertised, solicited, or issued for delivery in this State as a Medicare Supplement policy unless such policy or subscriber contract contains definitions or terms which conform to the requirements of this section.

1. "Accident," "accidental injury," or "accidental means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

i. The definition of injury shall not be more restrictive than an accidental bodily injury sustained by the covered person which is the direct cause of the loss, independent of disease, bodily infirmity or any other cause, and which occurs while insurance or service corporation coverage is in force.

ii. Such definition may provide that injuries shall not include injuries for which benefits are provided under any workers' compensation, employer's liability or similar law, mandatory motor vehicle no-fault plan, unless prohibited by law, or injuries occurring while the covered person is engaged in any activity pertaining to any trade, business, employment, or occupation for wage or profit.

2. "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined in the Medicare program.

3. "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall be defined in relation to its status, facilities and available services.

i. A definition of such home or facility shall not be more restrictive than one requiring that it:

(1) Be operated pursuant to law;

(2) Be approved for payment of Medicare benefits or be qualified receive such approval, if so requested;

(3) Be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;

(4) Provide 24-hour nursing service by or under the supervision of a registered graduate professional nurse (R.N.); and

(5) Maintain a daily medical record of each patient.

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ii. The definition of such home or facility may provide that such term shall not be inclusive of:

(1) Any home facility, or part thereof used primarily for rest;

(2) A home or facility for the aged or for the care of drug addicts or alcoholics; or

(3) A home or facility primarily used for the care and treatment of mental diseases or disorders, or custodial or educational care.

4. "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals.

i. The definition of the term "hospital" shall not be more restrictive than one requiring that the hospital:

(1) Be an institution operated pursuant to law;

(2) Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic, and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which a charge is made; and

(3) Provide 24-hour nursing service by or under the supervision of registered graduate professional nurses (R.N.'s).

ii. The definition of the term "hospital" may state that such term shall not be inclusive of:

(1) Convalescent homes, convalescent, rest, or nursing facilities;

(2) Facilities primarily affording custodial, educational, or rehabilitory care;

(3) Facilities for the aged, drug addicts, or alcoholics; or

(4) Any military or veterans' hospital or soldiers' home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.

5. "Medicare" shall be defined in the policy or subscriber contract. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Laws 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

6. "Medicare eligible expenses" shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers or hospital or medical service corporations for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims.

7. "Mental or nervous disorders" shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.

8. "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.). If the words "nurse," "trained nurse," or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer or hospital or medical service corporation to recognize the services of any individual who qualified under such terminology in accordance with the applicable statutes or administrative rules of the Board of Nursing or any other registry board of the State.

9. "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician." The use of such terms requires an insurer or hospital or medical service corporation to recognize and to accept, to the extent of its obligation under the policy or contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

10. "Preexisting condition" shall not be defined more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

11. "Sickness" shall not be defined more restrictively than a sickness or disease which causes loss commencing while the insurance or coverage is in force and which is not excluded under a preexisting condition limitation. The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law.

11:4-23.5 Prohibited provisions

(a) No Medicare Supplement policy may be advertised, solicited, or issued for delivery in this State if such policy limits or excludes coverage by type of illness, accident, treatment, or medical condition, except as follows:

1. Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;

2. Mental or emotional disorders, alcoholism and drug addiction;

3. Illness, treatment, or medical condition arising out of:

i. War or act of war (whether declared or undeclared), participation in a riot or insurrection, service in the armed forces or units auxilliary thereto;

ii. Suicide (while sane or insane), attempted suicide, or intentionally self-inflicted injury;

iii. Aviation, other than as a fare paying passenger on a regularly scheduled airline;

4. Cosmetic surgery, except that "cosmetic surgery" shall not include reconstructive surgery when such surgery is incidental to or follows surgery resulting from trauma, infection, or other diseases of the involved part;

5. Care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment, or subluxation in the vertebral column;

6. Treatment provided in a governmental hospital, benefits provided under Medicare or other governmental program (except Medicaid), any State or Federal workers' compensation, employer's liability or occupational disease law, or any mandatory motor vehicle no-fault law, services rendered by employees of hospitals, laboratories, or other institutions, services performed by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance or service benefits;

7. Dental care or treatment;

8. Eyeglasses, hearing aids, and examination for the prescription or fitting thereof;

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9. Rest cures, custodial care, transportation, and routine physical examinations;

10. Territorial limitations.

(b) Medicare Supplement policies may not contain limitations or exclusions of the type enumerated in (a) 1, 5, 9, or 10 above that are more restrictive than those of Medicare.

(c) No Medicare Supplement policy may provide benefits which duplicate the benefits available to a covered person under Part A or Part B of Medicare.

(d) No Medicare Supplement policy may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

11:4-23.6 Minimum benefit standards

(a) No group insurance policy or individual or group subscriber contract may be advertised, solicited, or issued for delivery in this State as a Medicare Supplement policy which does not meet the minimum standards contained in this section. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(b) The following general standards apply to Medicare Supplement policies and are in addition to all other requirements of this regulation:

1. A Medicare Supplement policy may not deny a claim for losses incurred as a result of a preexisting condition after six months from the effective date of coverage;

2. A Medicare Supplement policy may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents;

3. A Medicare Supplement policy shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amounts and copayment percentage factors. Premiums or subscription charges may be modified to correspond with such changes;

4. A Medicare Supplement policy shall not:

i. Provide for termination of coverage of an eligible spouse because of the termination of coverage of the insured, or subscriber, other than for nonpayment of premium; or

ii. Provide for termination of a covered person's coverage by the insurer or hospital or medical service corporation solely on the grounds of age or deterioration of health.

5. Termination of a Medicare Supplement policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the covered person limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(c) The minimum benefit standards prescribed for Medicare Supplement policies are:

1. Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through 90th day in any Medicare benefit period;

2. Coverage of Part A Medicare eligible expenses incurred as daily hospital charges to the extent not covered by Medicare during use of Medicare's lifetime hospital inpatient reserve days;

3. Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

4. Coverage of Part B Medicare eligible expenses to the extent not covered by Medicare, subject to a maximum calendar year out-of-pocket deductible of $200.00 of such expenses and to a maximum calendar year benefit of at least $5,000.

11:4-23.7 Loss ratio standards

(a) Medicare Supplement policies shall be expected to return to policyholders in the form of aggregate benefits under the policy, as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such period and in accordance with accepted actuarial principles and practices:

1. At least 75 percent of the aggregate amount of premiums or subscription charges collected in the case of group policies.

2. At least 65 percent of the aggregate amount of premiums or subscription charges collected in the case of individual policies.

(b) Medicare Supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies under (a) above.

11:4-23.8 Required disclosure provisions

(a) General rules concerning required disclosure provisions include the following:

1. Medicare Supplement policies shall include a renewal, continuation, or nonrenewal provision. The language or specifications of such provision must be consistent with the type of policy to be issued. Such provision shall be appropriately captioned and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. Such provision shall appear on the first page of individual policies and certificates.

2. Except for riders or endorsements by which the insurer or hospital or medical service corporation effectuates a request made in writing by the insured or subscriber or exercises a specifically reserved right under a Medicare Supplement policy, all riders or endorsements added after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage shall require signed acceptance by the insured or subscriber. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium or subscription charge during the policy term must be agreed to in writing signed by the insured or subscriber, except if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth clearly.

3. A Medicare Supplement policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

4. If a Medicare Supplement policy contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph in the policy and be labeled as "Preexisting Condition Limitations," "Preexisting Condition Exclusions," or words of similar import.

5. Medicare Supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page or attached thereto stating in substance that the policyholder or

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certificateholder shall have the right to return the policy or certificate within 10 days of its delivery and to have the premium or subscription charge refunded if, after examination of the policy or certificate, the insured person or subscriber is not satisfied for any reason. Medicare Supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for Medicare by reason of age shall have a notice prominently printed on the first page or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium or subscriber charge refunded if after examination the insured person or subscriber is not satisfied for any reason.

6. Insurers and hospital or medical service corporations issuing policies, certificates or subscriber contracts which provide hospital or medical expense coverage on an expense incurred, indemnity, or service benefit basis, other than incidentally, to a person(s) eligible for Medicare by reason of age shall provide for delivery to all applicants a Medicare Supplement "buyer's guide" in the form authorized by the Commissioner. The "buyer's guide" shall be delivered whether or not such policies, certificates, or subscriber contracts are advertised, solicited, or issued as Medicare Supplement policies. Except in the case of direct response insurers or service corporations, delivery of the "buyer's guide" shall be made to the applicant at the time of application, and acknowledgement of receipt of the "buyer's guide" shall be obtained by the insurer or service corporation. Direct response insurers or service corporations shall deliver the "buyer's guide" to the applicant upon request but not later than at the time the policy or certificate is delivered.

7. Except as otherwise provided in (c) below, the terms "Medicare Supplement," "Medigap," and words of similar import shall not be used unless the policy or contract is issued in compliance with N.J.A.C. 11:4-23.6.

(b) Outline of Coverage requirements for Medicare Supplement policies include:

1. Insurers or service corporations issuing Medicare Supplement policies for delivery in this State shall provide an outline of coverage to all applicants at the time application is made. Except for direct response policies, acknowledgement of receipt of such outline shall be obtained from the applicant.

2. If an outline of coverage is provided at the time of application and the Medicare Supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate actually issued must accompany such policy or certificate when it is delivered and contain the following statement, in no less than 12-point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

3. The outline of coverage provided to applicants pursuant to (b)2 above shall be in the form prescribed below:

(COMPANY NAME)
OUTLINE OF MEDICARE
SUPPLEMENT COVERAGE

1. Read Your Policy (Certificate) Carefully—This outline of coverage provides a very brief description of the important features of your Policy (Certificate). This is not the insurance (subscriber) contract and only the actual policy (contract) provisions will control. The policy (certificate) itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY (CERTIFICATE) CAREFULLY!

2. Medicare Supplement Coverage—Policies (Certificates) of this category are designed to supplement Medicare by covering some hospital, medical, and surgical services which are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by Medicare and subject to other limitations which may be set forth in the policy (certificate). The policy (certificate) does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing, and taking medicines. (Delete if such coverage is provided.)

3. (i) for Agents:

Neither (insert company's name) nor its agents are connected with Medicare.

(ii) Direct responses:

(insert company's name) is not connected with Medicare.

4. (A brief summary of the major benefit gaps in Medicare Parts A & B with a parallel description of supplemental benefits, including dollar amounts, provided by the Medicare Supplement coverage in the following order:)

SERVICE	BENEFIT	MEDICARE PAYS	THIS COVERAGE PAYS	YOU PAY
HOSPITALIZATION Semi-private room and board, general nursing and miscellaneous hospital services and supplies.	First 60 days	All but ($356)		
	61st to 90th day	All but ($89)		
Includes meals, special care units, drugs, lab test, diagnostic x-rays, medical supplies, operating and recovery room, anesthesia and rehabilitation	91st to 150th day	All but ($178) a day		
	Beyond 150 days	Nothing		
POST-HOSPITAL SKILLED NURSING CARE . . . In a facility approved by Medicare, you must have been in a hospital for at least three days.	First 20 days	100% of costs		
	Additional 80 days	All but ($45) a day		
	Beyond 100 days	Nothing		
MEDICAL EXPENSES	Physician's services, inpatient and outpatient medical services and supplies at a hospital, physical and speech therapy and ambulance.	80% of reasonable charge (after ($75) deductible)		

5. (Statement that the policy (certificate) does or does not cover the following:)

(i) Private duty nursing,

(ii) Skilled nursing home care costs (beyond what is covered by Medicare),

(iii) Custodial nursing home care costs,

(iv) Intermediate nursing home care costs,

(v) Home health care above number of visits covered by Medicare,

(vi) Physician charges (above Medicare's reasonable charge),

(vii) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay),

(viii) Care received outside of U.S.A.,

(ix) Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for or the cost of eyeglasses or hearing aids.

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6. (A description of any policy (certificate) provisions which exclude, eliminate, resist, reduce, limit, delay, or in any other manner operate to qualify payments of the benefits described in N.J.A.C. 11:4-23.8(6) above. Also include conspicuous statements:

(i) That the chart summarizing Medicare benefits only briefly describes such benefits;

(ii) That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.)

7. (A description of policy (certificate) provisions respecting renewability or continuation of coverage, including any reservation of rights to change premium (subscription charge).)

8. The amount of premium (subscription charge) for the policy (certificate).

(c) Any group health insurance policy or individual or group subscriber contract, other than a Medicare Supplement policy, issued for delivery in this State to persons eligible for Medicare by reason of age shall notify insureds under the policy or subscriber contract that the policy or subscriber contract is not a Medicare Supplement policy. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy or subscriber contract, or, if no outline of coverage is delivered, to the first page of the certificate or subscriber contract delivered to insureds. Such notice shall be in no less than 12-point type and shall contain the following language:

"THIS IS NOT A MEDICARE SUPPLEMENT (POLICY OR CERTIFICATE). If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."

11:4-23.9 Requirements for replacement

(a) Application forms shall include a question designed to elicit information as to whether a Medicare Supplement policy is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.

(b) Upon determining that a sale will involve replacement, an insurer or service corporation, or its agent, shall furnish to the applicant, prior to the issuance or delivery of the Medicare Supplement policy a notice regarding replacement of accident and sickness coverage. One copy of such notice shall be provided to the applicant, and an additional copy signed by the applicant shall be retained by the insurer or service corporation. A direct response insurer or service corporation shall deliver to the applicant at the time of the issuance of the policy (certificate) the notice regarding replacement of accident and sickness coverage. In no event, however, will such a notice be required in the replacement of "accident only" coverage.

(c) The notice required by (b) above for other than a direct response insurer or service corporation shall be the following:

NOTICE TO APPLICANT REGARDING
REPLACEMENT OF
ACCIDENT AND SICKNESS COVERAGE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness coverage and replace it with coverage to be issued by (Company Name). Your new certificate provides ten (10) days within which you may decide without cost whether you desire to keep the coverage. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the protection available to you under the new policy.

(1) Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy whereas a similar claim might have been payable under your present coverage.

(2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. That is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to answer truthfully and completely all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium (subscription charge) as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above "Notice of Applicant" was delivered to me on:

_____
(Date)

_____
(Applicant's Signature)

(d) The notice required by above for a direct response insurer or service corporation shall be as follows:

NOTICE OF APPLICANT REGARDING
REPLACEMENT OF
ACCIDENT AND SICKNESS COVERAGE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness coverage and replace it with the policy delivered herewith issued by (Company Name). Your new policy provides thirty (30) days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the protection available to you under the new policy.

(1) Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) (To be included only if the application is attached to the policy.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (Company Name and Address) within ten

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(10) days if any information is not correct and complete, or if the past medical history has been left out of the application.

_____
(Company Name)

(e) Item (1) of the notice set forth in N.J.A.C. 11:4-23.9(c) and (d) above may be omitted if preexisting conditions are covered under the new coverage.

11:4-23.10 Severability

If any provision of this rule or the application thereof to any person or circumstance if for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Residential Rental Referral Agencies

Proposed New Rule: N.J.A.C. 11:5-1.32

Authorized by: Kenneth D. Merin, Acting Commissioner, Department of Insurance.
Authority: N.J.S.A. 45:15-6

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 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
201 East State Street
CN 325
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 becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-595.

The agency proposal follows:

Summary

The proposed new rule, N.J.A.C. 11:5-1.32, replaces the previous rule on rental referral agencies which expired pursuant to Executive Order 66 (1978) and was not readopted last year. The proposed new rule regulates the rental referral business by confirming that the companies need real estate licenses and by requiring compliance with certain minimum practice standards.

In 1981, the Commission promulgated the predecessor N.J.A.C. 11:5-1.32, which provided that rental referral agencies could not collect more than $10.00 until the prospective tenant located suitable rental housing through their service. This rule sought to correct widespread abuses by limiting the amount paid until the service was fully rendered. Unfortunately, the business response was to return for cancellation the companies' real estate licenses, asserting that they were no longer in the real estate business but rather in the publishing business. Enforcement of the previous regulation became impossible as there was no voluntary compliance whatsoever. The rental referral agencies found themselves unable to meet expenses at the $10.00 price level, and also found collection of the balance of their fees extremely difficult. Consumer complaints became more, not less, numerous.

Beginning in late 1982, the Commission began a series of prosecutions of unlicensed agencies for engaging in the real estate brokerage business without being licensed to do so. Many companies then sought to be licensed; others closed in response to this enforcement effort. Enforcement of the predecessor N.J.A.C. 11:5-1.32 was relaxed to permit licensed agencies to collect their entire fee at the beginning, but only if sufficient security was provided to ensure that the services would be rendered.

The Commission realized, however, that voluntary compliance with the rule was necessary to enable enforcement resources to concentrate on unlicensed companies. Those companies applying for and receiving real estate licenses agreed to follow the guidelines contained in this new rule.

The new rule is proposed to control what the Commission perceives as the causes of consumer abuses. First, the proposed new rule requires the rental referral agency to enter into a written contract with the consumer, which accurately describes the service provided. Many consumer complaints result from a misunderstanding of what the rental referral agency will do. The agencies and their personnel are often responsible for the misunderstanding because consumer expectations built up through advertising and assurances are later dashed when the consumer cannot find appropriate rental housing. Second, rental referral agencies must verify the continued availability of the property with the landlord, and must not disseminate information not recently verified. The most common consumer complaint has been that the properties to which they are referred have long since been rented. Responsible companies regularly verify the continued availability of the property as a matter of course. Other common consumer complaints involve a lack of telephone lines (busy signals) and adequate staff to service the consumers on a continuing basis.

The proposed new rule seeks to ensure that services to be rendered over time are secured by one of three procedures. First, the agency may choose to charge an initial registration fee of up to $25.00 with the balance of the fee to be paid upon the completion of all services. Second, the agency may choose to collect the entire fee immediately, but place the portion in excess of $25.00 in its broker's escrow account until the services are completely rendered. Third, the company may choose to post cash security. Experience over the past year with licensed agencies choosing this option has not resulted in any payments from these funds. The companies have chosen to make voluntary refunds in appropriate circumstances at the Commission's request.

In order to assist in enforcement, the proposed new rule requires the licensee to maintain necessary records involving their dealings with landlords and prospective tenants. These records include licensees' verification of the continuing availability of the property. Records must be maintained for one year so that consumer complaints may be properly investigated. Finally, a copy of this rule must be posted on the licensed premises to promote consumer awareness of their rights and of agencies' responsibilities.

Enforcement of the previous rule proved to be impossible because the practical effect was an impact on the market;

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market forces are difficult to control by fiat. Market demand exists for these services, as evidenced by the continued public use of them even in the face of substantial adverse publicity. The proposed new rule establishes minimum standards for the conduct of business, in response to the most prevalent abuses. The proposed rule seeks to inform the consumer what he or she is buying, confirming the integrity of the service purchased, and to ensure that services rendered over time will be provided.

Subsection (a) requires rental referral agencies to comply with all licensing and regulatory requirements for other real estate licensees as well as the specific provisions of the proposed new rule. Subsection (b) requires rental referral agencies to describe in a written contract the services to be performed and other necessary consumer information. Subsection (c) forbids certain enumerated abuses. Subsection (d) requires that a lessor's oral consent to refer prospective tenants be confirmed in writing within 24 hours. Subsections (e) and (f) compel rental referral agencies to verify with landlords the rental information they distribute. Under subsection (g), rental referral agencies must maintain sufficient telephone lines and staff to service ongoing contracts. Subsection (h) lists the two methods by which a licensee may charge or accept an initial fee greater than $25.00 from a prospective tenant. Subsection (i) requires the agencies to maintain written records for inspection by Real Estate Commission enforcement personnel. Subsection (j) requires that a copy of the rule be posted to inform the consuming public.

The proposed new rule represents a departure from previous attempts at regulating rental referral businesses. The rule seeks to address the problems consumers face in dealing with these businesses.

Social Impact

The proposed new rule should have a substantial positive impact on individuals desiring to rent residential properties. The proposed new rule requires that prospective tenants know what services they are buying; that the continued availability of the premises has been verified within a reasonable time; that there are assurances that services will continue to be provided; and that there is a State agency supervising the provider of the services.

The proposed new rule will increase the accountability of rental referral agencies to both the public and the Real Estate Commission. The Real Estate Commission will be better able to ascertain whether the rental referral agencies are complying with acceptable business standards in the conduct and operation of the rental referral business.

Economic Impact

Rental referral agencies are expected to incur additional administrative costs in fulfilling the requirements of providing standardized correspondence to clients, rental referral contracts and in licensing staff. Retention of records by the rental referral agency will also be increased as a result of the proposed new rule.

Existing licensed businesses that meet the standards proposed in the new rule are not expected to incur any additional costs.

The Real Estate Commission staff will experience an increased workload as a result of reviewing records as specified in the proposal.

Full text of the proposal follows.

11:5-1.32 [Reserved] Residential rental referral agencies

(a) Every person engaged in the business of referring, for a fee, prospective residential tenants to possible rental units shall be licensed in accordance with the New Jersey Real Estate License Act, N.J.S.A. 45:15-1 et seq., and shall comply with the provisions of this section in addition to the obligations imposed by the Act, and other rules contained in this chapter.

(b) Every licensee subject to this section shall enter into a written contract with the prospective tenant and give such person a copy of the contract. The contract shall accurately state:

1. The services to be performed by the agency;
2. The fee charged;
3. The date and duration of the contract;
4. The affirmative actions required of the prospective tenant to utilize the service;
5. The refund policy; and
6. A statement that the business is licensed by the New Jersey Real Estate Commission, 201 East State Street, Trenton, New Jersey 08625.

(c) No licensee shall advertise or refer a prospective residential tenant to:

1. A non-existent address;
2. A property not verified as available as provided in (e) below;
3. A possible rental unit or location for which the licensee does not have the lessor's, or the duly authorized agent of the lessor's, oral or written consent to refer prospective tenants.

(d) Oral consent of the lessor or his duly authorized agent to refer prospective tenants to a possible rental unit or location shall be confirmed by the licensee in writing within 24 hours of the licensee's receipt of such consent.

(e) Every licensee subject to this section shall verify the continuing availability of the rental unit with the lessor or agent as follows:

1. All units advertised in media shall be verified each day the advertisement appears; and
2. All units to which prospective tenants are referred shall be verified as available every three working days.

(f) In the event a diligent effort by the licensee to verify availability of the rental unit is unsuccessful because of a failure of a lessor or agent to respond, the prospective tenant shall be specifically advised of the date and time the unit was last verified as available.

1. Every prospective tenant shall upon request be advised of the date and time any particular unit was last verified as available.
2. No licensee subject to this section shall refer a prospective tenant to any rental unit not verified as available within the previous seven calendar days.

(g) Every licensee subject to this section shall maintain sufficient telephone lines and staff to receive and answer inquiries from contract consumers.

(h) Prior to the prospective tenant obtaining rental property through the services of the licensee, no licensee shall charge or accept a fee in excess of $25.00 unless:

1. Any fee charged, collected or received in excess of $25.00 is deposited promptly in the broker's escrow account until the services described by the contract are fully performed; or
2. The licensee posts with an approved escrow agent cash security in an amount approved by the Commission, based upon the following criteria:

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i. The rental referral fee;
ii. The volume of rental referral business of the licensee;
iii. The duration of the rental referral contract; and
iv. The prior performance of the licensee or its principals in the rental referral business.

(i) Any licensee subject to this section shall maintain for one year the following records:

1. Written consent or written confirmation of oral consent of a lessor or agent to refer prospective tenants;
2. Records of the verification of availability of rental units as set forth in (e) above; and
3. Copies of contracts with prospective tenants.

(j) Every licensee subject to this section shall prominently post a copy of this regulation in its office for the information of its customers, and provide customers a copy upon request.

LAW AND PUBLIC SAFETY
(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Appeals

Proposed Readoption with Amendments: N.J.A.C. 13:2-17

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Authority: N.J.S.A. 33:1-22, 1-23, 1-26, 1-38, 1-39, 1-40 and 1-41.

Interested persons may present, in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex, CN 087
Trenton, New Jersey 08625

The Director, Division of Alcoholic Beverage Control, may thereafter adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules expire on October 1, 1984.

This proposal is known as PRN 1984-604.

The agency proposal follows:

Summary

The Director of the Division of Alcoholic Beverage Control is empowered to hear various types of appeals that can be filed by applicants for licenses, licensees and other aggrieved persons arising from actions taken by the local issuing authority concerning retail liquor licenses. Specific statutory appeal provisions exist in actions involving: 1. the issuance, renewal or extension of retail licenses (N.J.S.A. 33:1-22); 2. the transfer of retail licenses (N.J.S.A. 33:1-26); 3. the imposition of disciplinary sanctions or failure to institute disciplinary proceedings against retail licensees (N.J.S.A. 33:1-31); 4. the limitation of the number of retail licenses or hours of sale (N.J.S.A. 33:1-41); and 5. the review and adjudication in a quasi-judicial context of other matters or issues which ". . . may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this chapter, . . ." (N.J.S.A. 33:1-39).

The provisions of Subchapter 17, (N.J.A.C. 13:2-17) now proposed for readoption with amendments, delineate various rules involving the filing of appeals and hearing procedures. The first Division regulations in this area were promulgated on May 4, 1934 and June 25, 1935. (Bulletins 26 and 81, Items 4 and 13, respectively).

An amendment adding a lengthy section outlining the appeal hearing procedure was adopted on April 1, 1956. (Bulletin 1106, Item 5). The most recent amendment to this subchapter occurred on October 1, 1979 (11 N.J.R. 580(f)) when the existing requirement that the Director provide parties oral argument before there could be any material change in a filed Hearer's Report was deleted. This amendment has resulted in the entire subchapter sunsetting on October 1, 1984 pursuant to Executive Order No. 66.

A discussion of the specific sections in Subchapter 17 and proposed amendments follows:

Section 1 indicates that an appeal shall be commenced by filing the Appeal with the Director along with a filing fee of $50.00. In addition to grammatical amendments, the section was expanded to identify the basic elements of the Notice and Petition of Appeal and require that the appeal papers be filed in duplicate.

Section 2 readopts the requirements involving service of the appeal papers on various interested parties with minor grammatical amendments.

Section 3 reiterates the statutory provisions addressing the 30 day time limit applicable to the filing of an appeal. The amendments proposed utilize language more closely aligned with statutory language.

Section 4 requires the respondents in an appeal to file an answer with the Director within 10 days after receipt of appeal papers. The only amendment proposed is to file such answer in duplicate.

Section 5 currently indicates that the Director must provide five days notice to the parties to the appeal of the time and place fixed for hearing. The proposed amendments change the section heading from "Notice of Hearing" to "Jurisdiction". The hearing notice provisions are deleted. The section as proposed would set forth the current provisions of law requiring hearings on contested administrative agency matters to be conducted personally by the Director or referred to the Office of Administrative Law.

Section 6 sets forth the standards for review, and burden of proof applicable in an appeal under the Alcoholic Beverage Law. The discovery provisions in this section, as well as the portion of the section caption designated "discovery" are proposed for deletion.

Section 7 currently provides for an appeal hearing at the Division's offices which hearing shall be open to the public. Amendments have been proposed to indicate that appeals will either be held at the Division offices or locations designated by the Office of Administrative Law, whichever agency is hearing the case. All hearings will be public unless otherwise directed by the hearing agency pursuant to the standards set forth in N.J.A.C. 1:1-3.1.

Section 8 indicates that parties to an appeal may, subject to approval, present a matter for determination upon an agreed statement of facts or utilize a transcript of an electronically or stenographically recorded hearing below as all or part of the proofs to be offered in the appeal. The proposed amendments

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to this section add the phrase necessary to recognize that an Administrative Law Judge would initially address the requests for approval if the matter has been filed with the Office of Administrative Law.

Section 9 provides for the issuance of subpoenas for hearings. The proposed amendment recognizes that the Administrative Law Judge would entertain the subpoena request if the appeal had been referred to the Office of Administrative Law for hearing.

Section 10 now indicates that the failure of a party to appear at a scheduled hearing may result in the dismissal of that party's claim or the acceptance of proofs by the appearing party on an ex parte basis. These provisions are proposed to be deleted and the section's heading and contents will be expanded to incorporate by reference the provisions of N.J.A.C. 1:1-3.5 promulgated by the Office of Administrative Law dealing with the sanctions and penalties that may be imposed because of obstructionist behavior or the unreasonable or unjustified failure of a party to appear at hearings, comply with orders, or attend to the matters on appeal.

Section 11 reiterates the provisions of N.J.S.A. 33:1-31 which provide that an appeal filed from a disciplinary sanction imposed by the local issuing authority automatically stays the sanction (license suspension or revocation) unless otherwise ordered by the Director. Appeals filed concerning other matters do not operate to stay the action taken by the local issuing authority. The proposed amendments to this section emphasize that the determination to deny an automatic stay shall be made by the Director at the time of the filing of the appeal and recognize that any applications for stays in nondisciplinary appeals can be entertained by either the Director or Administrative Law Judge, whichever is hearing the case.

Section 12 reiterates the provisions of N.J.S.A. 33:1-22 which provides that the Director may issue an order temporarily extending the privileges of a license denied renewal pending appeal. The proposed amendments to this section emphasize that the determination to temporarily extend a license shall be made by the Director at the time of the filing of the appeal and further recognize that any application to modify or vacate an order of extension may be made thereafter to either the Director or the Administrative Law Judge, whichever is hearing the case.

Section 13 provides that any transfer, extension or renewal of a license that is the object of a pending appeal will be subject to the ultimate outcome of such appeal. An amendment is proposed for grammatical purposes and the ability to vacate the effect of this rule is restructured to encompass the situation that can occur where the Initial Decision of an Administrative Law Judge becomes the Final Determination in the case.

Section 14 currently outlines and prescribes procedures involved in the hearing of appeals. All of the current provisions of this section are proposed for deletion. Replacing these provisions will be the reference to and incorporation of the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1-1.1 et seq.) to govern the conduct of a contested case, except where the matter is submitted for determination upon an agreed statement of facts pursuant to N.J.A.C. 13:2-17.8.

Section 15 identifies these appeal rules as general rules that can be relaxed in the interests of justice. This entire section is proposed for deletion. The subject matter of relaxing rules and the standards therefore are set forth in the Uniform Administrative Procedure Rules of Practice at N.J.A.C. 1:1-1.3.

The Subchapter has been reviewed within the Division and the existing regulations, with proposed amendments, are necessary, adequate, reasonable, efficient, understandable and responsive to the objectives and purposes that exist today.

In addition, this subchapter has been reviewed by a Special Rules Proposal Committee initiated by the Office of Administrative Law, which membership consisted of representatives of the Office of Administrative Law, Department of Law and Public Safety—Division of Law and Division of Alcoholic Beverage Control. Many recommendations of that Committee are incorporated in this proposed readoption with amendments.

Social Impact

The statutory provisions establishing the right of affected persons to appeal decisions made adversely to their perceived interest is consistent with traditional concepts of jurisprudence and due process. The Administrative appeal before the Director offers licensees, applicants for licenses, aggrieved citizens and taxpayers the opportunity to have an independent de novo review of the decision made by the local issuing authority before either the Director or an Administrative Law Judge.

The rules proposed for readoption with amendments establish a uniform simple procedure to follow to initiate the appeal review. Some specific evidential issues involving the submission and acceptance of certain types of evidence, the recitation of burdens of proof, and the standard of review to be applied are clearly identified to assist parties in the preparation and litigation of the appeal. The general procedure rules governing the appeal with respect to other issues such as discovery, scheduling of hearings, motions and decisions are governed by the Uniform Administrative Procedure Rules of Practice.

In calendar year 1983 there were 104 appeals filed from actions taken at the municipal level by the local issuing authority. Considering that the local issuing authorities in New Jersey acted upon an estimated 15,000 license renewal applications, transfer applications and disciplinary proceeding adjudications, it can be noted that less than seven tenths of one percent of those actions were subject to further appeal to the Director, Division of Alcoholic Beverage Control. While actual recourse by interested parties to the appeal process is limited, a failure to readopt these regulations with amendments, would result in a chaotic, imprecise appeal process and would fail to give appropriate accord to specific statutory provisions of the Alcoholic Beverage Law and the Administrative Procedure Act.

Economic Impact

By statute, a filing fee of $50.00 must accompany each appeal and, in 1983, that amounted to just over $5,000. The expenses of administration and adjudication of appeals by both the Division and the Office of Administrative Law are essentially paid from funds allocated the agencies in their general budgets. The minimal recapture of expenditures from the appeal filing fee represents the basic State philosophy to permit its citizens affordable, ready access to the administrative review process. This appeal mechanism helps to insure the integrity and competency of liquor license determinations made by municipalities and it encourages licensees, applicants for licenses and citizens to monitor alcoholic beverage activities in a community with the knowledge and awareness that any determinations made at the municipal level can be independently reviewed and judged on appeal.

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Absent readoption of the regulatory provisions in Subchapter 17, the expenses to administer appeals would increase because the result would be imprecise, nonuniform appeal documents and procedures that would increase clerical and professional time spent in the processing of appeals.

Full text of the existing rules proposed for readoption appear in the New Jersey Administrative Code at N.J.A.C. 13:2-17.1 to N.J.A.C. 13:2-17.15, 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]).

13:2-17.1 Notice and petition of appeal; contents; fee

All appeals to the Director shall be **commenced** by **the filing, in duplicate, of** a notice and petition of appeal to the director of the Division of Alcoholic Beverage Control, setting forth **the identity of the parties involved in the appeal**, the subject matter of the appeal, the **date and** the action of the issuing authority[,] **from which the appeal is taken,** the relief sought [,] **and** the grounds therefor[;] and a fee of $50.00[.] **payable to the Director, Division of Alcoholic Beverage Control.**

13:2-17.2 Service of notice and petition of appeal

The appellant shall first serve, personally or by ordinary mail, a copy of the notice and petition of appeal upon the respondent issuing authority[;] and, where the action appealed from is the **grant** [granting], transfer[,] or extension of a license, or the refusal to revoke or suspend a license, a copy shall also be so served upon the licensee, who shall also be joined as a respondent. The notice and petition of appeal, together with an acknowledgement or affidavit of service, must be filed with the director within the time [limited by] **set forth in** N.J.A.C. 13:2-17.3.

13:2-17.3 Time for appeal

Appeals **by any taxpayer or other aggrieved person** from the issuance of a license [and] **or** from the **grant** [granting] of an application for the extension or transfer of a license must be taken within 30 days from the date of **issuance, extension or transfer of the license.** [the action appealed from; all] **All** other appeals **by a licensee or applicant for a license** must be taken within 30 days after the **personal** service or mailing **by registered mail** of notice by the municipal issuing authority of the action [appealed from.] **taken against the licensee or the applicant.**

13:2-17.4 Answer

Within 10 days after service of the notice and petition of appeal, each respondent shall file, **in duplicate,** an answer with the director and serve a copy thereof on each of the parties to the appeal. The answer filed by the respondent issuing authority shall include a statement of the grounds for its action, together with a copy of the subject resolution.

13:2-17.5 [Notice of hearing] **Jurisdiction**

Upon filing of the notice and petition of appeal[, at least five days notice of the time and place fixed by the director for the hearing of the appeal shall be given to the appellant, the respondent issuing authority, and where the action appealed from is the granting, transfer, or extension of a license, or the refusal to revoke or suspend a license, to the respondent licensee.] **and answer, the director shall determine whether the case is contested. If the director determines that the case is contested, he shall either file it with the Office of Administrative Law pursuant to N.J.A.C. 1:1-5.1 or retain it under the provisions of N.J.S.A. 52:14F-8.**

13:2-17.6 De novo hearing; [discovery] **burden of proof**

All appeals shall be heard de novo, except as otherwise provided in N.J.A.C. 13:2-17.8. [and the parties may introduce oral testimony and documentary evidence. The respondent shall first present evidence in support of the action of the municipal issuing authority, but the] **The** burden of establishing that the action of the respondent issuing authority was erroneous, and should be reversed, shall rest with appellant. [The parties may, upon good cause shown, and at the discretion of the director, have discovery, including written interrogatories or depositions. Failure to comply with the order for discovery may result in appropriate sanctions by the director.]

13:2-17.7 Public hearing

All appeals shall be heard at the office of the Division of Alcoholic Beverage Control[,] **or designated location by the Office of Administrative Law, whichever agency is hearing the case,** and shall be open to the public, unless otherwise directed by the director[.] **or Administrative Law Judge, whichever is hearing the case, pursuant to the standards set forth in N.J.A.C. 1:1-3.1.**

13:2-17.8 Stipulations, offer of transcript

Where none of the material facts is disputed, the appeal may be presented, subject to the approval of the director[,] **or Administrative Law Judge, whichever is hearing the case,** upon an agreed statement of facts. Where there is available a stenographic transcript or electronic recording of the proceedings before the issuing authority, either party may, if at least three days notice of intention so to do has been given opposing parties, or counsel therefor, offer the transcribed record thereof in lieu of producing said witnesses at the hearing of the appeal. In such event, [any opposing party may subpoena witnesses to appear personally, and] any party may produce any additional evidence, oral or documentary, at the hearing of the appeal. Subject to the approval of the director[,] **or Administrative Law Judge, whichever is hearing the case**, the parties may agree to present the appeal solely upon such stenographic or electronic transcript.

13:2-17.9 Subpoenas

Subpoenas and subpoenas duces tecum, signed by the director[,] **or Administrative Law Judge** for the attendance of witnesses and the production of books, records and other documents at the hearing on the appeal, may be obtained by the parties upon request [of the director].

13:2-17.10 Failure to appear; **failure to comply with orders or hearing requirements; obstructing the orderly conduct of proceedings**

The failure of [the appellant to appear at the time and place designated for the hearing of an appeal may be cause for the dismissal of the appeal, and upon failure of the respondent to appear at such time and place, the director may permit the appellant to proceed ex parte.] **any party to an appeal to appear at a scheduled hearing, conference or motion, without just excuse or because of failure to give reasonable attention to the matter; the unreasonable failure to comply with an order or hearing requirements; or the engaging in behavior that obstructs the orderly conduct of proceedings by any party, attorney at law or other representative of a party may**

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result in the imposition of sanctions and penalties as proscribed in N.J.A.C. 1:1-3.5.

13:2-17.11 Stays

An appeal from a suspension or revocation of a license shall act as a stay of such suspension or revocation pending the determination thereof, unless the director **at the time of the filing of the appeal** shall otherwise order. All other appeals shall not stay the effect of the action appealed from unless otherwise ordered by the director **or Administrative Law Judge**.

13:2-17.12 Extension of license term

Upon appeal from the denial of an application for renewal of a license the director may, **at the time of the filing of the appeal,** in his discretion, issue an order upon respondent issuing authority to show cause why the term of the license should not be extended pending the determination of the appeal, together with the ad interim relief extending the term **of the license pending the return of the order to show cause and until further order of the director or Administrative Law Judge.** If it shall appear upon the return of the order to show cause that a substantial question of fact or law has been raised, and that irreparable injury to the appellant would otherwise result, the director, **or Administrative Law Judge,** may, subject to such conditions as [he] may be imposed, order that the term of the license be extended pending a final determination of the appeal.

13:2-17.13 Transfer, extension or renewal subject to appeal

When appeal is taken in any matter, any transfer [or], extension or renewal of any license involved therein shall be subject to the ultimate outcome of such appeal, unless otherwise ordered [by the director.] **in the final administrative determination of the case.**

13:2-17.14 Hearing procedure

Upon determination that the matter is a contested case, the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1-1.1 et seq.) shall govern the conduct of the case, except where the matter is submitted for determination upon an agreed statement of facts pursuant to N.J.A.C. 13:2-17.8.

[(a) Hearings shall be conducted by the director or a duly designated hearer. Each party, except a corporation, may appeal pro se, or be represented by an attorney admitted to practice in this State, and shall have the right to present his case by oral and documentary evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. A corporation may appear only when represented by such an attorney.

(b) Testimony shall be taken stenographically or recorded electronically in each case. Each party shall be afforded the opportunity to present argument, either orally before the hearer immediately upon the close of the evidence, or by written brief. Oral argument shall be limited to 15 minutes for each party unless the hearer shall otherwise order. Briefs, if any, shall be submitted within the time affixed by the hearer.

(c) In cases where a hearer's report is not to be prepared, and the matter is to be submitted directly to the director for his action, such fact shall be announced by the hearer at the close of the evidence. In other cases, the hearer shall prepare a report containing recommended conclusions and order, file the original report with the director, and forthwith transmit a copy, either personally or by mail, to the parties or their attorneys.

(d) Within 10 days of the receipt of the hearer's report, each party may file written exceptions and argument thereto, with the director, together with proof of service of a copy thereof upon the other parties or their attorneys. Within five days after such service, answering argument may be filed with the director, together with proof of service of a copy thereof upon the other parties or their attorneys. With respect to objectors appearing without an attorney, the provisions relating to the hearer's report shall apply only to one or more of such objectors as shall be designated by the hearer for such purpose.

(e) Except as otherwise provided herein, no oral argument may be had before the director, unless the director decides, on his own motion, to hear oral argument and notifies the parties or their attorneys of the date and place fixed therefor.

(f) The hearer's report shall not be binding upon the director and the director's decision may, in whole or in part, adopt, modify, or reject the report. The written decision of the director shall set forth his conclusions together with supporting reasons therefor, and his order, if any, a copy of the decision shall be mailed forthwith to the parties or their attorneys.

(g) Any of the provisions of this rule relating to the presentation of a party's case or argument, or to the procedure in connection with the hearer's report, may be waived by any party or his attorney.]

13:2-17.15 [Relaxation of appeals procedures] **Reserved**

[The rules herein contained shall be considered as general rules governing the conduct of appeals and since they are designed to facilitate the hearing of appeals and advance justice, they may be relaxed or dispensed with by the director in any case where a strict adherence to them will result in injustice.]

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Disciplinary Proceedings

Proposed Readoption with Amendments: N.J.A.C. 13:2-19

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Authority: N.J.S.A. 33:1-23, 1-31 and 1-39.

Interested persons may present in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex,
CN 087
Trenton, New Jersey 08625

The Director, Division of Alcoholic Beverage Control, may thereafter adopt this proposal without further notice (see

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N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules expired on October 1, 1984.

This proposal is known as PRN 1984-606.

The agency proposal follows:

Summary

The provisions of N.J.A.C. 13:2-19.1 through 19.5 encompass general principles applicable to administrative disciplinary proceedings instituted for violations of the Alcoholic Beverage Law and/or Division promulgated rules and regulations.

The basic substance of N.J.A.C. 13:2-19.1 through 19.5 were first adopted as regulatory provisions on June 20, 1935 (Bulletin 80, Item 8). The hearing procedure now proposed for significant modification was adopted March 16, 1956 (Bulletin 1106, Item 6). The most recent amendment to this Subchapter occurred on October 1, 1979 (11 N.J.R. 580(F)) when the existing requirement that the Director provide parties oral argument before there could be any material change in a filed Hearer's Report was deleted. This amendment has resulted in the entire Subchapter sunsetting on October 1, 1984 pursuant to Executive Order No. 66.

A specific discussion of sections 1, 2, 3, 4 and 5 which are proposed for readoption without amendments, follows:

Section 1 provides that a disciplinary proceeding will not be barred or a pending proceeding terminated because of the expiration, transfer, surrender, renewal or extension of the license or permit.

Section 2 recognizes that a disciplinary proceeding can be instituted for reasons which occurred: (1) during a prior license term; (2) prior to a transfer or extension of a license; or (3) during a period when the license was held by a predecessor in interest to the current license.

Section 3 indicates that pending disciplinary proceedings shall continue to completion and a suspension, cancellation or revocation shall be effective without any further proceedings required, notwithstanding that the license was transferred, extended or renewed during the disciplinary proceedings.

Section 4 provides that a licensed premises housing a license subject to a pending disciplinary proceeding can continue to be subject to declaration that those premises are ineligible for licensure for a stated period even though the license or permit subject to the disciplinary proceeding expires or is surrendered and another license is issued or transferred to another person for that same premises.

Section 5 indicates that when a license is suspended, that suspension shall continue in full force and effect notwithstanding any transfer of that license during the period of suspension.

The provisions of Sections 1, 2, 3, 4 and 5 basically recognize that administrative proceeding are addressed to the license itself and are not effected by changes in the individuals who may thereafter acquire the license or by transfers, extensions or renewals of that license.

The provisions of Section 6, which currently outline a hearing procedure for disciplinary matters based upon practices predating the creation of the Office of Administrative Law, are proposed for readoption with amendments. Subsection (a), (b) and (c) are to be deleted and the provisions replaced with a new subsection (a) which will indicate that hearings shall either be conducted by the Director or referred to the Office of Administrative Law. A disciplinary matter will be considered a contested case upon a licensee's entry of a "not guilty" plea or upon the failure of a licensee to enter a plea within the time period allocated in the disciplinary notice of charges. The existing provisions in subsection (d), indicating that written argument as to penalty can be submitted within ten days in uncontested cases and recognizing the absence of oral argument unless ordered by the Director, are to be retained and redesignated as subsection (b).

The subchapter has been reviewed within the Division and the existing regulations, with proposed amendments, are necessary, adequate, reasonable, efficient, understandable and responsive to the objectives and purposes that exist today.

In addition, this subchapter has been reviewed by a Special Rules Proposal Committee initiated by the Office of Administrative Law, which membership consisted of representatives of the Office of Administrative Law and the Department of Law and Public Safety—Division of Law and Division of Alcoholic Beverage Control. Recommendations of that Committee are incorporated in this proposed readoption with amendements.

Social Impact

A license to engage in alcoholic beverage activity is issued annually commencing July 1 of any year and expiring June 30 of the following calendar year. N.J.S.A. 33:1-12.13; N.J.S.A. 33:1-12.26 and N.J.S.A. 33:1-96. That license may be the subject of administrative disciplinary proceedings for violation of the Alcoholic Beverage Law; State tax laws; municipal alcoholic beverage ordinances, resolutions or regulations; subsequent actions which if had occurred at the time of application for license would have prevented issuance of the license; and violations of Division promulgated rules and regulations. N.J.S.A. 33:1-31. When a liquor license is suspended or revoked, the suspension or revocation applies to the license and to the licensed premises. A license revocation renders the licensee and the officers, directors and each owner, directly or indirectly, of more than 10 percent of the stock of a corporate licensee ineligible to hold or receive any other license for a period of two years. A second revocation would permanently preclude any interest in a license in the future. A revocation of license may render the premises ineligible for any other license for two years, if ordered as part of the disciplinary proceeding.

These provisions indicate that disciplinary actions can involve activities which might have occurred during terms prior to renewal and can have consequences which extend beyond the final administrative adjudication as it relates to licenses, the owners of the license and licensed premises. Sections 1, 2, 3, 4 and 5 recognize these consequences and place licensees and prospective licensees on notice that activities which are contrary to the alcoholic beverage law and regulations can be the subject of disciplinary sanctions notwithstanding their occurrence in prior license terms, or because the license had expired (not renewed), was surrendered, transferred or extended to another person.

The broadest total number of parties that could be affected by these regulations are the approximately 13,000 holders of liquor licenses, as well as the prospective applicants for a liquor license. However, in calendar year 1983, 530 licensees were charged by the State Division with alleged violations of the law and/or regulations and while no specific statistics exist, it is estimated that a minimal number of these charges involved any application of the principles of Sections 1, 2, 3, 4 or 5.

The public at large is also affected by and benefits from these regulations through the assurance that offensive conduct of licensees will be punishable and not avoided by

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changes which are made in the licensed entity, location of the licensed premises or by an extension or renewal of a license.

Section 6, which will be modified to harmonize with the provisions concerning the operation of the Office of Administrative Law, clearly identifies when a matter is considered a contested case and what options and procedures will follow the service of Division instituted disciplinary charges.

Absent readoption of these regulations, as proposed with amendments, the legislative intent expressed in provisions of the Alcoholic Beverage Law, N.J.S.A. 33:1-1 et seq. and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. will not be reinforced and followed.

Economic Impact

The fact that a liquor license can be suspended or revoked does create potential economic impact upon an affected licensee. However, this impact on a license is envisioned and authorized as a statutory sanction under N.J.S.A. 33:1-31 for those who abuse the privilege of engaging in alcoholic beverage activity in this State. To the extent that a person who acquires an interest in a license may have that license subject to disciplinary sanctions arising from the actions of a predecessor, the Division does provide, upon request, a statement indicating whether the license to be acquired has any prior violations, outstanding license suspension orders or charges pending adjudication. In calendar year 1983 the Division responded to 217 such requests.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:2-31.1 to N.J.A.C. 13:2-31.5, 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]).

13:2-19.6 [Hearing] **Jurisdiction and hearing** procedure

(a) **A Division instituted disciplinary proceeding shall be considered a contested case upon the entry of a "not guilty" plea by the licensee or upon the failure of the licensee to enter a timely plea. Contested cases shall be filed with the Office of Administrative Law pursuant to N.J.A.C. 1:1-5.1 or retained by the Director under the provisions of N.J.S.A. 52:14F-8. Upon determination that the matter is a contested case, the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1-1. et. seq.) shall govern the conduct of the case.**

[Hearings in contested cases before the division shall be conducted by the director or a duly designated hearer. For the purposes of this rule, the owner of the licensed premises, if he has been made a party, shall be considered a respondent. Each party may appear pro se, except a corporation, or be represented by an attorney admitted to practice in this State. Testimony on behalf of the division shall be presented by a prosecutor assigned by the director, and such prosecutor and each respondent shall have the right to present his case or defense by oral and documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

Testimony shall be taken stenographically or electronically in each case. Each party shall be afforded the opportunity to present argument, either orally before the hearer immediately upon the close of the evidence, or by written brief. Oral argument shall be limited to 15 minutes for each party and the prosecutor, unless the hearer shall otherwise order. Briefs, if any, shall be submitted within the time fixed by the hearer. In cases where a hearer's report is not to be prepared, such fact shall be announced by the hearer at the close of the evidence. In other cases, the hearer shall prepare a report containing recommended conclusion and order shall file the original with the director and forthwith transmit a copy, either personally or by mail, to parties or their attorneys and to the prosecutor. Within 10 days after the receipt of the report, any party or the prosecutor may file written exceptions and argument with the director, together with a statement of service of a copy thereof upon the prosecutor or the parties, as the case may be. Within five days after such service, answering argument may be filed with the director, together with a statement of service of a copy thereof upon the prosecutor or the parties, as the case may be. Except as otherwise provided herein, no oral argument may be had before the director unless, on his own motion, the director decides to hear oral argument and notifies the parties or their attorneys of the date and place fixed therefor.

(b) The hearer's report shall not be binding upon the director and the director's decision may, in whole or in part, adopt, modify or reject the report. The written decision of the director shall set forth his conclusions, together with supporting reasons therefor, and his order, if any. A copy of the director's decision shall be mailed forthwith to the parties or their attorneys.

(c) Any of the provisions of this rule relating to the presentation of the defense or case or argument, or to the procedure in connection with the hearer's report, may be waived by any party or his attorney, or the prosecutor, as the case may be.]

[(d)] **(b)** In uncontested cases before the division, written argument as to penalty may be submitted to the director within 10 days after entry of the plea. No oral argument may be had before the director, unless, on his own motion, the director decides to hear oral argument and notifies the parties or their attorneys of the time and place fixed therefore.

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Seizure Hearings

Proposed Readoption with Amendments: N.J.A.C. 13:2-31

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.

Authority: N.J.S.A. 33:1-23, 1-27, 1-39, 1-55, 1-66 and 33:2-1 et seq.

Interested persons may present in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex,
CN 087
Trenton, New Jersey 08625

The Director, Division of Alcoholic Beverage Control, may thereafter adopt this proposal without further notice (see

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N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66 (1978), these rules expire on October 1, 1984.

This proposal is known as PRN 1984-605.

Summary

The basic tenet of the Alcoholic Beverage Law is that the manufacture, sale, transportation, warehousing, bottling and distribution of alcoholic beverages is illegal unless it is done pursuant to and within the terms of a license or permit issued in accordance with the law. N.J.S.A. 33:1-2. Actions involving violations of this principle result in statutory classifications designated as "unlawful alcoholic beverage activity", "illicit beverage" and "unlawful property", N.J.S.A. 33:1-1(x), (i) and (y) respectively.

One penalty established by law for violations of N.J.S.A. 33:1-2 is the criminal one set forth in N.J.S.A. 33:1-50. (fine of not less than $100.00 or more than $1,000.00 and/or imprisonment for not less than 30 days and not more than three years). The other sanction provided for by law authorizes the seizure and forfeiture of "illicit beverages", any vehicle containing illicit beverages and all "unlawful property" utilized in conjunction with the "unlawful alcoholic beverage activity". It is the seizure provisions contained in N.J.S.A. 33:1-66 which form the basic subject matter of N.J.A.C. 13:2-31.

Subchapter 31 was first promulgated March 24, 1936, Bulletin 111, Item VIII and contained the essential elements of Sections 1, 2 and 3. The provisions in Section 4 involving a hearing procedure were added on January 15, 1957, Bulletin 1148, Item 1. The most recent amendment to this Subchapter occurred on October 1, 1979 (11 N.J.R. 580(F)) when the existing requirement that the Director provide parties oral argument before there could be any material change in a filed Hearer's Report was deleted. This amendment has resulted in the entire Subchapter sunsetting on October 1, 1984 pursuant to Executive Order No. 66.

A discussion of the specific sections proposed for readoption with amendments follows.

Section 1 indicates that a public hearing will be held at Division offices to determine whether seized property will be forfeited as unlawful property. This provision will be modified to incorporate the provisions of the Administrative Procedure Act and the rules and regulations promulgated thereunder referable to contested administrative cases.

Subsection (b) of this section will be deleted. The provisions of that subsection created a preliminary hearing procedure to petition for return of seized property upon a finding that irreparable injury would result from awaiting a statutory full hearing. The reasons for deletion include the availability of expedited hearings before the Director and the Office of Administrative Law, the total absence of utilization of that provision in Division practice over the last eight years at least, and, most importantly, the deviation this procedure appears to make from the specific statutory methods set forth in N.J.S.A. 33:1-66 for a claimant to obtain return of the seized property. The statutorily authorized methods to obtain return of seized property pending hearing are reiterated in N.J.A.C. 13:2-31.2.

Section 2 identifies the three methods of obtaining return of seized property prior to final hearing. They are the posting of a cash bond equal to the Director's appraised retail value of such property; the posting of a surety bond satisfactory to the Director in a sum double the appraised retail value of the property; or the institution of a replevin action within 30 days of the seizure against the Director. The section also notes that a determination whether a claim for return of the bond should be recognized or denied can be adjudicated by either institution of judicial proceedings by a claimant in a court of competent jurisdiction or by adjudication before the Director upon a claimant's written stipulation to that effect at the time of the posting of the bond.

The amendments proposed in the readoption of Section 2 basically allign the regulatory language to the statutory language and provisions of N.J.S.A. 33:1-66.

Section 3 sets forth the statutory provisions of N.J.S.A. 33:1-66 establishing the standards applicable to determine whether claims for return of the property seized, or the bonds posted in lieu of seizure, should be recognized or denied.

If a person whose property has been seized establishes that he acted in good faith and unknowingly violated the law, the Director may return the property or posted bond in lieu of seizure of property upon payment of reasonable costs of seizure and reasonable costs of storage, if applicable.

If the claimant is a person that has a bona fide and valid lien upon or interest in the seized property and establishes that he acted in good faith and had no knowledge of the unlawful use to which the property was put, or of such facts as would have led a person of ordinary prudence to discover such use, the Director can recognize the claim upon payment of reasonable costs of seizure and storage. In such situations, the Director may order return of the property to the claimant if the lien or interest of the claimant exceeds the appraised retail value of the property; retain the property for use of the State and pay the claimant the value of its lien or interest, less costs; or sell the property upon condition that the claimant's lien or interest will be paid out of the proceeds of sale after first deducting costs.

If the claimant is a common carrier whose vehicle has been seized and establishes that it acted in good faith and had no knowledge at the time of seizure that the vehicle contained illicit alcoholic beverages, the Director may order return of the seized vehicle to the common carrier.

Section 3 also reiterates the statutory declaration that any order of forfeiture of seized property terminates all property interests in the property, or proceeds therefrom if sold, of the owner, conditional vendor, mortgagee or lien holder, subject to those situations where a person's claim is recognized under N.J.A.C. 13:2-31.2.

The amendments proposed in the readoption of Section 3 basically align the regulatory language to the statutory language and provisions of N.J.S.A. 33:1-66.

Section 4 contains provisions outlining a hearing procedure based upon practices predating the creation of the Office of Administrative Law. These provisions are to be deleted and replaced with a basic provision that contested case seizure hearings will be conducted in accordance with the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1-1.1 et seq.).

The subchapter has been reviewed within the Division and the existing regulations, with proposed amendments, are necessary, adequate, reasonable, efficient, understandable and responsive to the objectives and purposes that exist today.

In addition, this subchapter has been reviewed by a Special Rules Proposal Committee initiated by the Office of Administrative Law, which membership consisted of representatives of the Office of Administrative Law and the Department of Law and Public Safety-Divisions of Law and Alcoholic Beverage Control. Specific recommendations of that Committee are incorporated in this proposed readoption with amendments.

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Social Impact

After the repeal of Prohibition in 1933, the legislature of New Jersey authorized the manufacture, transportation, warehousing, distribution and sale of alcoholic beverages under a specific system of licensure and control. It has been oftnoted that a strict system of regulation and control is necessary in the dealing with an intoxicant such as alcoholic beverages to promote temperance, eliminate the racketeer and bootlegger and avoid the other abusive incidents that might result from misuse of the product. N.J.S.A. 33:1-3; Grand Union Co. v. Sills, 43 N.J. 390(1964). The legislative provisions of N.J.S.A. 33:1-66 represent a sanction for those persons who seek to engage in alcoholic beverage activity without a proper license. The unlicensed manufacturer, transporter, distributor or seller is an unregistered source of intoxicating beverage activity that can be injurious to the citizens of this State because of impure product, deprives the State of lawful tax revenues, unfairly competes with properly licensed individuals and operates outside the statutory and regulatory provisions established to achieve these legislative objectives and to prevent the social and economic consequences of alcohol abuse and misuse.

The regulations proposed for readoption with amendments reiterate the statutory provisions. They advise those that engage in unlawful alcoholic beverage activity that the beverages and other personal property utilized in connection with that activity will be seized and forfeited. They indicate to property owners, individuals with a lien upon or other interests in the seized property and common carriers what rights they may have to avoid the consequences of forfeiture and when and how those claims must be exercised. A due process hearing right is afforded these claimants to adjudicate the ultimate issues in a seizure proceeding; to wit, has there been unlawful alcoholic beverage activity and, if so, is there a basis to recognize a claim for return of the property. In sum, the statute (N.J.S.A. 33:1-66) and regulations in furtherance thereof (N.J.A.C. 13:2-31.1 et seq.) protect the citizens of this State against unsupervised liquor traffic by nonaccountable individuals that operate outside the scope of the law.

Economic Impact

The direct economic impact of a seizure when unlawful alcoholic beverage activity occurs is the forfeiture of the illicit alcoholic beverages, the cash that might have been generated from illegal sales, all of the fixtures and personal property located in or upon any premises where the illicit beverages are located and any implements, vehicles, vessels, airplanes or paraphernalia that was used in connection with the unlawful activity.

As it relates to cash seized from illegal operators or the forfeiture of bonds posted, the Division in the past three fiscal years has remitted $71,020.00 to the general treasury of the State. The trust fund maintained by the Division for such funds awaiting final determination in pending seizure proceedings has a balance of $35,200.00.

As it relates to illicit alcoholic beverages, from January 1, 1982 to date, the Division has seized 3,489 gallons of wine, 261 gallons of distilled spirits and 4,311 gallons of malt alcoholic beverages.

The total number of locations where seizures were effected since January 1, 1982 as a result of unlawful alcoholic beverage activity is 42 and resulted in the arrest of 97 persons.

There is a revenue benefit to the State resulting from orders of forfeiture as previously noted and, in addition, unopened alcoholic beverage products which are fit for beverage purposes after forfeiture are provided free to hospitals and state, county and municipal institutions to be dispensed to patients pursuant to physician's orders. In the past two years, 604 gallons of distilled spirits and wines were so dispensed. Opened alcoholic beverages and those which are or appear to be spoiled are destroyed. The administrative costs to conduct seizure hearings are basically borne from the allocated budgets of the Division of Alcoholic Beverage Control and the Office of Administrative Law. Absent readoption of these regulations, the administrative costs would increase because of fragmented, imprecise and unclear procedures and standards to govern actions required under N.J.S.A. 33:1-66.

Full text of existing rules now proposed for readoption appear in the New Jersey Administrative Code at N.J.A.C. 13:2-31.1 to N.J.A.C. 13:2-31.5, 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]).

13:2-31.1 Hearings generally

(a) [All] **Contested case** hearings to determine whether seized property constitutes unlawful property and shall be forfeited, shall be [held at the offices of the Division of Alcoholic Beverage Control, and] **conducted according to N.J.A.C. 1:1-1 et seq. and either retained by the Director under the provisions of N.J.S.A. 52:14F-8 or filed with the Office of Administrative Law pursuant to N.J.A.C. 1:1-5.1. Such hearings** shall be open to the public[.] **unless otherwise directed by the Director or Administrative Law Judge, whichever is hearing the case, pursuant to the standards set forth in N.J.A.C. 1:1-3.1.**

[(b) Where it is alleged that irreparable injury would result from awaiting a statutory hearing, application may be made for a preliminary hearing on a claim, by verified petition setting forth in detail the facts relied upon. Upon review of such petition, or upon conclusion of the preliminary hearing, if the Director concludes that no immediate relief is warranted, the claim for return of said property will be held over for the statutory hearing.]

13:2-31.2 Procedures; return of property seized

(a) Prior to final determination by the Director, claims for the return of property seized under N.J.S.A. 33:1-66 or N.J.S.A. 33:2-3 may be made to the Director upon payment in cash, under protest, of the retail value of the seized property, or **upon** the posting of a proper bond[.] **with sureties satisfactory to the Director in a sum double the retail value of the property. In lieu of such cash bond or surety bond, a claimant may institute an action for replevin against the Director in any court of competent jurisdiction according to the forms and procedure, including the delivery of a bond, of such court; such action to be commenced within 30 days from the seizure of such property and not thereafter.** The Director may, in his discretion, refuse to entertain any such claim **for the posting of a bond to obtain return of the property seized** made more than 30 days from the date of the **final** order of forfeiture.

(b) (No change.)

(c) A person making payment in cash, or the posting of a proper bond, under protest, may either institute suit to recover such payment in a court of competent jurisdiction under the provisions of N.J.S.A. 33:1-66 or elect, by written stipulation satisfactory to the Director, to have the matter heard [at the Division] **as a contested case** and to have the Director

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decide whether the claim shall be recognized or denied, and whether such cash **or bond** should be forfeited or returned.

13:2-31.3 Forfeiture of seized property

(a) The order of forfeiture of seized property after hearing terminates all property interests therein and **in** any proceeds therefrom, including the interests of the owner, any conditional vendor, chattel mortgagee or lienor. The **standards and** procedure on claims addressed to [the discretion of] the Director for the return of unlawful property or recognition of outstanding interests therein shall be as provided in (b), (c) and (d) below.

(b) Claims may be made **by the person whose property has been seized or forfeited** for the return of seized property on the ground that the claimant has acted in good faith and has unknowingly violated the law, by presenting evidence to that effect at the hearing. The Director may require a claimant to file a verified petition setting forth in detail all of the facts relied upon. Where the Director is satisfied that the claimant has acted in good faith and has unknowingly violated the law, he may order the return of the property upon payment by claimant of reasonable costs of seizure and storage.

(c) Claims may be made by any person having a bona fide **and valid** lien upon or interest in the seized **or forfeited** property for the recognition of the validity and priority of such lien or interest, by presenting evidence at the hearing that such claimant has acted in good faith, and had no knowledge of the unlawful use to which the property was put, or of such facts as would have led a person of ordinary prudence to discover such use. The Director may require such claimant to file a verified petition setting forth in detail the facts relied upon. Where the validity and priority of such lien or interest [have been recognized], the claimant's good faith and lack of knowledge of the unlawful use, [or] **and the absence** of such facts as would have led a person of ordinary prudence to discover such use, have been established to the satisfaction of the Director, he may order the return of the property **to the claimant where it appears that the amount or value of such lien or interest exceeds the value of the property plus costs** upon payment of reasonable costs of seizure and storage[,]; or order the retention thereof for the use of the State[,] conditioned upon the payment of the lien or interest **less costs of seizure and storage;** or order the sale thereof upon condition that the payment of the lien or interest shall be made out of the proceeds of sale, after first deducting the reasonable costs of seizure and storage.

(d) Claims **may be made by a common carrier whose vehicle has been seized for return of the vehicle** [of conditional sales vendors, whose security interest have been properly filed, or bailors of motor vehicles established rental businesses, or lienors of motor vehicles, the encumbrance on which has been properly noted on the certificate of ownership, may, in the discretion of the Director, establish their claims for the return of such equipment or vehicles] by filing a verified petition with the Director substantiating such interest, together with a statement that claimant **has acted in good faith and** had no knowledge **at the time of the seizure that the vehicle contained illicit alcoholic beverages.** [of the unlawful use to which the property was put, or of such facts as would have led a person of ordinary prudence to discover such use.] The Director may, in his discretion, if satisfied that these facts are established, order the return of the **seized vehicle to the common carrier.** [equipment or motor vehicle upon payment by claimant of reasonable costs of seizure and storage.]

13:2-31.4 Hearing procedure

(a) **Upon determination that the matter is a contested case, the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1-1.1 et seq.) shall govern the conduct of the case.** [Claims may be heard by the director or a designated hearer. Each party may appear pro se, except a corporation, or be represented by an attorney admitted to practice in this State and shall have the right to present his case by oral and documentary evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Testimony shall be stenographically or electronically transcribed. Each claimant shall be afforded an opportunity to present oral or written evidence in support of his claim. The claimant has the burden of establishing his claim. Where a hearer's report is not to be prepared, such fact shall be announced at the close of the hearing. In other cases the hearer shall prepare a report containing recommended conclusions and order and file the original with the director and forthwith transmit a copy, either personally or by mail, to the persons who have presented claims, or opposed forfeiture in the case, or their attorneys, and to the prosecutor. Within 10 days of the receipt of the report, any such claimant or other person, or the prosecutor, may file written exceptions and argument with the director, together with a statement of service of a copy thereof upon all adverse parties. Within five days after such service, answering argument may be filed by any adverse party, together with a statement of service of a copy thereof upon such claimant or other person or the prosecutor, as the case may be. Except as provided herein, no oral argument may be had before the director unless, on his own motion, the director decides to hear oral argument and notifies the persons entering an appearance in the case of their attorneys of the date and place fixed therefor.

(b) The hearer's report shall not be binding upon the director and the director's decision may, in whole or in part, adopt, modify, or reject the report. The written decision of the director shall set forth his conclusions, together with supporting reasons therefor, and his order, if any. A copy of the decision shall be mailed forthwith to the persons entering an appearance in the case, or their attorneys.

(c) Any of the provisions of this rule relating to the presentation of the defense, or claim, or argument, or to the procedure in connection with the hearer's report, may be waived by any person claiming an interest in the outcome of the case, or his attorney, or the prosecutor, as the case may be.]

(a)

OFFICE OF THE STATE ATHLETIC COMMISSIONER

Boxing Rules

Proposed Amendments: N.J.A.C. 13:46
Proposed Repeal: N.J.A.C. 13:46-4.14, 4.17, 4.18, 4.20, 4.28, 4.30, 13:46-6.8, 13:46-8.6, 8.31, 8.32, 13:46-15.18, 13:46-17.9, 13:46-18.6, 18.19, 13:46-19.4, 19.8, 13:46-20.14.

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Proposed New Rules: N.J.A.C. 13:46-5.32, 13:46-6.20, 13:46-8.35, 13:46-11.10, 13:46-18.12, 13:46-18.18.

Authorized By: Office of State Athletic Commissioner, Robert W. Lee, Acting 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 Dec. 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Robert E. 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 as a notice of adoption.

The proposal is known as PRN 1984-625.

The agency proposal follows:

Summary

The proposal would modernize the regulatory process through the adoption of new more precise and workable regulations governing the supervision of all aspects of boxing and wrestling. The proposal repeals or replaces unnecessary regulations and provides clear standards for the Commission to follow in the licensing and supervision of boxers, promoters, managers and other participants in the sports of boxing and wrestling. The proposals cover the whole gamut of the supervision of the sport and what follows is a detailed synopsis of the contents of the proposal.

N.J.A.C. 13:46-1A.1 et seq. governs boxing weights and classes. N.J.A.C. 13:46-1A.1 will be amended to include a new class entitled cruiserweight. Presently the heavyweight class includes all boxers over 175 pounds. In recent years boxers weighing up to 240 pounds have participated in boxing matches. The differential between a 175 pound boxer and a 240 pound boxer poses a safety hazard. N.J.A.C. 13:46-1A.2 sets forth the maximum weight differential of contestants and will be amended to take account of the new cruiserweight class. Cruiserweights will be from 175 to 190 pounds and will not be allowed to fight anyone greater than 15 pounds heavier than they are.

N.J.A.C. 13:46-4.1 sets forth the requirement that individuals conducting or participating in boxing and wrestling bouts and exhibitions obtain licenses. The proposal would clarify the present regulation to make clear that the Commission retains full authority to grant or deny a license irrespective of a recommendation of a nationally recognized boxing association.

The proposal increases the fee for boxing and wrestling promoters to $150.00. Under the present regulation the fee for a boxing promoter is $100.00 and the fee for a wrestling promoter is $50.00. The increased fee is necessary to enable the Commission to better perform its review of applicants for licensure.

Presently licenses are valid for a period of one year from the date of issue. N.J.A.C. 13:46-4.7 has been amended so that all licenses are on a fiscal year basis. This charge will simplify the recordkeeping of the State Athletic Commission.

The fee for a matchmaker license will be increased from $25.00 to $35.00 and since all licenses are on a fiscal year basis there is no need for a requirement, as in the present regulation, that matchmaker's licenses run concurrently with the promoter's license.

N.J.A.C. 13:46-4.14 provides that a licensed promoter shall not operate in the vicinity of another licensed promoter. Pursuant to N.J.A.C. 13:46-31, 32, 33 and 34 New Jersey is divided into three parts and a license is valid for only one territory. The proposal deletes N.J.A.C. 13:46-4.14 and amends N.J.A.C. 13:46.31 to provide that a license shall be valid for only one of three territories. N.J.A.C. 13:46-4.31(b) would provide that a promoter may obtain a license to promote in more than one territory but must obtain a license for that specific territory. The purpose behind a geographic limitation is to insure that an individual promoter will be capable of running a program in a given area. The present blanket prohibition against operating in more than one territory will be changed so that an individual can promote in more than one territory. However the public interest in insuring that he is capable of promoting a show in a given area will be served by requiring him to be licensed for that specific area.

N.J.A.C. 13:46-4.15 will be amended to prohibit all transfers of licenses. Presently licenses can be transferred when approved by the Commissioner.

N.J.A.C. 13:46-4.17, which provides that the license of a promoter may be revoked if he does not hold a program for a period of 60 days, will be repealed. The section of the regulations entitled criteria for license issuance, N.J.A.C. 13:46-4.27 will be amended to provide that the Commissioner may consider the number of shows held by a promoter in deciding whether to renew a license and that a show should be held in every 90 day period.

13:46-4.25 sets the license fees for various positions which are licensed by the Commission. The proposal increases the license fees and establishes a fee for inspectors. 13:46-4.26 will also be amended to increase the fee to obtain a duplicate license from $1.00 to $2.00.

The proposal amends N.J.A.C. 13:46-4.27 which sets forth the criteria for license issuance to promoters. The proposal provides that an applicant must demonstrate financial responsibility, experience, good character and general fitness. In the cases of promoters which are firms, associations or partnerships the above characteristic must be demonstrated concerning all persons who own or control more than 10 percent of the profits or assets. Likewise, in the case of corporations, the above characteristics must be demonstrated concerning all officers of the corporation and all stockholders who own more than 10 percent of the stock. The proposal also provides that no license may be granted to any person who has been convicted of an offense which would be a crime of moral turpitude under New Jersey law or any other offense which indicates the licensure would be inimical to the conduct of boxing in New Jersey.

The proposal would repeal N.J.A.C. 13:46-4.28 which provides that before obtaining a license a manager, boxer or second must obtain a license in the State in which he maintains his legal residence. Not all states license boxers, managers or seconds and some boxers are not citizens of the United States. The proposal amends N.J.A.C. 13:46-5.29 to require that an individual who is not a resident of New Jersey must be licensed by his own State of legal residence or other appropriate jurisdiction.

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The proposal increases the fee for a co-promoter permit license from $100.00 to $150.00 by amending N.J.A.C. 13:46-4.29.

N.J.A.C. 13:46-4.35 provides that the Commission may cause the fingerprints of all applicants for a license to be recorded. The proposal replaces the word "all" with word "any" so that the Commissioner may cause the fingerprints of some applicants to be recorded. It is too burdensome to record and keep on file the fingerprints of all applicants for a license.

N.J.A.C. 13:46-5.3 provides that any boxer who is not under contract to a manager may be a self-manager provided he has attained his 21st birthday. The proposal deletes the requirement that the boxer be 21 years old, due to the fact that the age of majority is now 18.

N.J.A.C. 13:46-5.4 requires that any boxer making his first professional appearance must provide positive proof of age. The boxing industry today is such that boxers frequently come from other states and countries and the staff of the State Athletic Commission cannot be personally familiar with every boxer who might participate in New Jersey. Therefore the proposal requires that any boxer must provide positive proof of his age and identity irrespective of how many times previously he has boxed professionally.

N.J.A.C. 13:46-5.5 concerns boxer manager contract forms and will be amended so that the form may be completed in the presence of either a notary public or a commission official. Presently such forms must be completed in the presence of both. The proposal also provides that all contracts and written agreements must be filed with the State Athletic Commission. At the present time many managers and boxers enter into separate contracts containing provisions different from the contract filed with the Commission. The existence of such divergent contracts impedes the ability of the Commissioner to exercise his statutory responsibilities.

Presently, pursuant to N.J.A.C. 13:46-5.6, boxer-manager contracts are limited to a maximum of two years. The proposal increases the maximum to three years. The proposal also forbids boxer-manager contracts which are renewable at the exclusive option of the manager. The use of such contracts circumvents the intent of the present regulations that a boxer would not be locked into his manager for a lengthy period of time. The maximum has been increased to three because it has been the Commission's experience that it is difficult to manage a boxer's career in a two-year period. The proposal amends N.J.A.C. 13:46-5.8 to provide that the Commission may recognize boxer-manager contracts on file with governmental agencies in other jurisdictions provided that the contract complies with the rules of the New Jersey Commission. The present rule speaks of "co-operating" states and does not address fighters from other countries or states without Commissions.

The proposal, by amending N.J.A.C. 13:46-5.15, clarifies what the Commission may do if a fighter fails to give a satisfactory performance. The proposal provides that the Commissioner may fine the fighter and deduct the fine from the purse which the Commission has held pending a hearing.

The proposal, by amending N.J.A.C. 13:46-5.28, reassigns the authority to call a draw when unavoidable circumstances cause the stopping of the bout from the referee to the Commissioner or his representative. Under the present regulation, when a contest is stopped and half or more of the scheduled rounds have been completed, the referee renders a decision. However decisions are now rendered in boxing contests by judges and not by the referee. Therefore N.J.A.C. 13:46-5.28 has also been amended to provide that when half or more of the scheduled rounds have been completed and a contest is stopped, the decision is to be awarded in accordance with the majority score of the scorecards.

The proposal amends N.J.A.C. 13:46-5.29 to provide that a non-resident of New Jersey may participate in a boxing contest if he has in his possession a current license from his state or other appropriate governmental jurisdiction. Not all states have boxing commissions, and boxers come to box in New Jersey from other countries. The proposal also removes the discretion of the Commissioner to waive the requirement. Such discretion has been exercised when a boxer comes from a state without a state boxing commission or from another country.

The proposal amends 13:46-5.31 which sets forth the grounds for suspension of licenses of boxers. The proposal provides for suspension for arrests and revocation for convictions of any officer in any jurisdiction which would under New Jersey law constitute a crime of moral turpitude. Licenses may also be revoked or suspended for any offense which indicates that licensure would be inimical to the conduct of the sport of boxing. Applications for licenses or renewals shall be denied for the same reason. The proposal also amends N.J.A.C. 13:46-6.18, 13:46-18.8 and 13:46-19.6 and provides the same standard for the suspension or revocation of the licenses of managers, promoters and matchmakers.

The proposal adds a new section, N.J.A.C. 13:46-5.32 to require that any boxer making his first professional appearance is limited to four rounds of boxing. The purpose of this provision is to protect the well-being of new boxers, concerning whom the Commission has no professional record to review.

The proposal sets forth a new standard for licensure as a manager. The present standard has little meaning. It does not set forth a standard by which it can be determined when an individual is properly qualified to be a manager. The proposal requires the applicant to show that he is able to work with and to protect the interest and safety of the boxer or boxers he seeks to manage and is conversant with the rules and regulations of the Commission.

The proposal has amended N.J.A.C. 13:46-6.2 to express in more clear language the requirement that if a manager seeks to work as a second he must be licensed as a second.

The proposal amends N.J.A.C. 13:46-6.3 to clarify the language to make it clear that when a manager is no longer licensed for any reason, the Commissioner has the discretion not to recognize the terms of the boxer-manager contract.

The proposal provides that no manager shall have more than four boxers engaged on a card of any boxing show. The present rule is not binding but states that no manager shall be "encouraged" to have more than two. The new proposal will provide a definite standard and will allow a larger number.

The proposal repeals N.J.A.C. 13:46-6.8 which is inconsistent with N.J.A.C. 13:46-5.10. N.J.A.C. 13:46-6.8 provides that club contracts may be signed by only the manager. N.J.A.C. 13:46-5.10, which the proposal retains, requires both the manager and the boxer to sign the contract.

The proposal amends N.J.A.C. 13:46-6.14 by clarifying the language used.

The proposal adds a new provision to prohibit managers from supplying boxers for bouts who are either unfit to box or who fail to give satisfactory performances. It has been the experience of the Athletic Commission that some managers have sent boxers to contests for which they were not properly fit. It is necessary to hold the manager responsible in order to deter the practice and to protect the safety of the boxer.

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The proposal places a regulation which prohibits a corporation from managing a boxer in the section of managers at N.J.A.C. 13:46-6.21. It is presently contained at N.J.A.C. 13:46-4.27.

The proposal amends several sections of Subchapter 8 to provide for judges. Originally regulations provided that the scoring of contests were to be done by the referee. References to referees have been replaced where appropriate with references to judges.

The proposal amends N.J.A.C. 13:46-8.1 to provide that both referees and judges are selected and licensed by the Commissioner. The proposal also adds a section (b) to provide a standard for the selection and licensing of referees and judges. Both referees and judges must have prior experience in amateur competition or in other states or jurisdictions. Also relevant is the applicant's training including attendance at seminars conducted by the Commissioner. Referees and judges must also be conversant with the rules and regulations of the Commissioner.

The proposal deletes N.J.A.C. 13:46-8.6 which requires the referee to use a small towel to wipe off the boxer's gloves after knockdowns or slips to the floor. The regulation also forbids the wiping of gloves of the referee's shirt. In practice if a towel is used it becomes covered with the material which is wiped off the gloves. Since the regulation does not serve the purpose of keeping the gloves clean, it will be repealed by the proposal.

The proposal clarifies the languages used in N.J.A.C. 13:46-8.17 to describe a knockdown.

N.J.A.C. 13:46-8.18 is amended by the proposal to provide that when a boxer severely and deliberately fouls his opponent he is not to be paid. The proposal also provides that the licenses of any boxer or manager may be suspended or revoked when there occurs stalling, faking, dishonesty, collusion or fouling. The regulations presently provide that the purse may be held. The proposal adds that the boxer or boxers may be fined, and the amount of the fine will be deducted from the purse.

The proposal amends 13:46-8.21 to delete the requirement that the timekeeper suspend time when a contestant has been knocked out or has fallen out of a ring. The proposal also adds the requirement that the boxer must return to the ring within twenty seconds. The proposal repeals the no foul rule, N.J.A.C. 13:46-8.23, which provides that a contestant may not be awarded a contest on a claim of a low-blow foul. This rule is inconsistent with present rule, N.J.A.C. 13:46-8.29, which provides that persistent fouling may result in disqualification. The proposal provides that a contest will not be awarded on a claim of a low blow foul unless the referee determines that due to the severity and deliberateness of the foul, the responsible boxer should be disqualified. A referee is also to penalize a deliberate low-blow foul with a loss of points. The proposal also provides that when a referee does not disqualify the boxer, he must determine whether the boxer who has been fouled can continue, and he can order the fight to be delayed for not more than five minutes.

The proposal amends N.J.A.C. 13:46-8.24 which now requires a referee to submit a report of any and all fights he referees within 24 hours. The proposal would require such reports only where there has been a disregard of the rules and allows the referee seven days to mail the report to the Commissioner.

N.J.A.C. 13:46-8.25 sets forth a compensation schedule for referees, which requires the promoter to pay them an amount depending on the size of the gate receipts of the show. The proposal adds judges as officials to be paid by the promoter according to a schedule. The proposal also increases the amounts to be paid and sets forth the schedule in clear language.

N.J.A.C. 13:46-8.26 forbids verbal or physical abuse of the referee. The proposal forbids such abuse of the referee and the judges and clarifies the language to make it clear that the Commissioner may revoke licenses for violations of this section.

The proposal repeals N.J.A.C. 13:46-8.31 which required referees to submit a premium payment for accident insurance to the inspector for the boxing show which they have been assigned.

The proposal deletes N.J.A.C. 13:46-8.32 which granted the Commissioner discretion to designate two judges to render decisions along with the referee in boxing contests. Since decisions are to be made in all contests by three judges, the provision is unnecessary.

The proposal amends N.J.A.C. 13:46-9.33 which concerns what occurs if a referee becomes incapacitated and is unable to finish scoring a boxing contest. Since referees no longer score boxing contests, the referees in N.J.A.C. 13:46-8.33 are changed to judges. Pursuant to the proposal, when a judge becomes incapacitated, the alternative referee scores the rest of the contest using the scorecard of the incapacitated judge. The proposal adds a new provision, N.J.A.C. 13:46-8.35 which provides that if the referee becomes incapacitated, the other referee assigned to the show will assume the duties of the incapacitated referee.

The proposal amends N.J.A.C. 13:46-9.1 which sets forth the duties of inspectors. The proposal provides the standard for appointment and licensing as an inspector. Inspectors must be capable of determining the appropriate amount of taxes and insurance premiums to be paid by a promoter for an event and must be able to compose a payroll of ring officials. Inspectors must also be conversant with the rules and regulations of the Commissioner.

The description of the duties of the inspectors has been amended by the proposal. Inspectors no longer may license participants on the night of the fight but rather are to determine whether the participants have been licensed. Boxers no longer receive licenses on the day of a fight when it is not possible to adequately access the boxer's mental and physical condition. Inspectors will no longer pay referees but, rather will compose a list of the fight officials to be used as payroll by the Office of the Commissioner. The proposal also adds the duty of submitting an insurance premium report to the Commissioner and collecting a check from the promoter for payment of the insurance premiums.

The proposal repeals N.J.A.C. 13:46-9.6 pursuant to which inspectors were required to obtain a signed physical fitness card from each boxer. This requirement is not necessary in light of recent changes in the regulations dealing with medical examinations on the day of the contest. The proposal adds a new regulation at N.J.A.C. 13:46-9.6 which provides that the promoter should not make payments directly to referees, judges, timekeepers, announcers, doormen or box office employees. Rather the promoter writes a check to the State of New Jersey and the funds are distributed by the State Athletic Commission.

The proposal amends N.J.A.C. 13:46-9.7 which deals with substitution of boxers. The proposal provides that substitutions can occur no later than two hours after the weigh-in and must be approved by the Commissioner or his representative. All substitutes must have previously obtained licenses from the State Athletic Commission.

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The proposal amends N.J.A.C. 13:46-9.8 which now provides that the inspector-in-charge shall collect a tax payment from the promoter on the same night of a show. The proposal expands the time in which payment may be made to within 24 hours of when the show is completed which is the time provided by statute. The proposal sets forth the amount of payment which is 10 percent of the total gross receipts from the sale of tickets and in addition a tax of two and one-half percent of any monies received from the lease or sale of television, moving pictures or radio rights. The proposal also forbids any allowance or deductions whatsoever from the amounts to be taxed.

The proposal amends N.J.A.C. 13:46-9.4 to provide that inspectors must count complimentary tickets in computing the tax payment of the gross receipts.

The proposal adds a new section, N.J.A.C. 13:46-10.8, which sets forth a compensation schedule for announcers which is based upon the gross receipts of the show.

N.J.A.C. 13:46-11.8 will be amended by the proposal to delete the reference to a boxing bout being terminated at the request of a corner which is inconsistent with N.J.A.C. 13:46-7.11 which states no second can terminate the performance of the boxer. The proposal also deletes the requirement that when a bout shall be terminated between rounds, the timekeeper shall sound the bell as a signal for the next round. The proposal provides that when a bout is terminated and the bell has not sounded the boxer will be considered as knocked out in the round just concluded. If the bell has sounded the fighter will be considered knocked out in the next round.

The proposal adds a new section, N.J.A.C. 13:46-11.10 to set forth a compensation schedule for timekeepers which is based upon the gross receipts of the show.

N.J.A.C. 13:46-15.2 will be amended to increase the bond required of licensed ticket printers from $5,000.00 to $10,000.00.

The proposal amends N.J.A.C. 13:46-15.6 to require that every ticket have printed on its face the total price charged therefore and the maximum premium, not to exceed 20 percent of the ticket price or $3.00, whichever is greater, at which a ticket may be resold. These requirements are the same as contained in N.J.S.A. 56:8-36 which applies to the resale of all tickets in entertainment events in New Jersey. N.J.A.C. 13:46-15.12 would be amended to provide that promoters may issue either tickets or passes to principals or seconds who are engaged in a boxing show.

N.J.A.C. 13:46-16.1 would be amended by the proposal to provide that doormen will no longer be hired by the promoter of a show but will be appointed, licensed and assigned by the Commissioner. Doormen play a crucial role in the taxation process and in the control of the audience at a boxing show. In order to safeguard the integrity of the collection of taxes and to protect public safety, doormen will be assigned by the Commission and not the promoter. The proposal also amends N.J.A.C. 13:46-16.2 to provide that those employed as doormen shall not be licensed as box office employees. The present regulation provides that employment duties of doormen and box office employees are not interchangeable without separate licenses. The proposal continues the prohibition that the duties are not interchangeable but also forbids an individual from being licensed as both.

The proposal changes references in Chapter 17 from Amateur Athletic Union (AAU) to Amateur Boxing Federation (ABF) which reflects the change in the name of the organization.

The proposal clarifies the language used in N.J.A.C. 13:46-18.1 and N.J.A.C. 13:46-18.3. The proposal also extends the period during which a promoter should hold a show from 60 to 90 days. Throughout the proposal references to club which is synonymous with promoter have been changed to promoter.

The proposal repeals N.J.A.C. 13:46-18.6 and N.J.A.C. 13:46-19.4 which forbids promoters and matchmakers from permitting any unlicensed person to book or schedule a match for any boxer. There are people who do supply names to promoters and matchmakers. The prohibition is not necessary because the Commissioner can exert sufficient supervision by the licensing of promoters and matchmakers.

The proposal amends N.J.A.C. 13:46-18.9 to require promoters to supply adequate "security services" instead of adequate "police protection". The new rule would permit licensees to utilize security personnel other than police officers to insure that order will be maintained, thereby reducing the burden often placed on local police departments, while ensuring the safety of the participants and spectators at boxing matches.

The proposal amends N.J.A.C. 13:46-18.10 to give the Commissioner discretion to allow promoters to schedule programs having less than 28 rounds of boxing. The purpose of this proposal is to lessen the pressure to arrange matches at the last moment which may result in mismatched contests or the participation of unfit substitutes. If a boxer refuses or is unable to fight one bout, the entire program may be jeopardized unless the Commissioner has the discretion to allow shorter programs.

The proposal amends N.J.A.C. 13:46-18.12. The new rule would require copies of all boxing contracts to be filed with the Commissioner. Main bout contracts would be required to be filed 30 days in advance of the contest or as determined by the Commissioner. Undercard bout contracts must be filed 14 days in advance of the contest. The rule would also prohibit the making of secret agreements contrary to the terms of the contract.

The proposal amends N.J.A.C. 13:46-18.14 which requires the provision of a room for the press at boxing programs. The proposal deletes some unnecessary language and the requirement that certain participants be present in the designated room immediately following the program. It is not appropriate and is violative of individual liberty to require, as a matter of State law, that an individual make himself available to be interviewed by the press. Therefore the portions of the rule requiring suspension of licenses would be deleted.

The proposal amends N.J.A.C. 13:46-18.15, the rule governing reservation of dates. Regulations were adopted in 1982. At that time the Commissioner was given the discretion to permit multiple programs in the same city on the same date so long as he was satisfied that the programs were not unduly competing with each other for the same audience. The present proposal amends the rule to provide criteria to consider in determining whether programs would unduly compete. The Commissioner will consider the location of each program, the identity, number and ranking of participants and whether the programs will be televised.

The proposal also allows the Commissioner to reserve a date based upon submission by a promoter of evidence of a commitment to televise a boxing program. Promoters may be able to arrange the televising of a program for specific dates, before they are able to obtain signed contracts from all of the participants. However, in order to obtain the television commitment it is necessary for the promoter to reserve a date. The existence of a television commitment provides sufficient evidence that a program will occur to justify the reservation of a date. The proposal also limits the period of time in which a

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promoter can reserve the same day of the week. Dates have been reserved far in advance thus precluding other promoters from utilizing a date in a specific area. Some of the dates reserved far in advance have not been used. Therefore, the proposal provides that a promoter can reserve in advance only three sorts of show on a particular day of the week.

There exist two provisions, N.J.A.C. 13:46-18.16 and N.J.A.C. 13:46-18.19, which are duplicative. The proposal repeals N.J.A.C. 13:46-18.19 and amends N.J.A.C. 13:46-18.16. The present regulations require the posting with the Commissioner of a surety bond or certified check for payment to purchasers of tickets who apply for refunds on tickets purchased when an advertised boxing program is cancelled. To be adequate, a certified check would have to be of an amount equal to the total amount of tickets sold. It is unrealistic to expect a promoter to be able to provide a certified check in such a large amount.

The proposal repeals N.J.A.C. 13:46-19.8 which provides that a matchmaker may make matches for only one club unless special written permission is obtained from the Commissioner. This rule is no longer enforced and was enacted when boxing events were promoted by boxing clubs. There is no purpose served by requiring a matchmaker to work for only one promoter.

The proposal amends N.J.A.C. 13:46-20.4 which deals with physical and mental examinations of wrestlers. The proposal adds a new provision granting the Commission authority to require an applicant on licenses to undergo any medical tests the Commission deems necessary.

The proposal amends N.J.A.C. 13:46-20.7 to give the Commissioner discretion to allow a wrestler to wrestle at more than one location on the same night.

The proposal amends N.J.A.C. 13:46-20.9 to provide that when a wrestler fails to appear as booked the Commissioner may either fine or suspend his license or both.

N.J.A.C. 13:46-20.12, which concerns the provision regulating safety equipment in wrestling contests, would be amended to provide that in a wrestling ring there will be three strands of ring rope, and would give the Commissioner discretion to allow variances from the rules governing boxing rings when necessary due to the different nature of the sports.

N.J.A.C. 13:46-20.18 would be amended by the proposal to increase the fee for a wrestling promoter license to $100.00.

The proposal clarifies the language contained in N.J.A.C. 13:46-21.2 to make clear that the promoter pays the wrestling referees according to a scale contained in the regulation.

The proposal amends N.J.A.C. 13:46-21.6 to provide that the promoter shall not pay wrestling referees directly. As with boxing officials, the promoter writes a check to the State of New Jersey and the State Commissioner pays the referee.

Social Impact

The proposal would have a positive social impact. The proposal will replace or repeal antiquated rules governing boxing. The proposal contains new provisions in many different areas which would assist the Commissioner in supervising the sport of boxing. The proposal will improve the ability of the Commission to protect the integrity of the sport and safety and well being of the participants.

Economic Impact

The proposal would raise certain fees to more accurately represent the cost to the State of the licensing of boxers, wrestlers and various officials. The proposal would clarify the rules regarding the collection of tax revenue which will assist the State in collecting the proper amount of taxes, and will provide clearer guidance to the promoters.

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

13:46-1.1 Definitions

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

. . .

"Club contract" is an agreement between a boxer with a promoter that provides that the boxer shall participate in a bout with another named boxer.

. . .

"Manager" means any person **who:** [does any of the following:]

1.-3. (No change.)

. . .

"Program" means the total of all boxing **and** [or] wrestling matches presented on a particular occasion.

. . .

13:46-1A-1 Classes of boxers

(a) Boxers shall be divided into the following classes:

1.-7. (No change.)

[8. Heavyweight ..... all over 175 pounds]

8. Cruiserweight ..... over 175 to 190 pounds

9. Heavyweight ..... all over 190 pounds

13:46-1A-2 Weight difference of contestants

(a) No contest shall be scheduled, and no contestants shall engage in a boxing contest where the weight differences shall exceed the allowance as shown in the following schedule, without the written approval of the Commissioner.

1.-6. (No change.)

[7. 175 pounds and over no limit]

7. 175 to 190 pounds not more than 15 pounds

8. 190 pounds and over no limit

SUBCHAPTER 4. [LICENSES] **LICENSING** AND PERMITS

13:46-4.1 General licensing requirement

No person, club, corporation or association shall hold, conduct or participate in boxing bouts or wrestling exhibitions or sparring exhibitions in the State of New Jersey without first having obtained a license from the State Athletic Commissioner. The Commissioner, in the exercise of the discretion to grant or deny a license, may consider any determinations, standards or recommendations made by a nationally recognized boxing association whose voting membership is composed of representatives of governmental agencies regulating boxing. Any such determinations, standards or recommendations made by a nationally recognized boxing association whose voting membership is composed of representatives of governmental agencies regulating boxing. Any such determinations, standards or recommendations made may include, but not be limited to, [an] **any** concerning the moral character of the applicant. A nationally recognized boxing association shall include, but not be limited to, the World Boxing Association, the World Boxing Council, the North American Boxing Federation and the United States Boxing Association. **Nevertheless, the Commissioner shall retain full authority to grant or deny a license irrespective of a determination or recommendations by such an association.**

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13:46-4.4 List of associated persons

Every application for a license shall have attached to it a complete list of these persons associated with the applicant. If the applicant is a partnership, the list shall state the name of all partners, and if the applicant is a corporation, the list shall state **all** officers and directors and all shareholders owning or controlling 10 percent or more of the stock. Failure to file such a complete list of associated persons with the application shall be considered sufficient reason to refuse issuance of the license. If the list of associated persons or any other information required by the act or by these rules is falsified and a license is issued, the license shall be revoked.

13:46-4.6 Fees

[(a) The fee for a promoter license is $100.00

(b) The fee for a wrestling license is $50.00]

(a) The fee for a boxing or wrestler's promoter's license is $150.00

(b) The fee for a wrestling promoter's permit is $100.00

[(c) The fee for a single show permit wrestling license is $25.00]

13:46-4.7 Period of validity; **Renewal of licenses**

[A license shall be valid for a period of one year from the date of issuance.]

All licenses must be renewed on or before June 30 of each year no matter when they were originally obtained and shall be valid until June 30 of the next year.

13:46-4.10 Matchmaker

Each licensed promoter shall designate a matchmaker [whose fee shall be $25.00, and whose license shall run concurrently with the issuance of the license and bond.] **who must be licensed by the Commissioner pursuant to N.J.A.C. 13:46-9.1. The fee for a matchmaker license shall be $35.00.**

13:46-4.14 [Transfer of functions] **(Reserved)**

[A licensed promoter shall not transfer its functions into the vicinity of another licensed promoter.]

13:46-4.15 Sale or transfer of license **prohibited**

[Licenses are not to be bartered, sold or exchanged. Any transfer of a license shall first be approved by the Commissioner.]

Licenses are not to be bartered, sold, exchanged or transferred.

13:46-4.17 [Revocation for nonuse] **(Reserved)**

[If a promoter has been granted a license for boxing or wrestling programs and the promoter does not hold a boxing or wrestling program for a period of 60 days the license of said promoter may be revoked.]

13:46-4.18 [Display of certificate] **(Reserved)**

[The license certificate issued by the Commissioner shall be enclosed in a suitable wooden or metal frame such that the whole of the certificate may be seen therein and shall be posted and at all times displayed in a conspicuous place in the box office of the promoter so licensed.]

13:46-4.19 Promoter responsibility

All [licensees] **holders of a promoters license** shall be held absolutely responsible to the Commissioner for all programs or exhibitions held, given or conducted. [by said licensees.]

13:46-4.20 [Financial interest in participants] **(Reserved)**

[No promoter shall have, either directly or indirectly, any financial interest in any boxer or wrestler competing on premises owned or leased by the promoter or in which such promoter is otherwise interested.]

13:46-4.25 License fees

(a) License fees for boxers, wrestlers, managers, seconds, referees, timekeepers, **inspectors,** announcers, doormen and box-office employees shall be on a fiscal year basis (July 1 through the following June 30) and the fee for each license shall be as follows:

1. Wrestling Booking Agency	[$50.00]	**$75.00**
2. Wrestling Booking Agency	[15.00]	**25.00**
3. Referee	[15.00]	**25.00**
4. Manager	[15.00]	**25.00**
5. Boxer	[5.00]	**10.00**
6. Wrestler	[5.00]	**10.00**
7. Second	[5.00]	**10.00**
8. Timekeeper	[5.00]	**10.00**
9. Announcer	[5.00]	**10.00**
10. Doorman	[5.00]	**10.00**
11. Box office employees	[5.00]	**10.00**
12. Matchmaker	[25.00]	**35.00**
13. Inspector		**10.00**

13:46-4.26 Lost license; duplicate

If a license is lost, its owner may obtain a duplicate for [$1.00] **$2.00** by written application to the Trenton Office of the State Athletic [Commission.] **Commissioner.**

13:46-4.27 Criteria for license issuance to promoters

(a) The State Athletic Commissioner may grant a license to conduct boxing or wrestling promotions [to an applicant if in his judgment the financial responsibility, experience, character and general fitness of the applicant, including in the case of corporations its, officers and stockholders, are such that the participation of such applicant will be consistent with the public interest, convenience or necessity and with the best interests of boxing or wrestling generally.] **where an applicant has demonstrated to the satisfaction of the Commissioner financial responsibility, experience, good character and general fitness and of those persons who own or control more than 10 percent of the profits or assets of the firm, association or partnership or the officers of a corporation or those stockholders who own more than 10 percent of the stock in such a corporation; provided, however, no license shall be granted to any applicant convicted of any offense in this or any other jurisdiction which would be under New Jersey law a crime or moral turpitude or any other offense which indicates that licensure would be inimical to the conduct of the sport of boxing in this State.**

(b) [If any applicant is an out-of-State legal resident, the Commissioner shall exercise his discretion in the granting or withholding of the license, employing for guidance the conduct of the applicant in his State of legal residence during his licensure there.]

In deciding whether to renew a license to a promoter, the Commissioner may consider the number of shows promoted in the prior year but a show should be held in each 90 day period.

13:46-4.28 [License in state of residence] **(Reserved)**

[Before a manager, boxer or second can obtain a license in New Jersey, he must first be qualified for and obtain a license

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or approval in the State in which he maintains his legal residence.]

13:46-4.29 Co-promoter

Any co-promoter of a boxing or wrestling promotion must obtain a [$100.00] **$150.00** permit license associating himself with a licensed promoter. Such a license is valid for a single show.

13:46-4.30 [Corporation license] **(Reserved)**

[No license shall be issued to a corporation to manage a boxer.]

13:46-4.31 Geographical territory

(a) When issuing a yearly boxing or wrestling license, the Commissioner shall designate [the] **which of three** geographical territor[y]**ies** over which the license shall be valid.

(b) A promoter may obtain a license to promote in more than one geographical territory and must obtain a license for a specific territory before promoting in that territory.

13:46-4.35 Fingerprinting of applicants for licenses

The Commissioner shall, at his discretion, cause the fingerprints of [all] **any** applicants for a license, including officers or directors of corporations, to be recorded and kept on file in the office of the Commissioner for identification purposes and for guidance in the exercise of discretion in granting, rejecting or suspending such licenses.

13:46-4.36 Refund of license fees

Refunds will not be granted to any person for fees paid for [promoter licenses,] **a license,** [including matchmaker's licenses,] when such person fails to complete the application requirements considered and approved by the Commissioner.

13:46-5.3 Boxer as self manager

Any boxer who has attained his [21st] **18th** birthday and is not under contract to a manager can make his own matches, signing contracts to handle his own affairs and shall for the same apply for a manager's license.

13:46-5.4 First appearance; proof of age **and identity**

(a) Any boxer [making his first professional appearance at a club, without previously taking out a license] must provide positive proof of his age **and identity**.

(b) Unless positive proof of age **and identity** is provided, the inspector shall not permit the contestant to box.

(c) Positive proof of age and identity may include but may not be limited to a drivers license or birth certificate.

13:46-5.5 Boxer-manager contract forms

(a) All boxers with managers must, when boxing in New Jersey for the first time, sign boxer-manager contract forms. These must be executed in triplicate in the presence of a notary public [and] **or** a Commission official. [The Commission official shall then give one copy to the manager, one to the boxer and the third copy shall be filed in the Trenton office of the State Athletic Commission.] **One copy shall be retained by the manager, one copy shall be retained by the boxer and the manager shall file the third copy with the State Athletic Commissioner.**

(b) All contracts and written agreements between a boxer and his manager must be filed with the State Athletic Commissioner.

13:46-5.6 Boxer-manager contracts; time of effectiveness

(a) Boxer-manager contracts in New Jersey shall [become] **be** effective for [two] **a maximum of three years** [or for a longer time period at the discretion of the Commissioner], unless the manager releases the boxer or the Commissioner declares the contract void.

(b) No boxer-manager contracts in New Jersey may be renewable at the exclusive option of the manager.

13:46-5.8 Parties to contract to be licensed

(a) (No change.)

(b) The Commissioner may recognize contracts on file [in co-operating States] **with governmental agencies in other jurisdictions provided that the contract comply with the rules of the Commissioner.**

13:46-5.11 Payment to boxer [as exclusive signer of club contract

When a boxer exclusively signs the club contract for a bout, the] **A** promoter shall pay [to him] **the boxer** the full purse specified in the contract.

13:46-5.15 Failure to give satisfactory performance

(a) If a boxer, in the judgment of **the** referee, inspector or other Commission official, fails to give a satisfactory performance, his purse shall be forwarded to the Commissioner.

[(b) All parties concerned shall be summoned to a hearing and the disposition of the purse shall be decided by the Commissioner.]

(b) Such money withheld shall be deposited with the State Treasurer.

(c) All parties concerned shall be summoned to a hearing and the disposition of the purse shall be decided by the Commissioner. If the Commissioner agrees that the boxer failed to give a satisfactory performance he may fine the boxer and the amount of the fine shall be deducted from the purse.

13:46-5.17 Boxer with suspended manager

[(a)] A boxer whose manager has been suspended may continue boxing independently during the term of such suspension, signing all contracts for matches.

[(b) No payment of a boxer's earnings may be made by any licensed club to a manager under suspension but the purse shall be paid to the boxer.]

13:46-5.21 Fouls

(a) The following are fouls in boxing and boxers committing any of these infractions are subject to penalty as the referee sees fit:

1.-6. (No change.)

7. Butting with the head or shoulder or using the knee;

8.-15. (No change.)

13:46-5.28 Contest stopped prematurely

When a boxing contest is stopped because of rain or other unavoidable circumstances and less than half of the scheduled number of rounds have been finished, [the referee] **the Commissioner or his representative** shall call the same a draw. If, under the same circumstances, half or more of the scheduled number of rounds have been completed, the [referee shall render a] decision **shall be awarded in accordance with the majority score of the scorecards.**

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13:46-5.29 Resident license

No professional boxer who is [a legal resident of a State outside of New Jersey] **not a resident of New Jersey** may be booked or scheduled to appear in any boxing contest unless such boxer has in his possession a current license from his State of legal residence, **or other appropriate governmental jurisdiction**. [or if the same provision is waived by the Commissioner]

13:46-5.31 Grounds for suspension of license

[Any boxer 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, an application for a license or renewal thereof may be summarily rejected.]

A license of any boxer shall be suspended for an arrest for or revoked on a conviction of any offense in this or any other jurisdiction which would be under New Jersey law a crime of moral turpitude or any other offense which indicates that licensure would be inimical to the conduct of the sport of boxing in this State. An application for a license or renewal thereof shall be denied by the Commission for the same reasons.

13:46-5.32 First appearance; number of rounds

Any boxer making his first professional appearance may not box more than four rounds.

13:46-6.1 General qualifications

[Managers of boxers must be properly qualified to perform the duties of managers.]

In order to be licensed as a manager an individual must indicate to the satisfaction of the Commissioner that he is able to work with the boxer or boxers he seeks to manage and to protect their interest and safety and is conversant with the rules and regulations of the Commission.

13:46-6.2 Working in a boxer's corner

[Any manager who works in the corner of a boxer with whom he has a contract or works with other boxers must obtain a second license.]

No manager may work as a second unless he has been licensed as a second.

13:46-6.3 [Signatory to boxer manager contract] **Loss of license by manager**

[Any manager who signs a boxer-manager contract must renew his manager's license during the term of same or it shall become void at the discretion of the Commissioner.]

Any manager who signs a boxer-manager contract must continue to be licensed during the term of the contract. If a manager does not renew his license, or if his license is not renewed or if his license is revoked by the Commissioner, the provisions of the boxer-manager contract at the discretion of the Commission will not be recognized by the Commissioner.

13:46-6.7 [Number of boxers in one show; limitation on manager] **Number of boxers with same manager in one show**

No manager shall [be encouraged to] have more than [two] **four** boxers engaged on a card of any boxing show.

13:46-6.8 [Signatories to Club Contract] **(Reserved)**

[Club contract must be signed personally by the manager or by the boxer if he has no manager.]

13:46-6.13 Number of managers per boxer

(a) No boxer can have more than one manager without express[ed] approval of the Commissioner.

(b) (No change.)

13:46-6.14 Manager attempting to take another manager's boxer

[Any licensed manager found guilty of attempting to take another manager's boxer shall be subject to fine and may be suspended.]

It shall be a prohibited practice for any licensed manager to attempt to take another manager's boxer.

13:46-6.16 Aid for injured boxer

No manager shall attempt to render aid to an injured boxer before the [club] **ringside** physician has had an opportunity to examine the boxer.

13:46-6.18 Grounds for suspension of license

[Any manager 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.]

A license of any manager shall be suspended for an arrest for or revoked on a conviction of any offense in this or any other jurisdiction which would be under New Jersey law a crime of moral turpitude or any other offense which indicates that licensure would be inimical to the conduct of the sport of boxing in this State. An application for a license or renewal thereof shall be denied by the Commission for the same reasons.

13:46-6.20 [Reserved] **Manager supplying unfit boxers**

It shall be a prohibited practice for a manager to supply boxers for bouts who are either unfit to box or who fail to give satisfactory performances.

SUBCHAPTER 8. BOXING REFEREES **AND JUDGES**

13:46-8.1 Selection and assignment

(a) Referees **and judges** for boxing **exhibitions** shall be selected, **licensed,** and assigned by the Commissioner.

(b) To be licensed as a referee or as a judge an individual must have officiated previously in amateur competition or in other states or jurisdictions. The Commissioner will review the applicant's previous performance and will consider any other training including attendance at seminars conducted by the State Athletic Commissioner. Judges must be conversant with the rules and regulations of the Commissioner.

13:46-8.3 Reporting for duty; number per show; restrictions

(a) Referees **and judges** must report for duty at least one hour before the scheduled starting time of the show.

(b) **Three judges and at** [At] least two referees will be assigned for each show.

(c) Referees must first report to their dressing room[,]; then to ringside; must stay at ringside when not officiating; and will avoid conversation except with Commission officials.

13:46-8.6 [Wiping boxing gloves] **(Reserved)**

[Each referee shall carry a clean; sanitary, small towel to wipe off the boxer's gloves after knockdowns or slips to the floor. Wiping of gloves on a referee's shirt is forbidden.]

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13:46-8.8 Mid-ring instructions

The referee shall call contestants together before such bout for final instructions, covering good sportsmanship and the eight-count; at which time each contestant shall be accompanied by his chief second only. The [principals,] **contestants,** after receiving instructions, shall shake hands and retire to their corners. They shall not again shake hands until the beginning of the last round.

13:46-8.15 Failure to answer bell

If any boxer fails to answer the bell after his rest period between rounds, the referee shall declare his opponent the winner by a TKO in the round coming up. The [referee] **judges** shall so indicate on [his] **their** scorecards.

13:46-8.17 Knocked down construed

[(a)] A boxer shall be considered by the referee to be knocked down when any part of his body other than his feet is on the ring floor, [he is hanging helplessly over the ropes, rising from a "down" position] **or if he is helplessly on the ropes as a result of a legal blow as ruled by the referee.**

[(b) A boxer hanging over the ropes is not officially "down" until so pronounced by the referee, who can count the boxer out either on the ropes or on the floor.]

13:46-8.18 Failure to compete

(a) (No change.)

(b) A contestant earns nothing and shall not be paid for an exhibition or contest in which there is stalling, faking or dishonesty or collusion **or when a contestant severely and deliberately fouls his opponent.**

(c) The Commissioner shall determine the merits of any such contest and take whatever action he considers proper **including the suspension or revocation of the licenses of any boxer or manager.**

(d) In any such case the representative of the Commissioner should order the purse of the offender held up and forwarded to the Commissioner for investigation and action.

(e) The Commissioner may fine the boxer or boxers and the amount of the fine shall be deducted from the purse and deposited with the State Treasurer.

13:46-8.21 Boxer fallen or knocked through ropes; return unassisted

(a) If a contestant has been knocked **out** or has fallen out of the ring during the contest, the referee shall at once order the other boxer to a neutral corner. [and shall inform the timekeeper to suspend time until directed to resume time from the point of interruption for the duration of the round.]

(b) The contestant who has fallen or has been knocked out of the ring must, **within 20 seconds,** return to the ring unassisted by his seconds. The referee, at his discretion, or guided by **the** expert judgment of the [attending] **ringside** physician, shall have the contest continue, unless he stops the contest and awards the other boxer the decision by technical knockout.

13:46-8.23 [No foul rule] **Low blow foul rule**

[No contestant may be awarded a contest on a claim of a low-blow foul nor may a contestant lose by reason of a low-blow foul. Contestants are presumed to be properly protected by safety equipment.]

(a) A contestant may not be awarded a contest on a claim of a low blow foul unless the referee determines that due to the severity and deliberativeness of the low blow foul, the boxer responsible for the low blow foul shall be disqualified. A referee may penalize any contestant who deliberately fouls his opponent during a contest with a loss of points and round.

(b) In the case of a foul when the referee does not determine that the boxer responsible shall be disqualified, the referee shall determine if the boxer who has been fouled can continue or not. If his chances have not been seriously jeopardized as a result of the foul, the referee may order the bout to continue after an interval of not more than five minutes.

13:46-8.24 Referee's report of [contest] **disregard of rules**

(a) A referee shall submit a report of any and all contests which he referees **where there has been a disregard of the rules.**

[(b) Any matter involving disregard of the rules must be included in the report.]

[(c)] **(b)** The original report must be mailed to the Trenton office of the Commissioner within [24 hours] **seven days.**

13:46-8.25 Compensation

(a) The compensation and expenses to boxing referees **and judges** shall be paid by the [person, club corporation or association] **promoter** conducting the show and shall be on the following basis:

1. If the **gross** [net] gate receipts of the show do not exceed **$15,000** [$2,000.00], the fee for each of the two referees shall be [$20.00] **$150.00 and the fee for each of the three judges shall be $125.00.**

2. When the **gross** [net] receipts are between [$2,001.00 and $3,000.00] **$15,000 and $30,000,** [the referee handling the main event shall receive $30.00 and the other referee shall receive $25.00] **the fee for each of the referees shall be $175.00 and the fee for each of the the judges shall be $150.00.**

[$3,001.00 to $4,000.00 ..... $35.00 and $25.00;
$4,001.00 to $5,000.00 ..... $45.00 and $25.00;
$5,001.00 to $7,000.00 ..... $55.00 and $30.00;
$7,001.00 to $8,000.00 ..... $80.00 and $70.00;
$8,001.00 to $10,000.00 ..... $85.00 and $50.00;]

3. When the gross receipts are between $30,000 and $50,000 the fee for each of the referees shall be $200.00 and the fee for each of the three judges shall be $175.00.

4. When the gross receipts are between $50,000 and $75,000 the fee for each of the referees shall be $250.00 and the fee for each of the three judges shall be $200.00.

5. When the gross receipts are between $75,000 and $150,000 the fee for each of the referees shall be $300.00 and the fee for each of the three judges shall be $225.00.

6. When the gross receipts are between $150,000 and $200,000 the fee for each of the referees shall be $400.00 and the fee for each of the three judges shall be $250.00.

7. When the gross receipts are between $200,000 and $300,000 the fee for each of the referees shall be $500.00 and fee for each of the three judges shall be $275.00.

8. When the gross receipts are in excess of $300,000 the fee for the referees and judges will be set by the Commissioner.

[(b) When the net receipts are over $10,000.00 the fees shall be fixed by the Commissioner]

[(c) Fees shall be fixed by the Commissioner whenever more than two referees are assigned to any one show. The Commissioner in such cases as stated in subsection (b) and (c) of this section shall notify the promoter who must pay referee's fees and expenses.

(d) In charity shows sanctioned by the Commissioner, referee's fees shall be set by the Commissioner]

13:46-8.26 Verbal or physical abuse of referee **or judge**

Any licensee who verbally or physically abuses a referee **or judge** shall be suspended indefinitely and [may be perma-

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nently discarred at the discretion of the Commissioner] **his license may be revoked.**

13:46-8.28 Knocked out boxer; treatment by physician

A boxer who is knocked out must not be touched or moved by anyone except the [club] **ringside** physician. The physician shall determine the methods of resuscitation.

13:46-8.31 [Accident insurance; premium payment] **(Reserved)**

[Referees shall submit a premium payment for accident insurance to the inspector for the boxing show to which they have been assigned.]

13:46-8.32 [Judges, majority vote] **(Reserved)**

[The Commissioner may, whenever he deems it desirable, designate two judges appointed by him, who with the referee, and by a majority vote thereof, shall render a decision in any boxing contest.]

13:46-8.33 Substitution of [referee] **judge**

(a) In the event a [referee] **judge** becomes incapacitated and is unable to finish scoring a boxing contest, time out should be called and [another] **the alternative** referee shall immediately be assigned to score the same.

(b) It shall be mandatory for [such substituted] **the alternative** referee to continue scoring on the scorecard used by the incapacitated [referee] **judge.** [and such scorecard shall be the official scorecard in the determination of a decision at the conclusion of the boxing contest.]

(c) The [substituted] **alternative** referee must start the round from the beginning from the time of his substitution for the incapacitated [referee] **judge.**

13:46-8.35 Incapacitation of referee

In the event a referee becomes incapacitated, time out shall be called and the other referee assigned to the show will assume the duties of the incapacitated referee.

SUBCHAPTER 9. INSPECTORS

13:46-9.1 [General supervisory duties] **Qualification and duties**

[(a) Inspectors shall be in charge of shows for the purpose of:

1. Licensing contestants and all other participants according to the requirements of the rules of this Chapter;
2. Collecting taxes;
3. Paying referees; and
4. Supervising gate entrances.

(b) Inspectors shall report directly to the representative or agent assigned by the Commissioner.]

(a) In order to be appointed and licensed as an inspector an individual must indicate to the satisfaction of the Commissioner that he is capable of determining the appropriate amount of taxes and insurance premiums to be paid by a promoter for an event. Inspectors must be able to compose a payroll of ring officials and must be conversant with the rules and regulations of the Commissioner.

(b) Inspectors shall be in charge of shows for the purpose of:

1. Determining that contestants and all other participants are licensed according to the requirements of the rules of this chapter;

2. Collecting taxes;

3. Composing a list of the identities of fight officials to be used as a payroll by the Office of the Commissioner;

4. Supervising gate entrances;

5. Submitting an insurance premium report to the Commissioner and collecting a check from the promoter for payment of the insurance premiums. The report and premium shall be forwarded by the Commissioner to the insurance carrier.

13:46-9.3 Report; payment of taxes and fees

(a) The inspector-in-charge at every show, boxing or wrestling, must submit or mail to the Commissioner within 24 hours a completed inspector's report on a form provided by the State Athletic Commission. [and which, on the reverse side, shall contain the physician's examination report.]

(b) Payment of all taxes and other fees must be made to the State Athletic Commission forthwith under penalty of suspension.

13:46-9.5 Forwarding of scorecards

Inspectors at boxing shows must obtain the [referee's] **judges'** scorecards and forward same to the Commissioner in addition to other required reports.

13:46-9.6 [Physical fitness card] **Payment of referees, judges, timekeepers, announcers, doormen and box office employees**

[Inspectors shall obtain from each boxer a signed physical fitness card on a form supplied by the Commissioner.]

Promoters shall not make payments directly to referees, judges, timekeepers, announcers, doormen or box office employees. The promoter shall write a check to the State of New Jersey in an amount determined by the chief inspector. The check shall be given to the chief inspector at the fight and forwarded to the Commission by the Chief Inspector. The funds will be disbursed by the Commission to the referees, judges, timekeepers, announcers, doormen or box office employees based upon the payroll composed by the inspectors.

13:46-9.7 Check of substitute boxers

[When substitutions occur in any boxing show, inspectors must thoroughly check the substitute's record, including his last five bouts, license, suspension status, name of his manager, if any, and any other pertinent information.]

All substitutions must occur no later than two hours after the weigh-in and all substitutes must be approved by the Commissioner or his representative and have previously obtained licenses from the State Athletic Commission.

13:46-9.8 Collection of tax payment

Within 24 hours of when a show is completed [The] **the** inspector-in-charge shall collect a tax payment from the promoter [the same night of a show] **in the amount of 10 percent of the total gross receipts from the sale of tickets and in addition a tax of 2.5 percent on any monies received from the lease or sale of television, moving pictures or radio rights. No allowances or deductions shall be taken from gross receipts on the sale of tickets or monies received from the sale or lease of television, moving pictures or radio rights, whatsoever.**

13:46-9.9 Computing tax payment

Inspectors in computing the tax payment **on the gross receipts from the sale of tickets** must count **complimentary** [the unsold] tickets **in accordance with N.J.A.C. 13:46-15.5.** [and deduct the total of same from the number of tickets printed.]

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13:46-10.8 Compensation of announcers

(a) The compensation and expenses of announcers shall be paid by the promoter conducting the show and shall be on the following basis:

1. If the gross gate receipts for the show do not exceed $15,000 the fee for the announcer shall be $150.00;

2. When the gross gate receipts are between $15,000 and $30,000, the fee for the announcer shall be $175.00;

3. When the gross gate receipts are between $30,000 and $50,000, the fee for the announcer shall be $200.00;

4. When the gross gate receipts are between $50,000 and $75,000, the fee for the announcer shall be $225.00;

5. When the gross gate receipts are between $75,000 and $150,000, the fee for the announcer shall be $250.00;

6. When the gross gate receipts are between $150,000 and $200,000, the fee for the announcer shall be $300.00;

7. When the gross gate receipts are between $200,000 and $300,000, the fee for the announcer shall be $325.00;

8. When the gross gate receipts are in the excess of $300,000, the fee for the announcer will be set by the Commissioner.

13:46-11.8 Termination between rounds

(a) If a boxing bout shall terminate between rounds by decision of the referee [or at the request of a corner, the timekeeper shall sound the bell as a signal for the next round.] **and the bell has not sounded for the next round, the boxer will be considered knocked out in the round just concluded; if the bell has sounded the fighter will be considered knocked out in the next round.**

[(b) The contest shall then be considered as having terminated in the round for which the bell was sounded and likewise the referee shall be considered to have counted "ten" as in the case of a knockout.]

13:46-11.10 Compensation of timekeeper in boxing shows

(a) The compensation and expenses of announcers shall be paid by the promoter conducting the show and shall be on the following basis:

1. If the gross gate receipts for the show do not exceed $15,000 the fee for the timekeeper shall be $150.00;

2. When the gross receipts are between $15,000 and $30,000, the fee for the timekeeper shall be $175.00;

3. When the gross receipts are between $30,000 and $50,000, the fee for the timekeeper shall be $200.00;

4. When the gross receipts are between $50,000 and $75,000, the fee for the timekeeper shall be $225.00;

5. When the gross receipts are between $75,000 and $150,000, the fee for the timekeeper shall be $250.00;

6. When the gross receipts are between $150,000 and $200,000, the fee for the timekeeper shall be $300.00;

7. When the gross receipts are between $200,000 and $300,000, the fee for the timekeeper shall be $325.00;

8. When the gross receipts are in the excess of $300,000, the fee for the timekeeper will be set by the Commissioner.

13:46-15.2 Printer's license

[(a) The Commissioner is authorized to issue licenses to printers as a safeguard against fraud and to prescribe rules and regulations governing such issuance and may for cause revoke the same.]

(a) [(b)] All licenses hereunder shall be for a period of one year unless sooner revoked for cause.

(b) [(c)] At the time of the application for such license, the applicant shall execute and file with the Commissioner a bond to the State of New Jersey in the sum of [$5,000.00] **$10,000** in proper form and with sureties thereon satisfactory to the Commissioner, which bond shall be conditioned for compliance with the provision of the license.

(c) [(d)] A printer's license fee shall be [$15.00] **$25.00** for a period of one year.

13:46-15.6 Price on ticket

[(a) Every ticket offered for sale or issued as a complimentary ticket shall have printed thereon the total price. The total price need not be printed, however, upon any ticket issued to:

1. Newspaper reporters, photographers, telegraphers, and radio and television announcers assigned to work by their recognized employers or superiors, policemen and firemen in uniform and on duty, and persons of similar vocation who are admitted free to any club for the performance of special duties in connection with any event and whose special duties are the sole reason for their presence and free admission as set forth in N.J.A.C. 13:46-15.11;

2. Persons in the established working press section having reservations as set forth in N.J.A.C. 13:46-15.15; and

3. Actual employees as set forth in N.J.A.C. 13:46-15.16.]

Every ticket offered for sale shall have printed on its face the total price charged therefore and the maximum premium, not to exceed 20 percent of the ticket price or $3.00 whichever is greater, plus taxes at which a ticket may be resold shall be printed either in a dollar amount or as a formula on the face or back of any ticket.

13:46-15.8 Holding of tickets; time limits

(a) Tickets of every description used for any boxing match or wrestling exhibition must be held by the promoters for [a period not to exceed] six months.

(c) (No change.)

13:46-15.11 Free admission

Newspaper reporters, photographers, telegraphers and radio and television announcers assigned to work by their recognized employers or superiors, policemen and firemen in uniform and on duty, and persons of similar vocation who are admitted free [to any club] for the performance of special duties in connection with any event and whose special duties are the sole reason for their presence and free admission, are not liable for any tax on admission.

13:46-15.12 Ticket exemptions

(a) Tickets **or passes** shall be provided by the [club] **promoter** for principals and seconds who are engaged in a boxing show.

(b) Any [club] **promoter** admitting any person other than those specifically exempted without a ticket is subject to a penalty deemed proper by the Commissioner under the circumstances.

13:46-15.13 Irregularities

(a) In all cases where it is reported by an inspector that a [club] **promoter** has made an incorrect statement of its gate receipts, or has used tickets not appearing on the statement required by the rules of the Commission, or by any mistake or subterfuge as to reduce the amount of tax under the law, the [club manager] **promoter** shall be called before the Commission and upon the failure to make a prompt and satisfactory explanation and adjustment the [club's] **promoter's** license shall be revoked.

(b) Reports on any such irregularities must be made immediately, and in writing, by the State inspector.

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13:46-15.18 [Advertisement on tickets] **(Reserved)**
[No advertising matter shall be printed on tickets.]

13:46-16.1 [Hiring, licensing] **Doormen and box office employees**
[Doormen and box office employees employed at boxing or wrestling shows shall be hired by the promoter and shall be licensed by the State Athletic Commission.]
(a) Doormen for boxing and wrestling exhibitions shall be appointed, licensed and assigned by the Commissioner.
(b) Box office employees employed at boxing or wrestling shows shall be appointed by the promoter and licensed and assigned by the State Athletic Commissioner.

13:46-16.2 [Separate licenses] **Separation**
[(a) Doormen shall be licensed for employment only as doormen and box office employees only for box office work.
(b) These employment duties are not interchangeable without separate licenses.]
The employment duties of doormen and box office employees are not interchangeable. Those employed as doormen shall not be licensed as box office employees.

13:46-16.3 Supervision
Doormen and box office employees shall be supervised by Commission representatives. [and shall be held responsible for any lack of cooperation.]

13:46-17.1 Conduct; approval
(a) Amateur [(AAU)] **ABF** boxing shall be conducted under the direction and rules of the Amateur [Athletic Union] **Boxing Federation.**
(b) (No change.)

13:46-17.2 Tickets
Tickets for amateur [(AAU)] **ABF** boxing shows must be printed by printers licensed and authorized by the New Jersey Athletic Commission.

13:46-17.3 Inspector
The Commissioner shall assign an inspector to each [(AAU)] **ABF** show. The inspector shall collect the State Tax and shall work closely with the [AAU] **ABF** clerk.

13:46-17.4 Safety precautions
The inspector must not permit an amateur [(AAU)] **ABF** boxing show to proceed unless there is a doctor in attendance at ringside **and an ambulance available** and all safety precautions are strictly adhered to in accordance with the rules and regulations of this Chapter.

13:46-17.5 Physicians' compensation
Physicians at [AAU] **ABF** shows shall be compensated by the [AAU] **ABF** clubs unless their services are donated.

13:46-17.8 Permit; [AAU] **ABF** sanction
No permit will be granted for the purpose of holding amateur contests unless request for such permit is accompanied by sanction of the [AAU] **ABF**.

13:46-17.9 [Sale of tickets for minor contestants] **(Reserved)**
[Tickets of admission shall not be sold for any boxing program featuring contestants under 16 years of age.]

13:46-18.1 General responsibility
A licensed promoter will be held responsible for any failure **to adhere to or enforce** [in adhering to or enforcement of] the rules and regulations of the New Jersey Athletic Commission.

13:46-18.3 Non-use of license
If a promoter [or club] has been [ranted] **granted** a license for boxing or wrestling shows and the [said] promoter [or club] does not hold a boxing or wrestling show for a period of [60] **90** days, the license of said promoter [or club] may be revoked.

13:46-18.6 [Dealings with unlicensed persons] **(Reserved)**
[No promoter shall permit any unlicensed person to book or schedule a match for any boxer until said person has been issued a license.]

13:46-18.8 Grounds for suspension of license
[Any promoter 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 to boxing or wresting.]
A license of any promoter shall be suspended for an arrest for or revoked on a conviction of any offense in this or any other jurisdiction which would be under New Jersey law a crime of moral turpitude or any other offenses which indicates that licensure would be inimical to the conduct of the sport of boxing in this State. An application for a license or renewal thereof shall be denied by the Commission for the same reasons.

13:46-18.9 Maintenance of order; responsibility
(a) [Clubs] **Promoters** will be held responsible for maintaining order, and any person who is intoxicated, abusive or disorderly in conduct, to the annoyance of surrounding spectators, must be ejected.
(b) [Clubs] **Promoters** must supply adequate [police protection] **security services** [in order] **to ensure** that order may be maintained and all laws and regulations enforced.

13:46-18.10 Minimum schedule of rounds per program
[Licensed clubs] **Promoters** shall not schedule less than 28 rounds of boxing for any one program **unless permission is granted by the Commissioner.**

13:46-18.11 Time of main event
(a) Promoters shall strive to start the main event of a boxing show not later than 10:00 P.M.
(b) If the [semifinal] **semi-final** or other advertised bouts have not been held they shall be put on after the main bout.

13:46-18.12 [Reserved] **Filing of boxing contracts; secret agreements**
(a) Copies of all boxing contracts must be filed with the office of the State Athletic Commissioner. For the main bout, contracts shall be filed 30 days in advance of the contest or at such times as shall be determined at the discretion of the Commissioner. For undercard bouts, contracts shall be filed 14 days in advance of the contest.
(b) The making of secret agreements contrary to the terms of the contracts so filed is prohibited under penalty of suspension of all parties thereto.

13:46-18.14 Press room
(a) At any professional boxing program, the licensed promoter shall provide a special room where, [in the public inter-

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est] members of the working press, radio and television broadcasters and photographers may have access to [the widest range of] information about the program. [in the best spirit of American journalism. Toward that end, the attending physician and licensees, including the promoter, matchmaker, referee and main bout contestants, shall be present in the designated room immediately following the program.

(b) Violation of this Section by a licensee will result in his suspension.]

13:46-18.15 Exclusivity and reservation of dates

(a) The Commission shall permit no more than one boxing program on any day within a 20-mile radius of the site of that program. Nevertheless, the Commissioner may permit more than one such program within the specified geographical area during a particular day under circumstances indicating to his satisfaction that the programs will not duly compete with each other for the same audience. **In determining whether the programs will not unduly compete with each other the Commission shall consider the location of each program, the identity, number and ranking of the participants and whether either of the programs will be televised.**

(b) A licensed promoter may reserve a date for a boxing program as follows:

1. He may tentatively reserve a date by submitting to the Commission in written form (letter, telegram, telex, and so forth) the names of the fighters for the main event contest, the date and time of the contest and the city where the contest is to occur.

2. Within five business days of forwarding to the Commissioner, the written communication tentatively reserving the date, the promoter shall confirm with the Commission the site of the bout and shall submit to the Commission signed contracts of the boxers for the main event or telegraphic acceptance of the contract by the boxers or their respective managers. **The promoter may also submit evidence of a commitment to televise a boxing program which the Commission in its discretion may accept in lieu of signed contracts acceptance as the basis for a final reservation of the date provided the signed contracts of the boxers are submitted within a two week period prior to the holding of the program.**

3.-4. (No change.)

5. [There shall be no limit on the number of dates which may be reserved by a promoter on days other than Saturday or Sunday.] **A promoter may not reserve in advance the same day of the week in the same municipality for a period of greater than three months.**

13:46-18.16 Posting security for ticket refunds

Licensed promoters shall post with the Commissioner a surety bond [or certified check] in such amount and for such time as shall be determined by the Commissioner for payments by said licensed promoter at the box office to patrons who apply for refunds on tickets already purchased when an advertised boxing program as scheduled is cancelled or postponed, except when the main contest is to be held on a scheduled rainout date indicated on the ticket.

13:46-18.17 Public announcements or advertisements of bouts

No licensed boxing promoter, matchmaker, manager [of] **or** boxer may publicly announce or advertise that any bout or exhibition will take place unless such bout or exhibition has been formally approved by the office of the State Athletic Commissioner.

13:46-18.18 **Filing period for promoter's contract**
[Reserved]

All contracts between licensed boxing promoters and boxers or managers of boxers affecting or calling for the service of a boxer shall be filed with the office of the State Athletic Commissioner by such licensed boxing promoter within 48 hours after the execution of such a contract.

13:46-18.19 [Posting of surety bond or certified check] **(Reserved)**

[Licensed promoters shall post with the Commissioner, exercising his discretion, a surety bond or a certified check in such amount and for such time as shall be determined by the Commissioner, based upon the total cash value of all tickets available for sale to patrons; as listed on the official ticket manifest filed with the Commissioner for a scheduled boxing program on the date indicated on the ticket.]

13:46-19.4 [Dealings with Unlicensed Persons] **(Reserved)**

[No matchmaker shall permit any unlicensed person to book or schedule a match for any boxer until said person has been issued a license.]

13:46-19.6 Grounds for suspension of license

[Any matchmaker 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 or wrestling.]

A license of any matchmaker shall be suspended for an arrest for or revoked on a conviction of any offense in this or any other jurisdiction which would be under New Jersey law a crime of moral turpitude or any other offense which indicates that licensure would be inimical to the conduct of the sport of boxing in this State. An application for a license or renewal thereof shall be denied by the Commission for the same reasons.

13:46-19.8 [Matches for one club only] **(Reserved)**

[A matchmaker can make matches for only one club unless special written permission is obtained from the Commissioner.]

13:46-20.4 Physical and mental examination

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

(c) The Commission may require an applicant or licensee to undergo any other medical tests the Commission deems necessary.

13:46-20.6 Tape on body

No wrestler shall be permitted to tape his hands, arm or any part of his body without the consent of the [club] **ringside** physician.

13:46-20.7 Wrestling [for one club] **at one location** per night

(a) No wrestler shall wrestle at more than one [club] **location** on the same night **unless he receives special permission from the Commissioner.**

(b) No booking agent shall contract for the services of any wrestler at more than one [club] **location** on the same day **unless he receives special permission from the Commissioner.**

(c) No [licensed clubs] **promoter** shall book or advertise a wrestler who [it] **he** knows has been booked to wrestle at another [club] **location** on the same night.

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13:46-20.8 Certified notice

At least seven days before any wrestling show, the [booking office] **promoter** shall furnish the Commission with an advanced signed certified notice of the participants, giving the true and ring names of the wrestlers.

13:46-20.9 Non-appearance

(a) (No change.)

(b) Non-appearance without a medical certificate notice shall be grounds for a penalty by a fine [for the first offense and a larger fine or suspension for any subsequent violations] **or suspension or both**.

(c) (No change.)

13:46-20.12 Safety equipment

The professional boxing rules governing the size, construction and safety equipment of boxing rings shall apply to wrestling rings **except that there shall be three strands of ring rope in wrestling rings and the Commissioner may allow variance from rules when necessary due to the different nature of the sports**.

13:46-20.14 [Payment of fines] **(Reserved)**

[(a) Fines for non-appearance of wrestlers shall be collected by inspectors the first time thereafter that the wrestler appears on a card,

(b) If a wrestler who owes a fine is not booked for 30 days, the booking office must pay the fine.]

13:46-20.16 Activity confined to ring and ring apron

(a) (No change.)

(b) Any wrestler leaving the ring during the course of the exhibition shall be subject to fine or suspension **or both** at the Commissioner's discretion.

13:46-20.18 License

(a) Every wrestling [booking officer or agent] **promoter** shall obtain a license from the New Jersey Athletic Commission.

(b) The fee for the [same] **license** shall be [$50.00] **$100.00** and shall be valid on a fiscal year basis.

(c) No booking [office or] agent shall supply any New Jersey [club or permit show] **promoter** with any wrestling talent without first obtaining a license.

13:46-20.20 Dealing with unlicensed promoters

No wrestling booking [office] **agent** shall deal with any unlicensed promoter in contracting for a wrestling show, or first verifying whether such party is licensed by the State Athletic Commissioner.

13:46-21.1 Compensation

[(a) Fees paid to referees for their service at wrestling exhibitions shall be determined by the net gate receipts of the show.]

(a) The compensation to referees shall be paid by the promoter conducting the show and shall be on the following basis:

[(b) The following scale of fees shall apply whenever one referee works a show:]

1.-11. (No change.)

13:46-21.5 Report

Each wrestling referee shall make a written report to the Commissioner [within 24 hours after the show] **of any contest which he referees where there has been a disregard of the rules. The report must be mailed to the Trenton office of the Commissioner within seven days.**

13:46-21.6 [Collection of Fees and Travel Expenses] **Payment of referees**

[Fees and travel expenses for wrestling referees shall be collected by the inspector in charge and then given to the referee.]

Promoters shall not make payment directly to wrestling referees. The promoter shall write a check to the State of New Jersey in an amount determined by the Chief Inspector. The check shall be given to the Chief Inspector at the exhibition and forwarded to the Commission by the Chief Inspector. The funds will be disbursed by the Commission to the referees based upon the payroll composed by the inspectors.

13:46-21.8 Apparel

Apparel required for wrestling referees shall consist of [grey flannel shirt, grey trousers] **blue shirt, black trousers, [black-bow] black bow** tie and black shoes.

SUBCHAPTER 22. HEARINGS AND SUBPOENA OF WITNESSES

13:46-22.1 Investigations and hearings held by Commissioner

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

(c) When the hearing takes place the Commissioner may administer oaths to and examine any witnesses for the purpose of [determing] **determining** the question for which the hearing has been called.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules: Definitions
Harness Rules: Definitions

Proposed Readoptions: N.J.A.C. 13:70-2 and 13:71-4

Authorized By: New Jersey Racing Commission, Harold G. Handel, Executive Director.
Authority: N.J.S.A. 5:5-30.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Bruce H. Garland, Deputy Director
New Jersey Racing Commission
CN-088 Justice Complex
Trenton, New Jersey 08625

The New Jersey Racing 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 1984-623.

The agency proposal follows:

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Summary

The rules of the New Jersey Racing Commission govern all aspects of pari-mutuel wagering and the conduct of harness and thoroughbred racing. Individual subchapters delineate specific areas of regulation such as illegal practices and claiming. Many of the words and terms used in these sections are defined in a separate subchapter entitled "Definitions".

N.J.A.C. 13:70-2 and N.J.A.C. 13:71-4, "Definitions", define the words and terms used throughout the chapter. For example, there are definitions for: age of a horse, drug, maiden, positive analysis, suspicious analysis and definitions of various types of races. Since the issuance of Executive Order 66, this subchapter was amended in January 1980. The subchapters expire on December 19, 1984.

The definitions contained in this subchapter are an integral part of each of the rules which regulate the racing industry. In many instances words and terms have a specialized meaning unique to their use in the racing industry. The definitions are concentrated in one section early in the chapter to facilitate reference to the subchapter which in turn will help in understanding the other subchapters.

The New Jersey Racing Commission has undertaken an intensive review of the foregoing rules prior to notice for readoption. The Commission expects public comment to be received stimulating further review as a result of the readoption procedure being instituted. The Commission has determined these subchapters are necessary to protect the public interest with respect to pari-mutuel horse racing, and that they constitute a reasonable and effective means to effectuate such a goal.

Social Impact

The subchapters proposed for readoption deals with definitions of words and terms used in other rules and regulations of the New Jersey Racing Commission. As such, the subchapters serve as an aid to the understanding of the other rules and regulations which insure and promote the integrity of racing in New Jersey. To this extent the social impact is a positive one, even though these particular subchapters do not directly concern substantive rules and regulations.

Economic Impact

There is no direct or indirect economic impact upon the public, the racing industry or the State of New Jersey. These subchapters are support subchapters for the other subchapters which comprise the rules and regulations of the New Jersey Racing Commission.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:70-2 and 13:71-4, as amended in the New Jersey Register.

(a)

NEW JERSEY RACING COMMISSION

Harness Rules
Safety Helmets

Proposed Amendment: N.J.A.C. 13:71-19.4

Authorized By: New Jersey Racing Commission, Harold G. Handel, Executive Director.
Authority: N.J.S.A. 5:5-30.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Bruce H. Garland, Deputy Director
New Jersey Racing Commission
CN-088 Justice Complex
Trenton, New Jersey 08625

The New Jersey Racing 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 1984-622.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 13:71-19.4 would require helmets to meet a safety standard before being classified as "satisfactory" by the Commission. To accomplish this, the rule defines "satisfactory" to be a helmet that is manufactured in compliance with the 1984 Snell Harness Racing Standard or other safety standards as approved by the Commission. The rule attempts to improve the safety of drivers in harness races by mandating that the helmets meet minimum safety standards. This amendment was drafted after studying a report prepared by the Helmet Research Committee of the United States Trotting Association.

Social Impact

The proposed amendment will have a positive social impact since it is directed at increasing the safety of the participants in racing. During the 1983 harness meeting at the Meadowlands a harness driver suffered disabling injuries which resulted in significant research into the helmet safety issue. As a result of that research, recommended standards were prepared and this amendment attempts to increase driver safety by adopting those safety standards.

Economic Impact

There should be no direct economic impact upon the state, the Racing Commission or the public as a result of this Proposed Amendment. However, to the extent that drivers will have to purchase new helmets, there will be an economic impact upon the drivers. However, the safety advantages far outweigh the anticipated expense of a new helmet.

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

13:71-19.4 Safety helmets

[No driver will be permitted to drive in a race unless he is wearing a protective safety helmet of a type satisfactory to the Commission and constructed with a hard shell and containing adequate padding and an adequate chin strap in place.]

No individual will be permitted to drive on a racetrack unless wearing a protective safety helmet of a type satisfactory to the Commission with chin strap in place. For purposes of this rule "satisfactory" shall be deemed to require that any helmet to be used be manufactured in compliance with the

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1984 Snell Harness Racing Standard or in compliance with any other safety standard as approved from time to time by the Commission.

PUBLIC UTILITIES

(a)

OFFICE OF CABLE TELEVISION

Rules of Practice and Procedure Common Tariff

Proposed Amendments: N.J.A.C. 14:17-18.1 18.2 and 18.3

Authorized By: Office of Cable Television, Bernard R. Morris, Director.
Authority: N.J.S.A. 48:5A-10.

Interested persons may submit in writing, data, views or arguments relevant to this proposal on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Bernard R. Morris, Director
Office of Cable Television
Board of Public Utilities
1100 Raymond Boulevard
Newark, New Jersey 07102

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

This proposal is known as PRN 1984-592.

The agency proposal follows:

Summary

The proposed amendments will make certain technical changes in the common tariff rules at N.J.A.C. 14:17-18. The Board of Public Utilities has recently adopted a rate schedule for the common tariff and the proposed amendments are necessary so that the rules will be consistent with the newly adopted rate schedule.

The amendments are necessary because the classifications of service levels offered by cable television operators has rendered the distinction between classical and competitive systems irrelevant for present purposes. Therefore, these terms, and their definitions, should be deleted from the rule. The proposed amendments would also delete references to the amount by which a cable operator may increase its rates under the common tariff in each successive year the common tariff is in operation. This amount, along with all other rates and charges governed by the common tariff, is determined by the Board of Public Utilities after full public hearings and an opportunity to be heard is given all interested parties. References to exact dollar amounts is unnecessarily limiting since the purpose of the rule is to set the procedure under which the common tariff will operate, rather than establish specific rates. The current rate structure of the common tariff has been published in the October 15, 1984, edition of the New Jersey Register.

Social Impact

The proposed amendments will allow the Board of Public Utilities, and more specifically the Office of Cable Television, greater flexibility in designing a common tariff which accurately reflects the needs of the general public and the cable television industry by deleting references to outdated sections of the rule.

Economic Impact

The proposed amendments are technical in nature and it is not expected that they will have any meaningful economic impact on the general public on the cable television industry.

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

14:17-18.1 Definitions

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

[''Competitive System'' means any cable television system which lies wholly within the Grade A contours of at least three major network broadcast signals shall be defined as a ''competitive system''. The boundaries of Grade A contours in Communications Commissioner at 17 CFR s73.683(a).]

[''Classical System'' means a cable television system, any part of which is located outside the Grade A contours of at least one major network broadcast station.]

''Basic Service,'' for the purposes hereof, means a cable television system's must carry signals as required by the Federal Communications Commission in its rules or, in the carry signals under the rules in effect on April 15, 1981, plus all promised access and local origination channels.

14:17-18.2 Rate structures

(a) The Office with the approval of the Board will establish, subject to the modification after full public hearing, maximum rates for basic service. [in each of the following categories:

1. Classical systems
2. Competitive systems]

(b) For the purpose of establishing a maximum ceiling rate for each level of service the Office, with the approval of the Board, shall establish, subject to modification after full public hearing, maximum rates for each additional channel of service to be provided in the minimum cable television service package to be received by all cable television subscribers such package to always include basic service.

(c) Subject to the provisions below, a cable television company may increase or decrease its rates at its discretion up to the maximum established by the Office for each level of service in its category.

14:17-18.3 Participation

(a) Any cable television company in the State of New Jersey may establish rates under the provisions of this subchapter subject to the following terms and conditions.

[1. In the first twelve month period following its election to avail itself of rates under this subchapter, a cable television company shall be entitled to increase its monthly charge for a primary connection for each level of service by an amount not to exceed $.50.]

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[2. In the second twelve month period it shall be entitled to increase its monthly charge for each level of service by not more than an additional $.75]

[3. Thereafter,] **1.** The cable television company is entitled to increase its rates to the class ceiling for each level of service set by the Board and the Office without limitation.

[4.] **2.** The entitlement to raise rates to a specific level in any twelve month period shall not be lost if not exercised by the company within that twelve month period, but shall be cumulative.

[5.] **3.** A cable television company may reduce its rates at its discretion without impairment of its ability to increase those rates directly to its preexisting maximum allowable rate. Any such reduction or increase in rates shall not be unjustly preferential or discriminatory to any class of existing customers, except that nothing herein shall be construed as prohibiting the provision of free service to schools and libraries.

[6.] **4.** A company with a preexisting rate higher than the class ceiling may avail itself of the provisions of this subchapter and its ceiling is deemed to be its preexisting higher rate, however nothing herein shall be construed to allow such company to raise its rates above such preexisting higher rates.

[7.] **5.** A cable television company which has received an increase in rates in a separate proceeding before the Board and which subsequently elects to be governed by the provisions of this subchapter shall not be entitled to increase its rates under the provisions of this subchapter for a period of nine months following the effective date of the increase in rates allowed in the separate proceeding before the Board.

[8.] **6.** An election by a cable television company to avail itself of the rates under this subchapter will preclude it from petitioning for an increase in rates through an individual proceeding before the Board for a period of eighteen months following such an election, or for a period of twelve months following the implementation of any increase in rates pursuant to the provisions of this subchapter above its previous high rates, whichever is later.

TRANSPORTATION

(a)

DIVISION OF PLANNING

Transportation of Hazardous Materials

Proposed New Rule: N.J.A.C. 16:49

Authorized By: John P. Sheridan Jr., Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:5B-1 et seq. Hazardous Materials Transportation Act "Pub. L. 93-633 (49 U.S. C. 1801 et seq.,) and 39:5B-25 et seq., (P.L. 1983, Chapter 401.).

Interested persons may submit in writing data, views and arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

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

This proposal is known as PRN 1984-584.

The agency proposal follows:

Summary

On March 19, 1984, the Department published a Notice of Pre-Proposal of New Rule N.J.A.C. 16:49, "Transportation of Hazardous Materials" which appeared at 16 N.J.R. 513(a), wherein the Department sought public comments and suggestions concerning regulations which may be necessary to facilitate the movement of hazardous materials in New Jersey.

There were five comments received regarding the pre-proposal of which four were in full support and one had objections to the full implementation of the regulations by reference. Those supporting the new rules were the Drug and Toilet Preparation Traffic Conference (D&TPTC), Hoffman-La Roche Inc., American Cyanamid Company, Union Carbide Corporation. The Fuel Merchants Association of New Jersey objected to the proposal in that the regulations were not germane to intrastate operation. The Association also argued the economic impact is substantially greater in the intrastate market than in the interstate market.

The Department therefore proposes new rule N.J.A.C. 16:49, concerning the transportation of hazardous materials adopting by reference certain Parts of Title 49—Transportation, Code of Federal Regulations (CFR). The proposed new rules will conform to the requirements established in the Federal rules. The application of the new rules in the State will protect the general public, their lives, their property in a manner consistent with the regulations issued by the United States Department of Transportation (USDOT).

The proposed new rules will establish comprehensive regulation of the shipping, packaging, marking, labelling, placarding, handling and transportation of hazardous materials for the safety protection and general welfare of the public. The new rules provide for: the inspection of hazardous materials by authorized representative of the Department of the State Police; packaging compliance with the requirements of the chapter; Federal exemptions; waivers and penalties.

Social Impact

The proposed new rules will impact on every shipper and motor carrier involved interstate or intrastate commerce who

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transport hazardous materials in and between the state(s). Ever officer, driver, agent, employee or representative of the shipper or motor carrier will be affected in that they will be required to take whatever measures are necessary to comply with the chapter and be knowledgeable with the provisions of the new rules.

The impact of the general public will be beneficial in that the safe transportation of hazardous materials will be assured on interstate and intrastate highways.

Economic Impact

The proposed new rules will have no significant additional economic impact on the motor carrier industry or its operation since the affected transporters have already been complying with the Federal regulations concerning the transportation of hazardous materials. The new rules will therefore not impose any new economic burden not already encountered, except for perhaps the purchase of the applicable Code of Federal Regulations.

The Department and the Division of State Police will incur administrative and operational costs in the implementation and enforcement of the proposed new rules. These costs cannot at the present time be accurately estimated but will be absorbed in the current budgetary resources of the respective agencies.

Full text of the proposed new rules follows.

CHAPTER 49

TRANSPORTATION OF HAZARDOUS MATERIALS

SUBCHAPTER 1. GENERAL REQUIREMENTS

16:49-1.1 Purpose

This chapter prescribes the requirements of the New Jersey Department of Transportation governing the transportation of hazardous materials in the State of New Jersey. This chapter is adopted to establish comprehensive regulation of the shipping, packaging, marking, labelling, placarding, handling, and transportation of hazardous materials, and is established consistent with the regulations issued by the United States Department of Transportation.

16:49-1.2 Application

(a) This chapter shall apply to:

1. Every shipper and motor carrier and its officers, drivers, agents, employees, and representatives involved or in any manner related to the transportation of interstate and/or intrastate commerce, shall comply with and be bound by these regulations or any future amendments, and shall take such measures as are necessary to insure compliance therewith.

2. All officers, agents, representatives, drivers, and employees of shippers and carriers involved or concerned with the management, maintenance, operation or driving of vehicles, shall be conversant and knowledgeable with the rules and regulations set forth in this chapter.

16:49-1.3 General requirements

(a) Hazardous materials that do not comply with the requirements of this chapter shall not be offered for transportation, accepted for transportation, or transported.

(b) Hazardous materials which are manufactured, packaged, stored, loaded, unloaded, or transported shall be open to inspection upon request by any duly authorized representative of the New Jersey Division of State Police, the New Jersey Department of Transportation, or the Port Authority of New York and New Jersey.

(c) No person shall, by marking or otherwise, represent that a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of the New Jersey Department of Transportation unless such container or package meets the requirements of this chapter.

(d) Without the necessity of further action or case-by-case review on its part, the New Jersey Department of Transportation accepts the validity of any exemption or renewal thereof issued by the United States Department of Transportation under Section 107, Subpart B of Title 49. Any person operating under a current, valid exemption or renewal thereof under Section 107 shall be deemed to be in compliance with those portions of these regulations to which the exemption applies, provided that the person is complying with the terms of the exemption.

(e) Intrastate carriers and shippers in need of exemptions shall be subject to the same rules and procedures required of interstate carriers and shippers.

(f) Whenever the term "interstate" is used in the Federal regulations adopted herein it shall, for the purpose of these regulations, mean and include both "interstate" and "intrastate" transportation in commerce.

(g) Any portion of the Federal regulations governing transportation of hazardous materials by air, water, or pipeline with Parts 107, 171, 172, 173, 174, 177, 178, and 179 are hereby excluded and not adopted by the Department.

(h) This chapter establishes minimum standards which must be complied with in conjunction with the transportation of hazardous materials. Therefore, in the event of a conflict between this and any other State regulation, the stricter, more stringent standard shall apply and govern.

(i) This chapter may be amended from time to time by the New Jersey Department of Transportation.

(j) If any provision or clause of this chapter is held invalid to any person or circumstance, such invalidity shall not affect other provisions or applications of the regulation which can be given effect without the invalid provision or application. To this end the provisions of this regulation are declared to be severable.

(k) This chapter or any portion or portions thereof may be waived by the New Jersey Department of Transportation if after consideration of the facts involved it is determined that a particular situation warrants such waiver.

16:49-1.4 Penalty for violation of these State regulations

(a) The penalty for violation of this chapter shall be as specified pursuant to N.J.S.A. 39:5B-25 et seq.,

(b) Each violation shall be treated separately. When the violation is a continuing one, each day of the violation constitutes a separate offense.

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16:49-1.5 Document availability

(a) Copies of the existing Title 49, Code of Federal Regulations, Parts 107, 171, 172, 173, 174, 177, 178, and 179, as referenced herein, may be purchased from the following places:

1. Superintendent of Documents
   U.S. Government Printing Office
   Washington, D.C. 20402
   (202) 783-3238
2. U.S. Government Printing Office Bookstore
   Room 110, 26 Federal Plaza
   New York, New York 10278-0081
   (212) 264-3825
3. U.S. Government Printing Office Bookstore
   Room 1214, Federal Building
   600 Arch Street
   Philadelphia, Pennsylvania 19106
   (215) 597-0677

(b) Copies of the above, Title 49, CFR volumes are also available for review at the Newark Public Library, Social Science Division of the Main Library, 5 Washington Street, Newark, New Jersey, and the New Jersey State Library, Law Section, 185 West State Street, Trenton, New Jersey.

16:49-1.6 Assistance

For assistance in matters related to New Jersey's Hazardous Materials Regulations, as adopted herein, contact:

Office of Hazardous Materials
Transportation Compliance and
Enforcement New Jersey
Division of State Police
P.O. Box 7068
West Trenton, New Jersey 08625
(609) 882-2000, extensions 2581 or 2582

SUBCHAPTER 2. ADOPTION OF PORTIONS OF TITLE 49, CODE OF FEDERAL REGULATIONS, BY REFERENCE

The New Jersey Department of Transportation, pursuant to N.J.S.A. 39:5B-25 et seq., hereby incorporates by reference the following portions of Title 49—Transportation, Code of Federal Regulations, revised as of November 1, 1983. The parts adopted by reference are found in Chapter I, referred to as "Research and Special Programs Administration, Department of Transportation. The portions adopted are summarized following:

1. Part 107, Hazardous Materials Program Procedures, Subpart B—Exemptions.
2. Part 171, General Information, Regulations, and Definitions (modifications made to Sections 171.15 and 171.16).
3. Part 172, Hazardous Materials Tables and Hazardous Materials Communications Regulations.
4. Part 173, Shippers—General Requirements for Shipments and Packagings (modifications made to Section 173.118a and applicability to Section 173.24).
5. Part 174, Carriage by Rail (modifications made to Section 174.8).
6. Part 177, Carriage by Public Highway (Appendix A excluded from adoption).
7. Part 178, Shipping Container Specifications.
8. Part 179, Specifications for Tank Cars.

The remaining text details the adopted portions of Title 49, C.F.R., by section. All sections are listed by number and title to identify content for the reader. Detailed modifications are stated within the appropriate section.

CHAPTER I RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B MATERIALS TRANSPORTATION BUREAU

PART 107 HAZARDOUS MATERIALS PROGRAM PROCEDURES

Subpart B - Exemptions

Section 107.101	Purpose and Scope.
Section 107.103	Application for exemption.
Section 107.105	Application for renewal.
Section 107.107	Administrative review.
Section 107.109	Processing of application.
Section 107.111	Party to an exemption.
Section 107.113	Application for and processing of emergency exemption.
Section 107.115	Determination of existing emergency.
Section 107.117	Withdrawal.
Section 107.119	Amendment, suspension, termination, and referral for enforcement action.
Section 107.121	Appeal.
Section 107.123	Availability for public inspection.
Appendix A	List of Department of Transportation officials through whom application for exemptions seeking priority treatment on the basis of existing emergencies may be initialed by telephone.
Appendix B	Standard Conditions Applicable to Exemptions.

For purposes of expediency in cases of emergency, the following is a copy of the procedures to be followed when an emergency exemption is needed. If additional assistance is required, contact the New Jersey Office of Hazardous Materials Transportation Compliance and Enforcement of the New Jersey State Police at (609) 882-2000:

Section 107.113 Application for and processing of emergency exemption.

(a) Any person who is subject to the requirements of this subchapter, Subchapter C of this chapter, 46 CFR Part 64 or Part 146 who seeks an exemption from any of those requirements on the basis of an existing emergency shall apply for that exemption through the appropriate Department of Transportation official listed in Appendix A to this subpart.

(b) An application submitted under this section must include such supporting information with respect to each of the topics specified in 107.103(b) (2) through (11) as the receiving

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Department of Transportation official considers necessary for processing the application.

(c) Upon receipt of all of the information necessary for processing the application, the receiving Department of Transportation official shall transmit to the Associate Director for HMR, by the most rapid available means of communication, his evaluation as to whether an emergency exists and his recommendations with respect to the conditions to be included in the exemption. If the Associate Director for HMR, determines that an emergency exists and that there is adequate justification for the exemption, he grants the exemption subject to the applicable conditions set forth in Appendix B of this subpart and such other terms as he considers necessary, and immediately notifies the applicant. If the Associate Director for HMR, cannot determine that an emergency exists or determines that there is not adequate justification for the exemption, he immediately so notifies the applicant.

Section 107.115 Determination of existing emergency.

(a) The Associate Director for HMR, shall determine that an emergency exists if, on the basis of information submitted in the application and his own investigation, he finds that—

(1) Existing conditions require the hazardous material concerned to be transported in commerce for the protection of life or property (other than the hazardous material to be transported); and

(2) The protection of life or property to be provided by the hazardous material would not be possible if the application is processed on a routine basis.

(b) The Associate Director for HMR, may determine that an emergency exists if, on the basis of information submitted in the application, he finds that—

(1) Existing conditions require the hazardous material concerned to be transported in commerce to prevent or minimize serious economic loss; and

(2) The prevention or minimizing of serious economic loss to be provided by the hazardous material would not be possible if the application is processed on a routine basis.

(c) In determining what constitutes serious economic loss under paragraph (b) of this section, the Associate Director for HMR, considers the nature and extent of the expected loss.

Appendix A—List of Department of Transportation Official through whom application for exemptions seeking priority treatment on the basis of existing emergencies may be initiated by telephone.

Motor Carriers

Chief, Regulations Division, Bureau of Motor Carrier Safety, Federal Highway Administration, Department of Transportation, Washington, D.C. 20590. Day 202-426-1700 and Night 202-426-1830.

Rail Carriers

Associate Administrator for Safety, Federal Railroad Administration, Department of Transportation, Washington, D.C. 20590. Day 202-426-0897 or 426-2748 and Night 202-426-1830.

Section 107.103 Application for exemption.

(a) Any person who is subject to the requirements of this subchapter, Subchapter C of this chapter, 46 CFR Part 64 or Part 146 may apply to the Associate Director for HMR, for an exemption from those requirements.

(b) Each application filed under this section for any exemption must:

(1) Be submitted in triplicate to: Office of Hazardous Materials Regulation, U.S. Department of Transportation, Washington, D.C. 20590, Attention: Exemptions Branch;

(2) Set forth the text or substance of the regulation from which the exemption is sought;

(3) State the name, address, and telephone number of the applicant;

(4) Include a detailed description of the proposal, including when appropriate, drawings, plans, calculations, procedures, test results, previous exemptions, approvals or permits, a list of specification containers, if any, to be used, a list of modified specification containers, if any, to be used and a description of the modifications, and any other supporting information;

(5) State the chemical name, common name, hazard classification, form, quantity, properties, and characteristics of the material covered by the proposal, including composition and percentage (specified by volume or weight) of each chemical, if a solution or mixture;

(6) Describe all relevant shipping and accident experience;

(7) Specify the proposed mode of transportation, identify any increased risks that are likely to result if the exemption is granted, and specify the safety control measures which the applicant considers necessary or appropriate to compensate for those increased risks;

(8) Specify the proposed duration or describe the proposed schedule of events for which the exemption is sought;

(9) State why the applicant believes the proposal, including any safety control measures specified by the applicant, will achieve a level of safety which

(i) Is at least equal to that specified in the regulation from which the exemption is sought, or

(ii) If the regulations do not contain a specified level of safety, will be consistent with the public interest and will adequately protect against the risks to life and property which are inherent in the transportation of hazardous materials in commerce;

(10) If the applicant seeks to have the application processed and a priority basis, set forth the supporting facts and reasons, and

(11) If the applicant is not a resident of the United States, include a designation of a permanent resident of the United States as his agent for service of process in accordance with Section 107.7

(c) Unless the Associate Director for HMR, finds that there is good reason for priority processing of an application, each application is processed in the order in which it is received. To permit timely consideration, an application should be submitted at least 120 days before the requested effective date.

(d) If the applicant wishes to claim confidential treatment for any information contained in the application, the procedures set forth in Section 107.5 apply.

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SUBCHAPTER C—HAZARDOUS MATERIALS REGULATIONS

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

Section 171.1	Purpose and scope.
Section 171.2	General Requirements.
Section 171.3	Hazardous Waste.
Section 171.4	Changes in specifications for tank cars.
Section 171.5	Procedure covering tank car construction.
Section 171.7	Matter incorporated by reference.
Section 171.8	Definitions and abbreviations.
Section 171.9	Rules of construction.
Section 171.10	Flammable or combustible liquids in bulk on board vessels.
Section 171.11	Use of ICAO Technical Instructions.
Section 171.12	Import and export shipments.
Section 171.13	Emergency regulations.
Section 171.14	Specification markings.
Section 171.15	Immediate notice of certain hazardous materials incidents.

Section 171.15 is revised to state the following. (Note: Paragraph (a) has been changed and paragraph (d) has been added.)

(a) At the earliest practicable moment, such carrier who transports hazardous materials (including hazardous wastes) shall give notice in accordance with paragraph (b) or paragraph (d) of this section after each incident that occurs during the course of transportation (including loading, unloading and temporary storage) in which as a direct result of hazardous materials

(1) A person is killed;

(2) A person receives injuries requiring his hospitalization;

(3) Estimated carrier or other property damage exceeds $50,000;

(4) Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material. (See also Sections 174.45, 175.45, 176.48 and 177.807 of this subchapter); or

(5) Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or

(6) A situation exists of such a nature that, in the judgment of the carrier, it should be reported in accordance with paragraph (b) of this section even though it does not meet the criteria of paragraph (a)(1), (2), or (3) of this section; e.g., a continuing danger to life exists at the scene of the incident.

(b) Each notice required by paragraph (a) of this section shall be given to the Department by telephone (toll-free) on 800-424-8802. Notice involving etiologic agents may be given the Director, Center of Disease Control, U.S. Public Health Service, Atlanta, Georgia, Area Code (404) 653-5313, in place of the notice to the Department or (toll call) on 202-426-2675. Each notice must include the following information:

(1) Name of reporter.

(2) Name and address of carrier represented by reporter.

(3) Phone number where reporter can be contacted.

(4) Date, time, and location of incident.

(5) The extent of injuries, if any.

(6) Classification, name, and quantity of hazardous materials involved, if such information is available.

(7) Type of incident and nature of hazardous material involvement and whether a continuing danger to life exists at the scene.

(c) Each carrier making a report under this section shall also make the report required by Section 171.16.

(d) If a New Jersey Police Accident Report has been filed with the New Jersey Division of Motor Vehicles, or if a Spill Report has been filed with the New Jersey Department of Environmental Protection, then reports requested above in paragraphs (b) and (c) are not required.

Section 171.16—Detailed hazardous materials incidents reports

Section 171.16 is revised to state the following: (Note: Paragraph (a) has been changed and paragraph (e) has been added.)

(a) Each carrier who transports hazardous materials shall report in writing in duplicate on DOT Form F 5800.1 to the Department within 15 days of the date of discovery, unless the requirements of paragraph (e) in this section are met, each incident that occurs during the course of transportation (including loading, unloading, or temporary storage) in which, as a direct result of the hazardous materials, any of the circumstances set forth in Section 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous materials has been discharged during transportation. If a report pertains to a hazardous waste discharge—

(1) A copy of the hazardous waste manifest for the waste must be attached to the report, and

(2) An estimate of the quantity of the waste removed from the scene, the name and address of the facility to which it was taken, and the manner of disposition of any unremoved waste, must be entered in Part H of the report (Form F 5800.1).

(b) Each carrier making a report under this section shall send that report to the Information Systems Manager, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590.

(c) Except as provided in paragraph (d) of this section, the requirements of paragraph (a) of this section do not apply to incidents involving the unintentional release of hazardous materials being transported under the following proper shipping names:

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(1) Consumer commodity.
(2) Battery, electric storage, wet, filled with acid or alkali.
(3) Paint and paint related material when shipped in packagings of five gallons or less.
(d) The exceptions to incident reporting provided in paragraph (c) of this section do not apply to:
(1) Incidents required to be reported under Section 171.15(a);
(2) Incidents involving transportation aboard aircraft; nor
(3) Incidents involving the transportation of hazardous waste.
(e) If a New Jersey Police Accident Report has been filed with the New Jersey Division of Motor Vehicles or if a Spill Report has been filed with the New Jersey Department of Environmental Protection, then other reports requested in this section are not required.

Section 171.17 Hazardous substance discharge notification.
Section 171.18 Continuation of effectiveness of existing Bureau of Explosives registrations.
Section 171.19 Approvals or authorizations issued by the Bureau of Explosives.
Section 171.20 Submission of Examination Reports.

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

Subpart A—General
Section 172.1 Purpose and scope.
Section 172.3 Applicability.

Subpart B—Tables of Hazardous Materials, Their Description, Proper Shipping Name, Class, Label, Packaging, and Other Requirements
Section 172.101 Purpose and use of hazardous materials table, including the Hazardous Materials Table, CERCLA List, Specific Chemical Wastes, Chemicals Listed by EPA under Section 307(a) of the Clean Water Act, Chemicals Listed by EPA under Section 112 of the Clean Air Act.
Section 172.102 Purpose and Use of Optional Hazardous Materials Table for international shipments, including the Optional Hazardous Materials Table.

Appendix A—Identification Number Cross Reference to Proper Shipping Names in Section 172.101 and Section 172.102.

Subpart C—Shipping Papers.
Section 172.200 Applicability.
Section 172.201 General entries.
Section 172.202 Description of hazardous material on shipping papers.
Section 172.203 Additional description requirements.
Section 172.204 Shipper's certification.
Section 172.205 Hazardous waste manifest.

Subpart D—Marking.
Section 172.300 Applicability.
Section 172.301 General marking requirements.
Section 172.302 Export shipments by water.
Section 172.304 Marking requirements.
Section 172.306 Consignee's or consignor's name and address.
Section 172.308 Authorized abbreviations.
Section 172.310 Radioactive materials.
Section 172.312 Liquid hazardous materials.
Section 172.316 Packaging containing material classed as ORM.
Section 172.324 Hazardous substances.
Section 172.326 Portable tanks.
Section 172.328 Cargo Tanks.
Section 172.330 Tank cars and multi-unit tank car tanks.
Section 172.332 Identification number markings.
Section 172.334 Identification numbers; prohibited display.
Section 172.336 Identification numbers; special provisions and exceptions.
Section 172.338 Replacement of identification numbers.

Subpart E—Labeling.
Section 172.400 General labeling requirements.
Section 172.401 Prohibited labeling.
Section 172.402 Additional labeling requirements.
Section 172.403 Radioactive material.
Section 172.404 Labels for mixed and consolidated packaging.
Section 172.405 Authorized label modifications.
Section 172.406 Placement of labels.
Section 172.407 Label specifications.
Section 172.411 EXPLOSIVE A, EXPLOSIVE B, EXPLOSIVE C, AND BLASTING AGENTS labels.
Section 172.415 NON-FLAMMABLE GAS label.
Section 172.416 POISON GAS label.
Section 172.417 FLAMMABLE GAS label.
Section 172.419 FLAMMABLE LIQUID label.
Section 172.420 FLAMMABLE SOLID label.
Section 172.422 SPONTANEOUSLY COMBUSTIBLE label.
Section 172.423 DANGEROUS WHEN WET label.
Section 172.426 OXIDIZER label.
Section 172.427 ORGANIC PEROXIDE label.
Section 172.430 POISON label.

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Section 172.432 IRRITANT label.
Section 172.436 RADIOACTIVE WHITE-I label.
Section 172.438 RADIOACTIVE YELLOW-II label.
Section 172.440 RADIOACTIVE YELLOW-III label.
Section 172.442 CORROSIVE label.
Section 172.444 ETIOLOGIC AGENT label.
Section 172.446 MAGNETIZED MATERIAL label.
Section 172.448 CARGO AIRCRAFT ONLY label.
Section 172.450 EMPTY label.

Subpart F—Placarding.
Section 172.500 Applicability of placarding requirements.
Section 172.502 Prohibited placarding.
Section 172.503 Identification number display on placards.
Section 172.504 General placarding requirements.
Section 172.506 Providing and affixing placards: Highway.
Section 172.507 Special placarding provisions: Highway.
Section 172.508 Placarding and affixing placards: Rail.
Section 172.510 Special placarding provisions: Rail.
Section 172.512 Freight container.
Section 172.514 Cargo tanks and portable tanks.
Section 172.516 Visibility and display of placards.
Section 172.519 General specifications for placards.
Section 172.521 DANGEROUS placard.
Section 172.522 EXPLOSIVES A placard.
Section 172.523 EXPLOSIVES B placard.
Section 172.524 BLASTING AGENTS placard.
Section 172.525 Standard requirements for the EMPTY placard.
Section 172.527 Background requirements for certain placards.
Section 172.528 NON-FLAMMABLE GAS placard.
Section 172.530 OXYGEN placard.
Section 172.532 FLAMMABLE GAS placard.
Section 172.536 CHLORINE placard.
Section 172.540 POISON GAS placard.
Section 172.542 FLAMMABLE placard and modification.
Section 172.544 COMBUSTIBLE placard and modification.
Section 172.546 FLAMMABLE SOLID placard.
Section 172.548 FLAMMABLE SOLID W placard.
Section 172.550 OXIDIZER placard.
Section 172.552 ORGANIC PEROXIDE placard.
Section 172.554 POISON placard.
Section 172.556 RADIOACTIVE placard.
Section 172.558 CORROSIVE placard.

Appendix A—Office of Hazardous Materials Regulation Color Tolerance Charts and Tables

Appendix B—Dimensional Specification for Placards

Appendix C—Dimensional Specifications for Recommended Placard Holder

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

Subpart A—General
Section 173.1 Purpose and scope.
Section 173.2 Classification of a material having more than one hazard as defined in this Part.
Section 173.3 Packaging and exceptions.
Section 173.4 Exceptions for small quantities.
Section 173.5 Agricultural operations.
Section 173.6 Shipments by Air.
Section 173.7 U.S. Government material.
Section 173.8 Canadian shipments and packagings.
Section 173.9 Cars, truck bodies or trailers containing lading which has been fumigated or treated with flammable liquids, flammable gases, poisonous liquids or solids, or poisonous gases.
Section 173.10 Tank car shipments.
Section 173.11 Shipper's registration statement; flammable cryogenic liquids.

Subpart B—Preparation of Hazardous Materials for Transportation
Section 173.21 Forbidden materials and packages.
Section 173.22 Shipper's responsibility.
Section 173.22a Use of packagings authorized under exemptions.
Section 173.23 Previously authorized packaging.
Section 173.24 Standard requirements for all packages.
Section 173.25 Authorized packages and overpacks.
Section 173.26 Quantity limitations and metric measurements.
Section 173.27 Aircraft quantity limitations.
Section 173.28 Reuse of packagings (containers).
Section 173.29 Empty packagings, portable tanks, cargo tanks, and tank cars.
Section 173.30 Loading and unloading of transport vehicles.
Section 173.31 Qualification, maintenance, and use of tank cars.
Section 173.32 Qualification, maintenance and use of portable tanks other than specification IM portable tanks.
Section 173.32a Approval of Specification IM portable tanks.
Section 173.32b Periodic testing and inspection of Specification IM portable tanks.
Section 173.32c Use of Specification IM portable tanks.
Section 173.32d Additions, modifications and removals of entries in the IM Tank Table.
Section 173.33 Qualification, maintenance, and use of cargo tanks.
Section 173.34 Qualification, maintenance and use of cylinders.

Subpart C—Explosives and Blasting Agents; Definitions and Preparation
Section 173.50 An explosive.
Section 173.51 Forbidden explosives.
Section 173.52 Acceptable explosives.
Section 173.53 Definition of class A explosives.
Section 173.54 Ammunition for cannon.
Section 173.55 Ammunition, nonexplosive.
Section 173.56 Ammunition, projectiles, grenades, bombs, mines, gas mines, and torpedos.
Section 173.57 Rocket ammunition.
Section 173.58 Ammunition for small arms.
Section 173.59 Chemical ammunition, explosive.
Section 173.60 Black powder and low explosives.
Section 173.61 High explosives.
Section 173.62 High explosives, liquid.

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Section 173.63	High explosives with liquid explosive ingredient.
Section 173.64	High explosives with no liquid explosive ingredient and propellant explosives, Class A.
Section 173.65	High explosives with no liquid explosive ingredient nor any chlorate.
Section 173.66	Detonators.
Section 173.68	Detonating primers.
Section 173.69	Detonating fuses, Class A, with or without radioactive components, detonating fuse parts containing an explosive, boosters, bursters, or supplementary charges.
Section 173.70	Diazodinitrophenol or lead mononitroresorcinate.
Section 173.71	Fulminate of mercury.
Section 173.72	Guanyl nitrosamino guanylidene hydrazine.
Section 173.73	Lead azide.
Section 173.74	Lead styphnate.
Section 173.75	Nitro mannite.
Section 173.76	Nitrosoguanidine.
Section 173.77	Pentaerythrite tetranitrate.
Section 173.78	Tetrazene.
Section 173.79	Jet thrust units (jato), Class A explosives; rocket motors, class A explosives, igniters, jet thrust (jato), class A explosives; and igniters, rocket motor, class A explosives.
Section 173.80	Charged well casing jet perforating guns.
Section 173.86	New explosives definitions; approval and notification.
Section 173.87	Explosives in mixed packaging.
Section 173.88	Definition of class B explosives.
Section 173.89	Ammunition for cannon with empty projectiles, inert-loaded projectiles, solid projectiles, tear gas projectiles or without projectiles.
Section 173.90	Rocket ammunition with empty, inert-loaded, or solid projectiles.
Section 173.91	Special fireworks.
Section 173.92	Jet thrust units (jato), class B explosives; rocket motors, class B explosives; igniters, jet thrust (jato), class B explosives; igniters, rocket motors, class B explosives; and starter cartridges, jet engine, class B explosives.
Section 173.93	Propellant explosives (solid) for cannon, small arms, rockets, guided missiles, or other devices, and propellant explosives (liquid).
Section 173.94	Explosive power devices, Class B.
Section 173.95	Rocket engines (liquid), Class B explosives.
Section 173.100	Definition of Class C explosives.
Section 173.101	Small-arms ammunition.
Section 173.101a	Cartridges, practice ammunition.
Section 173.102	Explosive cable cutters; explosive power devices, class C; explosive release devices, or starter cartridges, jet engine, class C explosives.
Section 173.103	Detonators, class C explosives, and detonating primers, class C explosives.
Section 173.104	Cordeau detonant fuse, mild detonating fuse, metal clad or flexible linear shaped charges, metal clad.
Section 173.105	Percussion, tracer, combination, time fuses and tracers.
Section 173.106	Cartridge bags, empty, with black powder igniters, igniters, safety squibs, electric squibs, delay electric igniters, igniter fuse-metal clad, and fuse lighters or fuse igniters.
Section 173.107	Primers, percussion caps, grenades, empty, primed, and cartridge cases, empty, primed.
Section 173.108	Common fireworks, signal flares, hand signal devices, smoke signals, smoke candles, smoke grenades, smoke pots, and Very signal cartridges.
Section 173.109	Toy caps.
Section 173.110	Charged well casing jet perforating guns, total explosive content in guns not exceeding 20 pounds per motor vehicle.
Section 173.111	Cigarette loads, explosive auto alarms, toy propellant devices, toy smoke device, trick matches, and trick noise makers, explosive.
Section 173.112	Oil well cartridges.
Section 173.113	Detonating fuses, class C explosives.
Section 173.114	Actuating cartridges, explosive, fire extinguisher or valve.
Section 173.114a	Blasting agents.

Subpart D—Flammable, Combustible, and Pyrophoric Liquids; Definitions and Preparation.

Section 173.115	Flammable, combustible, and pyrophoric liquids; definitions.
Section 173.116	Outage.
Section 173.117	Closing and cushioning.
Section 173.118	Limited quantities of flammable liquids.
Section 173.118a	Exceptions for combustible liquids. Section 173.118a is revised to state the following: (Note: Paragraph (b)(7) has been added.)

(a) Unless otherwise stated for a specific material, the regulations in this subchapter do not apply to a material classed as a combustible liquid in a packaging having a rated capacity of 110 gallons or less, unless the combustible liquid is a hazardous substance, or a hazardous waste.

(b) A combustible liquid that is a hazardous substance or a hazardous waste in a packaging having a rated capacity of 110 gallons or less, and a combustible liquid in a portable tank, cargo tank or a tank car is not subject to the requirements of this subchapter except those pertaining to:

(1) Shipping papers, waybills, switching orders, and hazardous waste manifests;

(2) Marking of portable tanks and marking of packages having a rated capacity of 110 gallons or less that contain hazardous substances or hazardous wastes;

(3) Display or identification numbers on portable tanks, cargo tanks, tank cars and multi-unit tank car tanks;

(4) Placarding of portable tanks, cargo tanks and tank cars;

(5) Carriage aboard aircraft and vessels (for packaging requirements for transport by vessel see Section 176.340 of this subchapter); and,

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(6) Reporting incidents as prescribed by Sections 171.15, 171.16, and 171.17 of this subchapter.

(7) Standard packaging requirements for all packages as prescribed in Section 173.24.

Section 173.119 Flammable liquids not specifically provided for.
Section 173.120 Automobiles, motorcycles, tractors, or other self-propelled vehicles.
Section 173.121 Carbon bisulfide (disulfide).
Section 173.122 Acrolein, inhibited.
Section 173.123 Ethyl chloride.
Section 173.124 Ethylene oxide.
Section 173.125 Alcohol, n.o.s. (flammable liquid).
Section 173.126 Nickel carbonyl.
Section 173.127 Nitrocellulose or collodion cotton, fibrous or nitrostarch, wet; nitrocellulose flakes; colloided nitrocellulose, granular, flake, or block, and lacquer base of lacquer chips, wet.
Section 173.128 Paint and paint related material (flammable liquids).
Section 173.129 Polishes (flammable liquids).
Section 173.130 Refrigerating machines.
Section 173.131 Road asphalt, or tar, liquid.
Section 173.132 Adhesive; cement; container cement; linoleum cement; pyroxylin cement; rubber cement; tile cement; wallboard cement, and coating solution.
Section 173.133 Spirits of nitroglycerin.
Section 173.134 Pyroforic liquids, n.o.s.
Section 173.135 Diethyl dichlorosilane, dimethyl dichlorosilane, ethyl dichlorosilane, ethyl trichlorosilane, methyl trichlorosilane, trimethyl chlorosilane, and vinyl trichlorosilane.
Section 173.136 Methyl dichlorosilane and trichlorosilane.
Section 173.137 Lithium aluminum hydride, ethereal.
Section 173.138 Pentaborane.
Section 173.139 Ethylene imine, inhibited, and propylene imine, inhibited.
Section 173.140 Zirconium, metallic, solutions, or mixtures thereof, liquid.
Section 173.141 Amyl mercaptan, butyl mercaptan, ethyl mercaptan, isopropyl mercaptan, propyl mercaptan, and aliphatic mercaptan mixtures.
Section 173.143 Methylchloromethyl ether, anhydrous.
Section 173.144 Ink (flammable liquid).
Section 173.145 Dimethylhydrazine, unsymmetrical, and methylhydrazine.
Section 173.146 Heaters for refrigerator cars, flammable liquid fuel type.
Section 173.147 Methyl vinyl ketone, inhibited.
Section 173.148 Monoethylamine.
Section 173.149 Methyl magnesium bromide in ethyl ether in concentrations not over 40 percent.
Section 173.149a Nitromethane.

Subpart E—Flammable Solids, Oxidizers, and Organic Peroxides; Definitions and Preparation.

Section 173.150 Flammable solid; definition.
Section 173.151 Oxidizer; definition.
Section 173.151a Organic peroxide; definition.
Section 173.152 Packing.
Section 173.153 Limited quantities of flammable solids, oxidizers and organic peroxides.
Section 173.154 Flammable solids, organic peroxide solids and oxidizers not specifically provided for.
Section 173.154a Fuses.
Section 173.155 Bags, nitrate of soda, empty and unwashed.
Section 173.156 Barium peroxide and calcium peroxide.
Section 173.157 Benzoyl peroxide, chlorobenzoyl peroxide (para), cyclohexanone peroxide, demethylhexane dihydroperoxide, lauroyl peroxide, or succinic acid peroxide, wet.
Section 173.158 Benzoyl peroxide, dry; chlorobenzoyl peroxide (para) dry, cyclohexanone peroxide, dry; lauroyl peroxide, dry; or succinic acid peroxide, dry.
Section 173.159 Burnt cotton.
Section 173.160 Calcium chlorite and sodium chlorite.
Section 173.161 Calcium phosphide.
Section 173.162 Charcoal.
Section 173.163 Chlorate of soda, chlorate of potash, and other chlorates.
Section 173.164 Chronic acid or chromic acid mixture, dry.
Section 173.165 Coal, ground bituminous, sea coal, coal facings.
Section 173.166 Cobalt resinate, precipitated, calcium resinate, and calcium resinate fused.
Section 173.167 Cotton waste, oily.
Section 173.168 Lithium amide, powdered.
Section 173.169 Fiber, burnt.
Section 173.170 Fibers of fabrics impregnated, saturated or coated.
Section 173.171 Fish scrap or fish meal.
Section 173.172 Hair, wet.
Section 173.173 Aluminum dross or magnesium dross.
Section 173.174 Iron sponge, spent oxide, spent iron mass, spent iron sponge.
Section 173.175 Lacquer base, or lacquer chips, dry.
Section 173.176 Matches.
Section 173.177 Motion-picture film and X-ray film.
Section 173.178 Calcium carbide, calcium silicon powder, and magnesium granules, coated.
Section 173.179 N-methyl-N'-nitro-N-nitrosoguanidine.
Section 173.182 Nitrates.
Section 173.183 Potassium nitrate mixed (fused) with sodium nitrite.
Section 173.184 Nitrocellulose or collodion cotton, wet, or nitrocellulose, colloided, granular, or flake, wet, or nitrostarch, wet, or nitroguanidine, wet.
Section 173.185 Paper stock, wet.
Section 173.186 Paper waste, wet.
Section 173.187 Potassium peroxide; potassium superoxide; sodium peroxide or sodium superoxide.
Section 173.188 Phosphoric anhydride.
Section 173.189 Phosphorus, amorphous, red.
Section 173.190 Phosphorus, white or yellow.
Section 173.191 Phosphorus pentachloride.
Section 173.192 Ammonium picrate, picric acid, trinitrobenzoic acid, and urea nitrate, wet.
Section 173.193 Picric acid, trinitrobenzoic acid, or urea nitrate, wet.

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Section 173.194 Potassium permanganate.
Section 173.195 Pyroxylin plastic scrap.
Section 173.197 Pyroxylin plastics, in sheets, rolls, rods, or tubes.
Section 173.197a Smokeless powder for small arms.
Section 173.198 Sodium hydride.
Section 173.199 Rags, oily.
Section 173.200 Rags, wet.
Section 173.201 Rubber scrap, rubber buffings, reclaimed rubber, or regenerated rubber.
Section 173.202 Sodium metal liquid alloy, potassium metal liquid alloy, and sodium potassium liquid alloy.
Section 173.203 Tetranitromethane.
Section 173.204 Sodium hydrosulfite.
Section 173.205 Sodium picramate, wet.
Section 173.206 Sodium or potassium, metallic; sodium amide; sodium potassium alloys; sodium aluminum hydride; lithium metal; lithium silicon; lithium ferro silicon; lithium hydride; lithium borohydride; lithium aluminum hydride; lithium acetylide-ethylene diamine complex; aluminum hydride; cesium metal; rubidium metal; zirconium hydride, powdered.
Section 173.207 Sulfide of sodium or sulfide of potassium, fused or concentrated, when ground.
Section 173.208 Titanium metal powder, wet or dry.
Section 173.209 Tankage, garbage, and tankage fertilizers.
Section 173.210 Tankages, rough ammoniate.
Section 173.211 Textile waste, wet.
Section 173.212 Trinitrobenzene and trinitrotoluene, wet.
Section 173.213 Wool waste, wet.
Section 173.214 Hafnium metal or zirconium metal, wet, minimum 25 percent water by weight, mechanically produced, finer than 270 mesh particle size; hafnium metal or zirconium metal, dry, in an atmosphere of inert gas, mechanically produced, finer than 270 mesh particle size; hafnium metal or zirconium metal, wet, minimum 25 percent water by weight, chemically produced (See Note 1), finer than 20 mesh particle size; hafnium metal or zirconium metal, dry, in an atmosphere of inert gas, chemically produced (See Note 1), finer than 20 mesh particle size.
Note 1: Produced by means other than attrition or grinding.
Note 2: Any product containing 10 percent or more, particle size specified, shall be subject to this section.
Note 3: Any product containing less than 25 percent water by weight is considered dry for purposes of these regulations.
Section 173.216 Zirconium picramate, wet.
Section 173.217 Calcium hypochlorite, hydrated; calcium hypochlorite, mixture, dry; lithium hypochlorite mixture, dry; mono-(trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry; potassium dichloro-s-triazine-trione, dry; sodium dichloro-s-triazinetrione, dry; trichloro-s-triazinetrione, dry.
Section 173.218 Isopropyl percarbonate, unstabilized.
Section 173.219 Potassium perchlorate.
Section 173.220 Magnesium or zirconium scrap consisting of borings, clippings, shavings, sheets, turnings, or scalpings, and magnesium metallic (other than scrap), powder, pellets, turnings, or ribbon; magnesium aluminum powder.
Section 173.221 Liquid organic peroxides, n.o.s., and liquid organic peroxide solutions, n.o.s.
Section 173.222 Acetyl peroxide and acetyl benzoyl peroxide, solution.
Section 173.223 Peracetic acid.
Section 173.224 Cumene hydroperoxide, dicumyl peroxide, diisopropylbenzene hydroperoxide, paramenthane hydroperoxide, pinane hydroperoxide, and teritary butylisopropyl benzene hydroperoxide.
Section 173.225 Phosphorus trisulfide, phosphorus sesquisulfide, phosphorus heptasulfide, and phosphorus pentasulfide.
Section 173.227 Urea peroxide.
Section 173.228 Zinc ammonium nitrate.
Section 173.229 Chlorate and borate mixtures or chlorate and magnesium chloride mixtures.
Section 173.230 Sodium, metallic, dispersion in organic solvent.
Section 173.231 Calcium, metallic, crystalline.
Section 173.232 Aluminum, metallic powder.
Section 173.233 Nickel catalyst, finely divided, activated or spent.
Section 173.234 Sodium nitrite and sodium nitrite mixtures.
Section 173.235 Ammonium bichromate (ammonium dichromate).
Section 173.236 Decaborane.
Section 173.237 Chlorine dioxide hydrate, frozen; chloric acid.
Section 173.238 Aircraft rocket engines (commercial) and/or aircraft rocket engine igniters (commercial).
Section 173.239 Barium azide-50 percent or more water wet.
Section 173.239a Ammonium perchlorate.

Subpart F—Corrosive Materials: Definition and Preparation.
Section 173.240 Corrosive material; definition.
Section 173.241 Outage.
Section 173.242 Bottles containing corrosive liquids.
Section 173.243 Closing and cushioning.
Section 173.244 Limited quantities of corrosive materials.
Section 173.245 Corrosive liquids not specifically provided for.
Section 173.245a Corrosive liquids, n.o.s. shipped in bulk.
Section 173.245b Corrosive solids not specifically provided for.
Section 173.246 Antimony pentafluoride, bromide pentafluoride, iodine pentafluoride, bromine trifluoride, and chlorine trifluoride.
Section 173.247 Acetyl bromide; acetyl chloride; acetyl iodide; antimony pentachloride; benzoyl chloride; boron trifluoride-acetic acid

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complex; chromyl chloride; dichloroacetyl chloride; diphenylmethyl bromide solutions; pyrosulfuryl chloride; silicon chloride; sulfur chloride (mono and di); sulfuryl chloride; thionyl chloride; tin tetrachloride (anhydrous); titanium tetrachloride; and trimethyl acetyl chloride.

Section 173.247a Vanadium tetrachloride and vanadium oxytrichloride.

Section 173.248 Acid sludge, sludge acid, spent sulfuric acid, or spent mixed acid.

Section 173.249 Alkaline corrosive liquids, n.o.s.; Alkaline corrosive battery fluid; Potassium fluoride solution; Potassium hydrogen fluoride solution; Sodium aluminate, liquid; Sodium hydroxide solution; Potassium hydroxide solution; Boiler compound, liquid, solution.

Section 173.249a Cleaning compound, liquid; Coal tar dye, liquid; Dye intermediate, liquid; Mining reagent, liquid; and Textile treating compound mixture, liquid.

Section 173.250 Automobiles, other self-propelled vehicles, engines or other mechanical apparatus.

Section 173.250a Benzene phosphorus dichloride and benzene phosphorus thiodichloride.

Section 173.251 Boron trichloride and boron tribromide.

Section 173.252 Bromine.

Section 173.253 Chloroacetyl chloride.

Section 173.254 Chlorosulfonic acid and mixtures of chlorosulfonic acid-sulfur trioxide.

Section 173.255 Dimethyl sulfate.

Section 173.256 Compounds, cleaning, liquid.

Section 173.257 Electrolyte (acid) and alkaline corrosive battery fluid.

Section 173.258 Electrolyte, acid or alkaline corrosive battery fluid, packed with storage batteries.

Section 173.259 Electrolyte, acid, or alkaline corrosive battery fluid, packed with battery charger, radio current supply device, or electronic equipment and actuating devices.

Section 173.260 Electric storage batteries, wet.

Section 173.261 Fire-extinguisher charges.

Section 173.262 Hydrobromic acid.

Section 173.263 Hydrochloric (muriatic) acid, hydrochloric (muriatic) acid mixtures; hydrochloric (muriatic) acid solution, inhibited; sodium chlorite solution (not exceeding 42 percent sodium chlorite); and cleaning compounds, liquids, containing hydrochloric (muriatic) acid.

Section 173.264 Hydrofluoric acid; White acid.

Section 173.265 Hydrofluorosilicic acid.

Section 173.266 Hydrogen peroxide solution in water.

Section 173.267 Mixed acid (nitric and sulfuric acid) (nitrating acid).

Section 173.268 Nitric acid.

Section 173.269 Perchloric acid.

Section 173.270 Phosphorus tribromide.

Section 173.271 Methyl phosphonic dichloride, phosphorus oxybromide, phosphorus oxychloride, phosphorus trichloride, and thiophosphoryl chloride.

Section 173.272 Sulfuric acid.

Section 173.273 Sulfur trioxide.

Section 173.274 Fluosulfonic acid.

Section 173.275 Difluorophosphoric acid, anhydrous, monofluorophosphoric acid, anhydrous hexafluorophosphoric acid, and mixtures thereof.

Section 173.276 Anhydrous hydrazine and hydrazine solution.

Section 173.277 Hypochlorite solutions.

Section 173.278 Nitrohydrochloric acid.

Section 173.279 Anisoyl chloride.

Section 173.280 Trichlorosilanes.

Section 173.281 Benzyl bromide (bromotoluene, alpha).

Section 173.282 Isopropyl percarbonate, stabilized.

Section 173.283 Fluoboric acid.

Section 173.284 Tungsten hexafluoride.

Section 173.286 Chemical kits.

Section 173.287 Chromic acid solution.

Section 173.288 Chloroformates.

Section 173.289 Formic acid and formic acid solutions.

Section 173.290 Mixtures of hydrofluoric and sulfuric acid.

Section 173.291 Flame retardant compound, liquid.

Section 173.292 Hexamethylene diamine solution.

Section 173.293 Iodine monochloride.

Section 173.294 Monochloroacetic acid, liquid or solution.

Section 173.295 Benzyl chloride.

Section 173.296 Di iso octyl acid phosphate.

Section 173.297 Titanium sulfate solution containing not more than 45 percent sulfuric acid.

Section 173.298 Memtetrahydro phthalic anhydride.

Section 173.299 Etching acid liquid, n.o.s.

Section 173.299a Tris-(1-aziridinyl) phosphine oxide.

Subpart G—Compressed Gases; Definition and Preparation.

Section 173.300 Definitions.

Section 173.300a Approval of independent inspection agency.

Section 173.300b Approval of non-domestic chemical analyses and tests.

Section 173.300c Termination of approval.

Section 173.301 General requirements for shipment of compressed gases in cylinders.

Section 173.302 Charging of cylinders with non-liquefied compressed gases.

Section 173.303 Charging of cylinders with compressed gas in solution (acetylene).

Section 173.304 Charging of cylinders with liquefied compressed gas.

Section 173.305 Charging of cylinders with a mixture of compressed gas and other material.

Section 173.306 Limited quantities of compressed gases.

Section 173.307 Exceptions for compressed gases.

Section 173.308 Cigarette lighter or other similar device charged with fuel.

Section 173.314 Requirements for compressed gases in tank cars.

Section 173.315 Compressed gases in cargo tanks and portable tank containers.

Section 173.316 Liquefied hydrogen.

Section 173.318 Cryogenic liquids in cargo tanks.

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Section 173.319 Cryogenic liquids in tank cars.
Section 173.320 Cryogenic liquids; exceptions.

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Section 173.325 Classes of poisonous materials.
Section 173.326 Poison A.
Section 173.327 General packaging requirements for Poison A materials.
Section 173.328 Poison A materials not specifically provided for.
Section 173.329 Bromacetone; chlorpicrin and methyl chloride mixtures; chlorpicrin and non-flammable, nonliquefied compressed gas mixtures.
Section 173.330 Chemical ammunition.
Section 173.331 Gas identification sets.
Section 173.332 Hydrocyanic acid, liquid (prussic acid) and hydrocyanic acid liquefied.
Section 173.333 Phosgene or diphosgene.
Section 173.334 Organic phosphates mixed with compressed gas.
Section 173.336 Nitrogen dioxide, liquid; nitrogen peroxide, liquid; and nitrogen tetroxide liquid.
Section 173.337 Nitric oxide.
Section 173.343 Poison B.
Section 173.344 General packaging requirements for Poison B liquids.
Section 173.345 Limited quanitites of Poison B liquids.
Section 173.346 Poison B liquids not specifically provided for.
Section 173.347 Aniline oil.
Section 173.348 Arsenic acid.
Section 173.349 Carbolic acid (phenol) liquid.
Section 173.350 Chemical ammunition.
Section 173.351 Hydrocyanic acid solutions.
Section 173.352 Sodium and potassium cyanide solutions, and cyanide solution, n.o.s.
Section 173.353 Methyl bromide and methyl bromide mixtures.
Section 173.353a Methyl bromide, liquid and non-flammable, nonliquefied compressed gas mixtures.
Section 173.354 Motor fuel antiknock compound or tetraethyl lead.
Section 173.355 Phenyldichlorarsine.
Section 173.356 Thiophosgene.
Section 173.357 Chloropicrin and chloropicrin mixtures containing no compressed gas or Poison A liquid.
Section 173.358 Hexaethyl tetraphosphate, methyl parathion, organic phosphate compound, organic phosphorus compound, parathion, tetraethyl dithio pyrophosphate, and tetraethyl pyrophosphate, liquid.
Section 173.359 Hexaethyl tetraphosphate mixtures; methyl parathion mixtures; organic phosphorus compound mixtures; organic phosphate compound mixtures; parathion mixtures; tetraethyl dithio pyrophosphate mixtures; and tetraethyl pyrophosphate mixtures, liquid (includes solutions, emulsions, or emulsifiable liquids).
Section 173.360 Perchloro-methyl-mercaptan.
Section 173.361 Aldrin mixtures, liquid, with more than 60 percent aldrin.
Section 173.362 4-Chloro-o-toluidine hydrochloride.
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Section 173.363 General packaging requirements for Poison B solids.
Section 173.364 Limited quantities of Poison B solids.
Section 173.365 Poison B solids not specifically provided for.
Section 173.366 Arsenic (arsenic trioxide) or arsenic acid (solid).
Section 173.367 Arsenical compounds, n.o.s.; arsenate of lead; calcium arsenate; Paris green; and arsenical mixtures.
Section 173.368 Arsenical dust, arsenical flue dust, and other poisonous non-combustible by-product dusts; also arsenic trioxide, calcium arsenate, and sodium arsenate.
Section 173.369 Carbolic acid (phenol), not liquid.
Section 173.370 Cyanides and cyanide mixtures, dry.
Section 173.371 Dinitrobenzol (dinitrobenzene).
Section 173.372 Mercury bichloride (mercuric chloride).
Section 173.373 Ortho-nitroaniline and paranitroaniline.
Section 173.374 Nitrochlorobenzene, meta or para.
Section 173.375 Sodium azide.
Section 173.376 Aldrin and aldrin mixtures, dry, with more than 65 percent aldrin.
Section 173.377 Hexaethyl tetraphosphate mixtures; methyl parathion mixtures; organic phosphorus compound mixtures, organic phosphate compound mixtures; parathion mixtures; tetraethyl dithio pyrophosphate mixtures; and tetraethyl pyrophosphate mixtures, dry.
Section 173.379 Cyanogen bromide.
Section 173.381 Irritating materials; Definition and general packaging requirements.
Section 173.382 Irritating materials, not specifically provided for.
Section 173.383 Chemical ammunition.
Section 173.384 Monochloracetone, stabilized.
Section 173.385 Tear gas grenades, tear gas candles, or similar devices.
Section 173.386 Etiologic agents; definition and scope.
Section 173.387 Packaging requirements for etiologic agents.
Section 173.388 Labeling of packages containing etiologic agents.

Subpart I—Radioactive Materials.
Section 173.401 Scope.
Section 173.403 Definitions.
Section 173.411 General design requirements.
Section 173.412 Additional design requirements for Type A packages.
Section 173.413 Requirements for Type B packages.
Section 173.415 Authorized Type A packages.
Section 173.416 Authorized Type B packages.
Section 173.417 Authorized packaging—Fissile materials.
Section 173.418 Authorized packaging—pyrophoric radioactive materials.
Section 173.419 Authorized packaging—oxidizing radioactive materials.
Section 173.421 Limited quantities of radioactive materials.

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Section 173.421-1 Additional requirements for limited quantities of radioactive materials and radioactive instruments and articles.
Section 173.421-2 Requirements for multiple hazard limited quantity radioactive materials.
Section 173.422 Exceptions for instruments and articles.
Section 173.423 Table of activity limits-excepted quantities and devices.
Section 173.424 Excepted article containing natural uranium or thorium.
Section 173.425 Transport requirements for low specific activity (LSA) radioactive materials.
Section 173.427 Empty radioactive materials packaging.
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Section 173.433 Requirements for determination of A_1 and A_2 values for radionuclides.
Section 173.434 Activity-mass relationships for uranium and natural thorium.
Section 173.435 Table of A_1 and A_2 values for radionuclides.
Section 173.441 Radiation level limitations.
Section 173.442 Thermal limitations.
Section 173.443 Contamination control.
Section 173.444 Labeling requirements.
Section 173.446 Placarding requirements.
Section 173.447 Storage incident to transportation—general requirements.
Section 173.448 General transportation requirements.
Section 173.451 Fissile materials—general requirements.
Section 173.453 Fissile materials—exceptions.
Section 173.455 Classification of fissile materials packages.
Section 173.457 Transportation of Fissile Class III shipments—specific requirements.
Section 173.459 Mixing of fissile material packages.
Section 173.461 Demonstration of compliance with tests.
Section 173.462 Preparation of specimens for testing.
Section 173.463 Packaging and shielding—testing for integrity.
Section 173.465 Type A packaging tests.
Section 173.466 Additional tests for Type A packagings designed for liquids and gases.
Section 173.467 Tests for demonstrating the ability of Type B and fissile radioactive materials packagings to withstand accident conditions in transportation.
Section 173.469 Tests for special form radioactive materials.
Section 173.471 Requirements for U.S. Nuclear Regulatory Commission approved packages.
Section 173.472 Requirements for exporting DOT specification Type B and fissile packages.
Section 173.473 Requirements for foreign-made packages.
Section 173.474 Quality control for construction of packaging.
Section 173.475 Quality control requirements prior to each shipment of radioactive materials.
Section 173.476 Approval of special form radioactive materials.
Section 173.477 Approval for export shipments.
Section 173.478 Notification to competent authorities for export shipments.

Subpart J—Other Regulated Material; Definition and Preparation.
Section 173.500 Definitions.
Section 173.505 Exceptions for Other Regulated Material (ORM).
Section 173.510 General packaging requirements.

Subpart K—Other Regulated Material; ORM-A.
Section 173.605 Ammonium hydrosulfide solution, ammonium polysulfide solution, bromochloromethane, dibromodifluoromethane, dichlorodifluoroethylene dichloromethane, methyl chloroform, perfluoro-2-butene, tetrachloroethylene, and trichloroethylene.
Section 173.610 Camphene.
Section 173.615 Carbon dioxide, solid (dry ice).
Section 173.620 Carbon tetrachloride, ethylene dibromide (1,2-dibromoethane), and tetrachloroethane.
Section 173.630 Chloroform.
Section 173.635 Ferrophosphorus.
Section 173.645 Ferrosilicon.
Section 173.650 Hexachloroethane.
Section 173.655 Naphthalene or naphthalin.

Subpart L—Other Regulated Material, ORM-B.
Section 173.800 Ammonium hydrogen sulfate, ammonium fluoride, barium oxide, chloroplatinic acid, copper chloride, ferric chloride, lead chloride, molybdenum pentachloride, potassium hydrogen sulfate, sodium aluminate, sodium hydrogen sulfate, and/or sodium hydrogen sulfite (each in solid form).
Section 173.850 Lime, unslaked; quicklime; and calcium oxide.
Section 173.860 Mercury, metallic.
Section 173.861 Gallium metal, liquid.
Section 173.862 Gallium metal, solid.

Subpart M—Other Regulated Material; ORM-C.
Section 173.906 Inflatable life rafts, escape slides, and evacuation slides.
Section 173.910 Ammonium sulfate nitrate.
Section 173.915 Battery parts.
Section 173.920 Bleaching powder.
Section 173.925 Box toe board.
Section 173.930 Burlap bags, used and unwashed or not cleaned.
Section 173.931 Burlap cloth, burlap bags, new, used, and washed, or vacuum cleaned, wheel cleaned or otherwise mechanically cleaned.
Section 173.945 Calcium cyanamide, not hydrated.
Section 173.952 Castor beans and castor pomace.
Section 173.955 Coconut meal pellets.
Section 173.960 Copra.
Section 173.965 Cotton and other fibers.
Section 173.970 Cotton batting, batting dross, wadding, seed hull fiber, shavings pulp, and cut linters.

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Section 173.975 Cotton sweepings; and textile, cotton, felt, or wool waste.
Section 173.980 Excelsior.
Section 173.985 Exothermic ferrochrome, ferromanganese, and silicon-chrome.
Section 173.990 Feed, wet, mixed.
Section 173.995 Fish scrap and fish meal.
Section 173.1000 Garbage tankage, rough ammoniate tankage, or tankage fertilizer.
Section 173.1005 Hay or straw.
Section 173.1010 Lead dross or scrap containing 3 percent or more free acid.
Section 173.1015 Lithium batteries, for disposal.
Section 173.1020 Magnetized material.
Section 173.1025 Ferrous metal borings, shavings, turning, or cuttings (excluding stainless steel).
Section 173.1030 Oakum or twisted jute packing.
Section 173.1035 Oiled material.
Section 173.1040 Pesticide, water-reactive.
Section 173.1045 Petroleum coke, uncalcined.
Section 173.1065 Rubber curing compound, solid.
Section 173.1070 Sawdust or wood shavings.
Section 173.1075 Scrap paper or waste.
Section 173.1080 Sulfur.
Section 173.1085 Yeast, active (in liquid or compressed form).
Section 173.1090 Asbestos.

Subpart N—Other Regulated Material; ORM-D.
Section 173.1200 Consumer Commodity.

Subpart O—Other Regulated Material; ORM-E.
Section 173.1300 Hazardous waste, liquid or solid, n.o.s.; hazardous substance, liquid or solid, n.o.s.

Appendix A—Method of Testing Corrosion to Skin.

PART 174—CARRIAGE BY RAIL

Subpart A—General Requirements.
Section 174.1 Purpose and scope.
Section 174.3 Unacceptable hazardous materials shipments.
Section 174.5 Carrier's materials and supplies.
Section 174.7 Responsibility for compliance.
Section 174.8 Inspection.

This section is changed to read as follows.

(a) Methods of manufacture, packing, and storage of hazardous material, insofar as they affect safety in transportation by rail, must be open to inspection by a duly authorized representative of the U.S. Department of Transportation, the New Jersey Department of Law and Public Safety, the New Jersey Department of Transportation, an initial carrier, and the U.S. Bureau of Explosives.

(b) At any point where a train is required to be inspected, each loaded placarded rail car and each rail car immediately adjacent thereto must be inspected. The cars may continue in transit only when the inspection indicates that the cars are in a safe condition for transportation. (See Sections 174.9 and 174.10.) The inspection of a rail car other than a tank car or a rail car containing Class A explosives must include a visual inspection for obvious defects of the running gear and any leakage of contents from the car and to determine whether all required placards are in place and conform to the information given on the train consist or other shipping document as required by Section 174.26(b).

(c) For inspection requirements applicable to rail cars containing Class A explosives, see Sections 174.10 and 174.104.

Section 174.9 Inspection of tank cars.
Section 174.10 Inspection of cars at interchange.
Section 174.11 Canadian shipments and packages.
Section 174.12 Intermediate shippers and carriers.
Section 174.14 Movements to be expedited.
Section 174.16 Removal and disposition of hazardous materials at destination.
Section 174.18 Astray shipments.
Section 174.20 Local or carrier restrictions.

Subpart B—General Operating Requirements
Section 174.24 Shipping papers.
Section 174.25 Additional information on waybills, switching orders and other billings.
Section 174.26 Notice to train crews of placarded cars.
Section 174.33 Lost or destroyed labels and placards.
Section 174.45 Reporting hazardous materials incidents.
Section 174.47 Correction of violations.
Section 174.48 Leaking packages other than tank cars.
Section 174.49 Flammable vapors.
Section 174.50 Leaking tank cars.

Subpart C—General Handling and Loading Requirements.
Section 174.55 General requirements.
Section 174.57 Cleaning cars.
Section 174.59 Marking and placarding of rail cars.
Section 174.61 Truck bodies, trailers or freight containers on flat cars.
Section 174.63 Freight containers, portable tanks and IM portable tanks.
Section 174.67 Tank car unloading.
Section 174.69 Removal of placards and car certificates after unloading.
Section 174.81 Segregation and separation requirements for hazardous materials in rail cars.

Subpart D—Handling of Placarded Cars.
Section 174.83 Switching of cars containing hazardous materials.
Section 174.84 Switching of flatcars carrying placarded trailers, freight containers, portable tanks or IM portable tanks.
Section 174.85 Placement of freight cars placarded "EXPLOSIVES A" in yards, on sidings, or side tracks.
Section 174.86 Position in train of cars placarded "EXPLOSIVES A" or "POISON GAS" when accompanied by cars carrying guards or technical escorts.
Section 174.87 Placarded cars prohibited in passenger trains, limited in mixed trains.
Section 174.88 Position in train of cars placarded "EXPLOSIVES A".
Section 174.89 Position in train of cars placarded "RADIOACTIVE".
Section 174.90 Separating cars placarded "EXPLOSIVES A" or "POISON GAS" from other cars in trains.
Section 174.91 Position in train of loaded placarded tank car other than car placarded "COMBUSTIBLE".

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Section 174.92 Separating loaded placarded tank cars other than cars placarded "COMBUSTIBLE" from other cars in trains.
Section 174.93 Position in train of empty placarded tank cars.

Subpart E—Detailed Requirements for Explosives
Section 174.100 Forbidden explosives.
Section 174.101 Loading explosives.
Section 174.102 Forbidden mixed loading and storage.
Section 174.103 Disposition of damaged or astray shipments.
Section 174.104 Class A explosives; car selection, preparation, inspection, and certification.
Section 174.105 Routing shipments, Class A explosives.
Section 174.106 "Order-Notify" or "C.O.D." shipments, Class A explosives.
Section 174.107 Shipping days for Class A explosives.
Section 174.109 Non-agency shipments.
Section 174.110 Car magazine.
Section 174.112 Loading Class B explosives (Also see Section 174.101).
Section 174.114 Record to be made of change of seals on "EXPLOSIVES A" laden cars.
Section 174.115 Loading Class C explosives.

Subpart F—Detailed Requirements for Gases
Section 174.200 Special handling requirements.
Section 174.201 Compressed gas cylinders.
Section 174.204 Tank car delivery of gases.
Section 174.208 Rail cars, truck bodies, or trailers with fumigated or treated lading.
Section 174.280 Poison gases with foodstuffs.
Section 174.290 Poison A shipped by, for, or to the Department of Defense.

Subpart G—Detailed Requirements for Flammable Liquid
Section 174.300 Special handling requirements.
Section 174.304 Flammable liquids in tank cars.
Section 174.380 Poisonous flammable liquids with foodstuffs.

Subpart H—Detailed Requirements for Flammable Solids
Section 174.410 Special handling requirements for matches.
Section 174.450 Fires.
Section 174.480 Poisonous flammable liquids with foodstuffs.

Subpart I—Detailed Requirements for Oxidizers
Section 174.510 Special handling requirements for nitrates.
Section 174.515 Cleaning cars; potassium permanganate.
Section 174.580 Poisonous oxidizers with foodstuffs.

Subpart J—Detailed Requirements for Poisonous Materials
Section 174.600 special handling requirements for Poison A materials.
Section 174.615 Cleaning cars.
Section 174.680 Poisons with foodstuffs.

Subpart K—Detailed Requirements for Radioactive Materials
Section 174.700 Special handling requirements for radioactive materials.
Section 174.715 Cleanliness of cars after use.
Section 174.750 Incidents involving leakage.

Subpart L—Detailed Requirements for Corrosive Materials
Section 174.800 Special handling requirements for corrosive materials.
Section 174.810 Special handling requirements for wet electric storage batteries.
Section 174.812 Special handling requirements for nitric acid.

Subpart M—Detailed Requirements for Other Regulated Materials
Section 174.840 Special loading and handling requirements for asbestos.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

Subpart A—General Information and Regulations
Section 177.800 Purpose of regulations in Parts 170-189 of this chapter.
Section 177.801 Scope of regulations in Parts 170-189 of this chapter.
Section 177.802 Application of regulations in Parts 170-189 of this chapter.
Section 177.803 Export and import shipments by domestic carriers by motor vehicles.
Section 177.804 Compliance with Federal Motor Carrier Safety Regulations.
Section 177.805 Canadian shipments and packagings.
Section 177.806 U.S. Government material.
Section 177.807 Reporting hazardous materials incidents.
Section 177.808 Connecting carrier shipments.
Section 177.809 Carrier's material and supplies.
Section 177.810 Vehicular tunnels.
Section 177.811 Astray shipments.
Section 177.812 Containers required.
Section 177.813 Inefficient containers.
Section 177.814 Retention of manufacturer's certificate and retest reports.
Section 177.815 Lost or destroyed labels.
Section 177.816 Training.
Section 177.817 Shipping Papers.
Section 177.818 Special instructions; flammable cryogenic liquids.
Section 177.821 Hazardous materials forbidden or limited for transportation.
Section 177.822 Acceptable articles.
Section 177.823 Marking and placarding motor vehicles.
Section 177.824 Retesting and inspection of cargo tanks.
Section 177.825 Routing and training requirements for radioactive materials.
Section 177.826 Carrier's registration statement; flammable cryogenic liquids.

Subpart B—Loading and Unloading
Section 177.834 General requirements.
Section 177.835 Explosives.
Section 177.836 Nonexplosive material.
Section 177.837 Flammable liquids.
Section 177.838 Flammable solids and oxidizing materials.
Section 177.839 Corrosive liquids.
Section 177.840 Compressed gases.
Section 177.841 Poisons.
Section 177.842 Radioactive material.
Section 177.843 Contamination of vehicles.
Section 177.844 Other regulated materials.

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Subpart C—Loading and Storage Chart of Hazardous Materials

Section 177.848 Loading and storage chart of hazardous materials.

Subpart D—Vehicle and Shipments in Transit; Accidents

Section 177.853 Transportation and delivery of shipments.
Section 177.854 Disabled vehicles and broken or leaking packages; repairs.
Section 177.855 Accidents; explosives.
Section 177.856 Accidents; flammable liquids.
Section 177.857 Accidents; flammable solids and oxidizing materials.
Section 177.858 Accidents; corrosive materials.
Section 177.859 Accidents; compressed gases.
Section 177.860 Accidents or leakage; poisons.
Section 177.861 Accidents; radioactive materials.

Subpart E—Regulations Applying to Hazardous Material on Motor Vehicles Carrying Passengers for Hire

Section 177.870 Regulations for passenger carrying vehicles.

APPENDIX A—RELATIONSHIP BETWEEN ROUTING REQUIREMENTS IN PART 177 WITH STATE AND LOCAL REQUIREMENTS

Appendix A above, of Part 177, is excluded from adoption herein.

PART 178—SHIPPING CONTAINER SPECIFICATIONS

Section 178.0 Purpose, scope, and applicability.

Subpart A—Specifications for Carboys, Jugs in Tubs, and Rubber Drums

Section 178.1 Specification 1A, boxed carboys.
Section 178.4 Specification 1D; boxed glass carboys.
Section 178.5 Specification 1X; boxed carboys, 5 to 6½ gallons, for export only.
Section 178.6 Specification 1EX; glass carboys in plywood drums.
Section 178.13 Specification 1H; polyethylene carboys in low carbon steel or other equally efficient metal crates.
Section 178.14 Specification 1K; glass carboys cushioned with expandable polystyrene in wooden wirebound box outside containers.
Section 178.16 Specification 35; non-reusable molded polyethylene drum for use without overpack; removable head required.
Section 178.17 Specification 1M; non-reusable glass carboy in non-reusable expanded polystyrene packaging.
Section 178.19 Specification 34; reusable molded polyethylene container for use without overpack. Removable head not authorized.

Subpart B—Specifications for Inside Containers, and Linings

Section 178.21 Specification 2T; polyethylene container.
Section 178.22 Specification 2C; inside containers, corrugated fiberboard cartons.
Section 178.23 Specification 2D; inside containers, duplex paper bags.
Section 178.24 Specification 2U; molded or thermoformed polyethylene containers having rated capacity of over one gallon. Removable head containers or containers fabricated from film not authorized.
Section 178.24a Specification 2E; inside polyethylene bottle.
Section 178.25 Specification 2F; inside metal containers and liners.
Section 178.26 Specification 2G; inside containers, fiber cans and boxes.
Section 178.27 Specification 2TL; polyethylene container.
Section 178.28 Specification 2J; inside containers, waterproof paper bags for linings.
Section 178.29 Specification 2K; inside containers, paper bags for linings.
Section 178.30 Specification 2L; lining for boxes.
Section 178.31 Specification 2M; waterproofed paper lining.
Section 178.32 Specification 2N; inside containers, metal cans.
Section 178.33 Specification 2P; inside nonrefillable metal containers.
Section 178.33a Specification 2Q, inside nonrefillable metal containers.
Section 178.34 Specification 2R; inside containment vessel.
Section 178.35 Specification 2S; polyethylene packaging.
Section 178.35a Specification 2SL; molded or thermoformed polyethylene packaging.

Subpart C—Specifications for Cylinders

Section 178.36 Specification 3A; seamless steel cylinders or 3AX; seamless steel cylinders of capacity over 1,000 pounds water volume.
Section 178.37 Specification 3AA; seamless steel cylinders made of definitely prescribed steels or 3AAX; seamless steel cylinders made of definitely prescribed steels of capacity over 1,000 pounds water volume.
Section 178.38 Specification 3B; seamless steel cylinders.
Section 178.39 Specification 3BN; seamless nickel cylinders.
Section 178.42 Specification 3E; seamless steel cylinders.
Section 178.44 Specification 3HT; inside containers, seamless steel cylinders for aircraft use made of definitely prescribed steel.
Section 178.45 Specification 3T; seamless steel cylinder.
Section 178.46 Specification 3AL; seamless cylinders made of definietly prescribed aluminum alloys.
Section 178.47 Specification 4DS; inside containers, welded stainless steel for aircraft use.
Section 178.50 Specification 4B; welded and brazed steel cylinders.
Section 178.51 Specification 4BA; welded or brazed steel cylinders made of definitely prescribed steels.
Section 178.53 Specification 4D; inside containers, welded steel for aircraft use.

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Section 178.54	Specification 4B240-FLW; welded or welded and brazed cylinders with fusion-welded longitudinal seam.
Section 178.55	Specification 4B240ET; welded and brazed cylinders made from electric resistance welded tubing.
Section 178.56	Specification 4AA480; welded steel cylinders made of definitely prescribed steels.
Section 178.57	Specification 4L; welded cylinders insulated.
Section 178.58	Specification 4DA; inside containers, welded steel for aircraft use.
Section 178.59	Specification 8; steel cylinders with approved porous filling for acetylene.
Section 178.60	Specification 8AL; steel cylinders with approved porous filling for acetylene.
Section 178.61	Specification 4BW; welded steel cylinders made of definitely prescribed steel with electric-arc welded longitudinal seam.
Section 178.65	Specification 39; non-reusable (nonrefillable) cylinder.
Section 178.68	Specification 4E; welded aluminum cylinders.

Subpart D—Specifications for Metal Barrels, Drums, Kegs, Cases, Trunks, and Boxes

Section 178.80	Specification 5; steel barrels or drums.
Section 178.81	Specification 5A; steel barrels or drums.
Section 178.82	Specification 5B; steel barrels or drums.
Section 178.83	Specification 5C; steel barrels or drums.
Section 178.88	Specification 5K; nickel barrels or drums.
Section 178.89	Specification 5L; steel barrels or drums.
Section 178.90	Specification 5M; monel drums.
Section 178.92	Specification 5P; lagged steel drums.
Section 178.98	Specification 6B; steel barrels or drums.
Section 178.99	Specification 6C; steel barrels or drums.
Section 178.100	Specification 6J; steel barrels and drums.
Section 178.102	Specification 6D; cylindrical steel overpack, straight sided, for inside plastic container.
Section 178.103	Specification 6L; metal packaging.
Section 178.104	Specification 6M; metal packaging.
Section 178.107	Specification 42B; aluminum drums.
Section 178.109	Specification 42D; aluminum drums.
Section 178.115	Specification 17C; steel drums.
Section 178.116	Specification 17E; steel drums.
Section 178.117	Specification 17F; steel drums.
Section 178.118	Specification 17H; steel drums.
Section 178.120	Specification 20PF phenolic-foam insulated, metal overpack.
Section 178.121	Specification 21PF fire and shock resistant, phenolic-foam insulated, metal overpack.
Section 178.130	Specification 37K; steel drums.
Section 178.131	Specification 37A; steel drums.
Section 178.132	Specification 37B; steel drums.
Section 178.133	Specification 37P; steel drums with polyethylene liner.
Section 178.134	Specification 37M; cylindrical steel overpack, straight sided for inside plastic container; nonreusable containers.
Section 178.135	Specification 37C; steel drums.
Section 178.137	Specification 37D; steel drum. Nonreusable container. Open-head not authorized.
Section 178.140	Specification 13; metal kegs.
Section 178.141	Specification 13A; metal drums.
Section 178.146	Specification 32A; metal cases, riveted or lock-seamed.
Section 178.147	Specification 32B; metal cases, welded or riveted.
Section 178.148	Specification 32C; metal trunks.
Section 178.149	Specification 32D; metal boxes for old and worn-out motion-picture film no longer exhibitable.
Section 178.150	Specification 33A; polystyrene cases. Nonreusable containers.

Subpart E—Specifications for Wooden Barrels, Kegs, Boxes, Kits and Drums.

Section 178.156	Specification 10B; wooden barrels and kegs (tight).
Section 178.165	Specification 14; wooden boxes, nailed.
Section 178.168	Specification 15A; wooden boxes, nailed.
Section 178.169	Specification 15B; wooden boxes, nailed.
Section 178.170	Specification 15C; wooden boxes, nailed.
Section 178.171	Specification 15D; wooden boxes, nailed.
Section 178.172	Specification 15E; wooden boxes, fiberboard lined.
Section 178.176	Specification 15L; wooden boxes with inside containers for desensitized liquid explosives.
Section 178.177	Specification 15M; wooden boxes, metal lined, with inside containers for desensitized liquid explosives.
Section 178.181	Specification 15X; wooden boxes for two five-gallon cans.
Section 178.182	Specification 15P; glued plywood, or wooden box for inside containers.
Section 178.185	Specification 16A; plywood or wooden boxes, wirebound.
Section 178.186	Specification 16B; wooden boxes, wirebound.
Section 178.187	Specification 16D; wooden wirebound overwrap for inside containers.
Section 178.190	Specification 19A; wooden boxes, glued plywood, cleated.
Section 178.191	Specification 19B; wooden boxes, glued phywood, nailed.
Section 178.193	Specification 18B; wooden kits.
Section 178.194	Specification 20WC; wooden protective jacket.
Section 178.195	Specification 21WC; wooden-steel protective overpack.
Section 178.196	Specification 22A; wooden drums, glued plywood.
Section 178.197	Specification 22B; wooden drums, glued plywood.
Section 178.198	Specification 22C; plywood drum for plastic inside container.

Subpart F—Specifications for Fiberboard Boxes, Drums, and Mailing Tubes.

Section 178.205	Specification 12B; fiberboard boxes.
Section 178.206	Specification 12C; fiberboard boxes.
Section 178.207	Specification 12D; fiberboard boxes.
Section 178.208	Specification 12E; fiberboard boxes.
Section 178.209	Specification 12H; fiberboard boxes.
Section 178.210	Specification 12A; fiberboard boxes.
Section 178.211	Specification 12P; fiberboard boxes. Nonreuseable containers for inside plas-

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tic containers greater than 1-gallon capacity, as prescribed in Part 173 of this subchapter.
Section 178.212 Specification 12R; paperfaced expanded polystyrene board boxes. Nonreusable containers.
Section 178.214 Specification 23F; fiberboard boxes.
Section 178.218 Specification 23G; special cylindrical fiberboard box for high explosives.
Section 178.219 Specification 23H; fiberboard boxes.
Section 178.224 Specification 21C; fiber drum.
Section 178.225 Specification 21P; fiber drum overpack for inside plastic container.
Section 178.226 Specification 29; mailing tubes.

Subpart G—Specifications for Bags, Cloth, Burlap, Paper or Plastic
Section 178.230 Specification 36A; lined cloth bags (triplex).
Section 178.233 Specification 36B; burlap bags, lined.
Section 178.234 Specification 36C; burlap bags, paper lined.
Section 178.236 Specification 44B; multiwall paper bags.
Section 178.237 Specification 44C; multiwall paper bags.
Section 178.238 Specification 44D; multiwall paper bags.
Section 178.239 Specification 44E; multiwall paper bags.
Section 178.240 Specification 45B; bags, cloth and paper, lined.
Section 178.241 Specification 44P; all-plastic bags.

Subpart H—Specifications for Portable Tanks
Section 178.245 Specification 41; steel portable tanks.
Section 178.251 General design and construction requirements applicable to specifications 56 (Section 178.252) and 57 portable tanks (Section 178.253).
Section 178.252 Specification 56; metal portable tank.
Section 178.253 Specification 57; metal portable tank.
Section 178.255 Specification 60; steel portable tanks.
Section 178.270 Specification IM 101 and IM 102 steel portable tanks; general design and construction requirements.
Section 178.271 Specification IM 101 steel portable tanks.
Section 178.272 Specification IM 102 steel portable tanks.

Subpart J—Specifications for Containers for Motor Vehicle Transportation
Section 178.315 Specification MC 200; containers for liquid nitroglycerin, desensitized liquid nitroglycerin or diethylene glycol dinitrate.
Section 178.318 Specification MC 201; container for detonators and percussion caps.
Section 178.337 Specification MC 331; cargo tanks constructed of steel, primarily for transportation of compressed gases as defined in the Compressed Gas Section.
Section 178.338 Specification MC 338; insulated cargo tank.
Section 178.340 General design and construction requirements applicable to specifications MC 306 (Section 178.341), MC 307 (Section 178.342), and MC 312 (Section 178.343) cargo tanks.
Section 178.341 Specification MC 306; cargo tanks.
Section 178.342 Specification MC 307; cargo tanks.
Section 178.343 Specification MC 312; cargo tanks.

Subpart K—Specifications for General Packagings
Section 178.350 Specification 7A; general packaging, Type A.
Appendix A—Specifications for Steel
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PART 179—SPECIFICATIONS FOR TANK CARS

Subpart A—Introduction, Approvals, and Reports
Section 179.1 General.
Section 179.2 Definitions and abbreviations.
Section 179.3 Procedure for securing approval.
Section 179.4 Changes in specifications for tank cars.
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Subpart B—General Design Requirements
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Subpart C—Specifications for Pressure Tank Car Tanks (Classes DOT—105, 109, 112 and 114).
Section 179.100 General specification applicable to pressure tank car tanks.
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Section 179.103 Special requirements for class 114A*** tank car tanks.
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Subpart D—Specifications for Non-Pressure Tank Car Tanks (Classes DOT—103, 104, 111AF, 111AW, and 115AW).
Section 179.200 General specifications applicable to non-pressure tank car tanks (Classes DOT—103, 104, and 111).
Section 179.201 Individual specification requirements applicable to non-pressure tank car tanks.
Section 179.202 Special commodity requirements for non-pressure tank car tanks.
Section 179.220 General specifications applicable to non-pressure tank car tanks consisting of an inner container supported within an outer shell (class DOT—115).
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Subpart E—Specifications for Multi-Unit Tank Car Tanks (Classes DOT—106A and 110AW).
Section 179.300 General specifications applicable to multi-unit tank car tanks designed to be removed from car structure for filling

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and emptying (Classes DOT—106A and 110AW).
Section 179.301 Individual specification requirements for multi-unit tank car tanks.
Section 179.302 Special commodity requirements for multi-unit tank car tanks.

Subpart F—Specifications for Liquefied Hydrogen Tank Car Tanks and Seamless Steel Tanks (Classes DOT—113A—W and 107A).
Section 179.400 General specifications applicable to liquefied hydrogen tank car tanks.
Section 179.401 Individual specification requirements for liquefied hydrogen tank car tanks.
Section 179.500 Specification DOT—107A****seamless steel tank car tanks.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

State Police Retirement System Outstanding Loans; Retirement

Proposed Amendments: N.J.A.C. 17:5-5.5

Authorized By: State Police Retirement System, Anthony P. Ferrazza, Secretary.
Authority: N.J.S.A. 53:5A-30h.

Interested persons may submit in writing, data, views, or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front Street
CN 295
Trenton, New Jersey 08625

The State Police Retirement System 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 1984-569.

The agency proposal follows:

Summary

The proposed amendments change the current procedures for the repayment of loans outstanding against the pension account of a State Police Retirement System member when that member retires. The repayment options include the full payment of the outstanding loan upon retirement or by monthly deductions from the retirement allowance at the rate of twice the amount of biweekly amount of the loan deduction while the member was in active service. If the retired member dies before the full amount of the outstanding loan balance has been repaid, the amount of such outstanding loan balance will be repaid or deducted from the death benefits payable.

Social Impact

The proposed amendments will affect members of the State Police Retirement System who retire with outstanding loan balances against their pension accounts. The amendments establish how such members will be required to pay back outstanding loans upon retirement.

Economic Impact

The proposed amendments could lead to some retirement allowance checks of State Police Retirement System members being reduced during the loan repayment period if there is an outstanding loan present at the time of retirement and the member chooses not to repay the loan in full at that time. However, the proposed amendment will protect the financial integrity of the retirement system by allowing it to recoup certain funds that were intended to be used as a portion of the reserves used to finance the individual's retirement benefits.

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

17:5-5.5 Outstanding loan

[(a) Any outstanding loan against the Annuity Savings Fund must be repaid before a member may qualify for any type of retirement other than disability retirement. The board may, however, consider cases of extreme hardship and permit an actuarial reduction of the retirement allowance to satisfy a loan.

(b) In calculating a disability retirement allowance where there is an outstanding loan, the annuity shall be the actuarial equivalent of the amount which actually appears in the member's account, and the total allowance shall be reduced by the amount of the actuarial equivalent of the outstanding obligation.]

Members who have a loan outstanding at their time of retirement may elect to repay the outstanding value of their loan, in full, less interest credit, before their retirement allowance becomes due and payable. In the event the loan obligation is not satisfied, the remaining balance will be repaid in a monthly amount at twice the bi-weekly amount paid by the member while in active service until such loan is repaid in full. No change in the method of repayment of the loan will be permitted once the procedure has commenced. In the event of the death of the member before the loan is repaid, the outstanding balance must be repaid from the death benefits payable.

(b)

DIVISION OF PENSIONS

Consolidated Police and Firemen's Pension Fund
Administration, Membership, Retirement, and Transfers

Proposed Readoption: N.J.A.C. 17:6-1, -2, -3, -4

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Authorized By: Board of Trustees of the Consolidated Police and Firemen's Pension Fund Commission, Anthony P. Ferrazza, Secretary.
Authority: N.J.S.A. 43:16-7.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front Street
CN 295
Trenton NJ 08625

The Consolidated Police and Firemen's Pension Fund Commission thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on December 6, 1984. The readoption becomes effective upon acceptance for filing of a notice of readoption by the Office of Administrative Law.

This proposal is known as PRN 1984-568.

The agency proposal follows:

Summary

N.J.A.C. of the New Jersey Administrative Code deals with those rules which are approved by the Consolidated Police and Firemen's Pension Fund Commission. The chapter contains subchapters dealing with: 1. The Administration of the Pension Fund (meetings, election of members, records and appeals); 2. Membership (creditable salary, deductions and adjustments); 3. Retirement (applications, effective date, survivor benefits, credits, disability determination, medical examinations and 4. Transfers (interfund and other systems).

The Consolidated Police and Firemen's Pension Fund is closed to new members and, as of June 30, 1983, had 11 active members and 5,802 retired members and beneficiaries who were paid over $40 million in retirement benefits for the year ending June 30, 1983.

In such a substantial financial operation the statutes cannot possibly consider all of the possible issues as they may arise in the administration of the program and in proper consideration of the monies appropriate to the coverages provided under the plan. In such cases regulations are required to do equity whenever the statute is silent or when the statute only generally supplies the specifics and is often subject to interpretation by the Courts and the opinions of the Attorney General's office. Thus rules are required and will always be required to provide equity, uniformity of treatment, and administrative efficiency.

With every opinion of the Attorney General's office, an interpretation by the Courts, or a change in the statutes, the rules are reviewed for the purpose of determining their continued applicability. All of the regulations are reviewed at least annually to determine their applicability to recent changes, to improve upon the language, to clarify any issues which may have arisen in the course of the previous 12 months and to ensure the implementation of such rules in the day-to-day activities of the several bureaus of the Division of Pensions.

The Division of Pensions appreciates the significance of Executive Order Number 66(1978) and its review of the regulations has always been with the view of curtailing any which are no longer necessary because of changes in the statutes which may have implemented what had previously been only regulation, or where the Courts have disposed of the issue, or where it was disposed by opinions of the Attorney General, so that the regulation was deemed to be unnecessary. The most recent review of these rules indicates that they are still necessary, adequate, reasonable, efficient, understandable, and responsive to the purposes for which they were promulgated. As the rules are adopted, or amended for readoption, public comment and review are received. The Division is satisfied that such comments have been properly considered in the language of the regulations as finally promulgated.

Social Impact

With respect to the social impact, the rules in Chapter 6, as are the rules of all programs administered by the Division of Pensions, are pertinent to past and present participants in the Consolidated Police and Firemen's Pension Fund.

As a large financial undertaking involving the receipt of cash, the proper consideration of claims and the audited review of disbursements, are all within the prescriptions of the regulations which have been adopted, explaining or interpreting the provisions of law, or providing for the proper administration of the program where the law is silent. Certainly in terms of the large amounts of money and the very large numbers of people involved, every effort must be made to assure that there is a lack of discrimination in the performance of the program and that it services the beneficiaries equitably and uniformly.

Economic Impact

With respect to the economic impact, the Consolidated Police and Firemen's Pension Fund is established on an actuarially determined basis so that the proper employer contributions are made long before the money is needed to provide the benefits which have been promised. As a result, the money that is required to be established is much smaller than if there were no prefunding, because the monies are invested and with such earnings meet the contingencies required of the program.

About 60 percent of the pensioners remain in New Jersey from whence they receive their pensions and most of them continue the coverage as pensioners or beneficiaries. As such the program has an influence in the economic viability of the communities in which they reside. Absent this program these individuals would lack the means to support themselves and their families or would have to continue working beyond the mandatory retirement age.

If the rules contained in Chapter 6 were not readopted, then chaos would follow because the Division could not cite such rules in clarifying the policy of the board of trustees among the host of issues which the rules are designed to cover. While the rules may not be adopted, the program is continued by legislation, and, in fact, there is an average of at least several amendments to this statute or one amendment to other statutes which bear on this program each year. This is perhaps one of the reasons why there is so much activity in the rule making imposed upon the Division of Pensions. As a result the opportunity for designing the best possible program requires changes and this leads to periodic alteration in the regulations which have been adopted. Without their readoption it would be difficult to maintain a fair, equitable, and cost effective administration of the program. The Division would find itself in Court on disputes dealing with inequitable treatment and would be involved with substantially increased cost of administration.

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Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:6, as supplemented by amendments in the New Jersey Register.

(a)

DIVISION OF PENSIONS

Consolidated Police and Firemen's Pension Fund
Election of Commission Members

Proposed Amendment: N.J.A.C. 17:6-1.4

Authorized By: Anthony Ferrazza, Secretary, Consolidated Police and Firemen's Pension Fund Commission.
Authority: N.J.S.A. 43:16-7.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front Street
CN 295
Trenton, New Jersey 08625

The Consolidated Police and Firemen's Pension Fund 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 1984-567.

The agency proposal follows:

Summary

The proposed amendment lowers from 50 to 20 the number of required signatures that must appear on petitions for the election of members to the Consolidated Police and Firemen's Pension Fund Commission. This amendment is proposed because the active membership in this fund has been closed to new members for several years and the number of retirants and beneficiaries is being reduced due to deaths. The proposed amendment will facilitate the assurance of a full membership of the Commission so that it will be able to conduct its business as required by statute.

Social Impact

The proposed amendment may affect active or retired members of the Consolidated Police and Firemen's Pension Fund who may decide to run for election as a Commission member in that they will need fewer names on a petition for election.

Economic Impact

The proposed amendment will not have any adverse effect upon the individuals in the fund or the taxpaying public since the amendment simply reduces the amount of required signatures needed on a petition for election to the Commission.

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

17:6-1.4 Election of members; Commission
(a) (No change.)
(b) Requirements for the election notice and petition shall include:
1.-2. (No change.)
3. The election notice will also indicate that at least [50] **20** eligible or retired members must sign the petition in order for a candidate's name to be placed on the ballot.
4.-8. (No change.)
(c)-(j) (No change.)

TREASURY – TAXATION

(b)

DIVISION OF TAXATION

Corporation Business Tax
Definition of a Regular Place of Business; Allocation

Proposed Amendment: N.J.A.C. 18:7-7.1 and 7.2

Authorized By: John R. Baldwin, Director, Division of Taxation.
Authority: N.J.S.A. 54:10A-8 and 54:10A-27.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jack Silverstein
Chief Tax Counselor
Division of Taxation
50 Barrack Street, CN 269
Trenton, NJ 08646

The Division of Taxation 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 1984-607.

The agency proposal follows:

Summary

The proposed amendments will detail what the Division of Taxation considers to be a "regular place of business." A taxpayer must maintain a regular place of business outside New Jersey in order to allocate less than 100 percent of its entire net income and entire net worth to New Jersey; N.J.S.A. 54:10A-6. In addition, there are general instructions regarding allocation of net worth and net income. Proposed

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amendments to N.J.A.C. 18:7-7.2 define certain phrases such as bona fide office, space of the taxpayer, regularly maintained, occupied and used by taxpayer in carrying on its business, and regular employee. The following New Jersey court decisions precipitated proposing these amendments: Hoeganaes Corporation v. Director, 145 N.J. Super. 352 (App. Div., 1976); Rocappi, Inc. v. Director (Tax Court, 1981); and Commonwealth Metal Corporation v. Director (Tax Court, 1983).

Social Impact

The proposed amendments are designed to give expression to settled case law. They should enhance the self-assessment aspects of the corporation business tax by publishing the position of the Division of Taxation in the consistent interpretation of maintaining a regular place of business outside the State.

Economic Impact

The amendments will reduce the cost of administration of the corporation business tax to the taxpayer, particularly the cost of controversy and dispute in a settled issue.

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

18:7-7.1 General instructions regarding allocation of net worth and net income

(a) No corporation, foreign or domestic (other than a [taxpayer] **corporation** entitled and electing to report as an investment company, [or] regulated investment company **or real estate investment trust)** is entitled to allocate any part of its entire net worth or entire net income outside New Jersey unless during the period covered by the return it maintained a regular place of business outside the State.

(b) (No change.)

(c) The mere ownership of assets outside New Jersey does not constitute a basis for allocating less than 100 percent of the taxpayer's entire net worth [of] **or** entire net income to New Jersey.

18:7-7.2 Regular place of business; definition

(a) A regular place of business is any bona fide office (other than a statutory office), factory, warehouse, or other space of the taxpayer which is regularly maintained, occupied and used by the taxpayer in carrying on its business and in which one or more regular employees are in attendance. **The following will assist in the determination of what is a regular place of business.**

[1. Where, as a regular course of business, property of the taxpayer is stored by it in a public warehouse in another state until it is shipped to customers, such warehouse is not considered a regular place of business of the taxpayer;

2. Also where, as a regular course of business, raw material or partially finished goods of a taxpayer are delivered to an independent contractor in another state to be converted, processed, finished or improved, and the finished goods remain in the possession of the independent contractor until shipped to customers, the plant of such independent contractor is not considered a regular place of business of the taxpayer.]

1. Bona fide office: The maintenance of a limited space outside New Jersey in which the employee in attendance performs insignificant duties related to the business of the taxpayer does not constitute a regular place of business.

2. Space of the taxpayer: The taxpayer must be directly responsible for the expenses incurred in maintaining the regular place of business and must either own or rent the facility in its own name and not through a related person or entity. The regular place of business should be publicly identifiable as belonging to the taxpayer by, for example, reflecting the taxpayer's name on the exterior and interior of the building and being listed in the taxpayer's name in a telephone book.

3. Regularly maintained, occupied and used by the taxpayer in carrying on its business: The taxpayer must regularly maintain, occupy and use the premises by employing one or more regular employees who are in attendance during normal working hours. Premises are not regularly maintained, occupied and used in the event employees are in attendance only on a part time basis and, in their absence, telephone messages are received by an answering service or recording device.

4. Regular employee: A regular employee must be under the control and direction of the taxpayer in transacting the taxpayer's business and/or performing work on behalf of the taxpayer. The officers of the taxpayer are generally deemed to be regular employees of the taxpayer while independent contractors and members of the taxpayer's board of directors are not regular employees of the taxpayer. The method or procedure by which a taxpayer reports the income paid to an individual (such as a W-2 form) shall not be conclusive as to whether the individual is a regular employee (See N.J.A.C. 18:7-8.14.):

i. The facilities of a public warehouse located outside New Jersey and utilized to store property of the taxpayer prior to shipment to customers shall not constitute a regular place of business of the taxpayer where the warehouse is not the space of the taxpayer.

ii. The facilities of an independent contractor located outside of New Jersey and used to store, convert, process, finish and/or improve the goods of the taxpayer prior to shipment to customers shall not constitute a regular place of business of the taxpayer.

iii. A job site, field office or other facility, which is only maintained, occupied and used on a temporary and limited basis, shall not constitute a regular place of business.

iv. The location of inventories outside of New Jersey in the possession of employees in their homes, or in trucks, or in coin-operated machines do not represent space regularly maintained, occupied and used by the taxpayer in carrying on its business.

v. In the event the taxpayer's business is conducted by an independent agent or independent contractor, the place of business of the independent agent or independent contractor shall not be considered a regular place of business of the taxpayer. In addition, any employee of such independent agent or independent contractor shall not be considered a regular employee of the taxpayer.

(b) (No change.)

(c) The mere fact that a taxpayer is subject to an income or franchise tax in other jurisdiction shall not be determinative as to whether the taxpayer maintains a regular place of business outside of New Jersey where taxable status in that jurisdiction is based on criteria other than a regular place of business.

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(a)

DIVISION OF TAXATION

Corporation Business Tax Discretionary Adjustment of 100 Percent Allocation Factor

Proposed Amendment: N.J.A.C. 18:7-8.3

Authorized By: John R. Baldwin,
Director, Division of Taxation.
Authority: N.J.S.A. 54:10A-8 and 54:10A-27.

Interested persons may submit in writing, data, views or arguments relevant to the proposals on or before December 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jack Silverstein
Chief Tax Counselor
Division of Taxation
50 Barrack Street, CN 269
Trenton, New Jersey 08646

The Division of Taxation thereafter may adopt the proposals without further notice (see N.J.A.C. 1:30-3.5). The adoptions become effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-570.

Summary

The proposed amendment to N.J.A.C. 18:7-8.3 is a result of the decision of S.M.Z. Corporation v. Director, Division of Taxation 193 N.J. Super. 305 (App. Div. 1984). In that case, the Appellate Division reversed the decision of the Tax Court and, consequently, the Director, Division of Taxation has the authority under N.J.S.A. 54:10A-8 to revise the 100 percent allocation factor determined under N.J.S.A. 54:10A-6 of New Jersey's Corporation Business Tax Act despite the fact that a taxpayer did not maintain a regular place of business in New Jersey. Thus, the taxpayer can have an allocation factor less than 100 percent and this rule sets forth the criteria for obtaining that result.

Social Impact

All taxpayers with a 100 percent allocation factor on their New Jersey Corporation Business Tax Return who have paid a tax to another State or another jurisdiction in a State in the United States, other than the United States Treasury Depart-

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ment (Federal Internal Revenue Service) or any other Federal entity, may obtain equitable relief in the form of a lesser New Jersey Corporation Business Tax if they meet the criteria contained in the proposed rule. Such reduction will be permitted based upon a tax on duplicated income which should prevent some litigation between taxpayers and the State, with corresponding savings in time, money and paperwork. This amendatory rule and the corresponding procedure will result in a smaller court calendar than would exist without the existence of such a rule.

Economic Impact

There may be a minimal loss in State tax revenue from corporation business tax collections that cannot be estimated. However, the savings from less tax litigation by 100 percent allocators will offset most of the loss. Constitutionally and legally the State will have a better image and better public relations, even though there is a small loss in Corporation Business Tax revenues, among the public, accountants, lawyers and taxpayers that could result in better tax compliance in enforcement of other taxing statutes.

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

18:7-8.3 Right of Director to independently compute allocation factor

(a) (No change.)

(b) Reduction in tax for income duplicated on a return filed with another State pursuant to N.J.S.A. 54:10A-8 and this rule—100 percent allocation factor:

1. Eligibility:

i. Where the Business Allocation Factor under Section 6 of the Act is 100 percent and the taxpayer in fact paid a tax based on or measured by income to a foreign state, resulting in a duplication of income being taxed, it may, under Section 8 of the Act, apply for a reduction in the amount of its tax. The reduction is available only where the taxpayer in its own right acquired a taxable status in the foreign state by reference to at least one of the criteria described at N.J.A.C. 18:7-1.6 as if the New Jersey Corporation Business Tax Act were the law of that foreign state.

Example: S corporation does not maintain a regular place of business outside New Jersey, other than a statutory office. It was not a domestic corporation in State X, nor did it meet any of the other criteria described at N.J.A.C. 18:7-1.6 in that State which would have created a taxable status in New Jersey. Although it was not itself doing business in State X, it was a member of an affiliated group of corporations which conducted a unitary business in that State and as such is permitted or required to join in filing a combined or consolidated return in State X. In fact, it did so.

Any duplication of income being reported to New Jersey and to State X may not form the basis for a reduction in the tax.

2. Method:

i. An eligible taxpayer computes its reduction on a rider attached to its return by demonstrating that a part of entire net income is duplicated on a return filed with another state. It must attach a copy of all relevant portions of the return filed with the foreign state relating to income reported, the computation of all components of its apportionment fractions and the computation of the tax paid to the foreign state. It must also submit a schedule apportioning all property, receipts and payroll to a common denominator defined consistent with the return. For purposes of calculating the reduction:

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(1) It may be based upon only so much of adjusted entire net income appearing on its Corporation Business Tax Return as is reported to the foreign state;

(2) The formula apportionment used in the foreign state may not exceed the Business Allocation Factor as determined under Section 6 of the Act and these rules;

(3) It must be computed by using the lesser of the tax rates of the foreign state or the tax rate under the New Jersey Corporation Business Tax Act.

Example 1:

Corporation A does not maintain a regular place of business outside New Jersey other than a statutory office. As a consequence, its Business Allocation Factor is 100 percent. It sold land for $250,000 which had a tax basis and book value of $100,000 and was situated in State Y. Under the laws of State Y, the entire gain is directly allocable to that State and is taxed at an eight percent rate. It may determine the portion of its tax which is measured by net income as follows:

	New Jersey Tax Income Base	Duplicated in State Y
Gross income exclusive of gain on sale of land	$ 500,000	
Net gain on sale of land	+ 150,000	$ 150,000
Total income	650,000	
Deductions	− 447,778	
Taxable income before net operating deductions and special deductions	202,222	
Adjustments—N.J. Corporation Business Tax Deducted—add back	+ 20,000	
Entire net income	$ 222,222	
Tax at 9%—before reduction	$ 20,000	
Formula apportionment not used in State Y		100%
Duplication of income		150,000
Reduction—may not exceed 9%		× .08
Tax paid to State Y		$ 12,000
Reduction	− 12,000	
Paid with return	$ 8,000	

Example 2:

Corporation B does not maintain a regular place of business outside New Jersey other than a statutory office. Its Business Allocation Factor is 100 percent. It did however start and complete a construction job in State Z and paid an income tax to that State at a ten and one-half percent rate. It may determine the portion of its Corporation Business Tax measured by net income as follows:

	New Jersey Tax Income Base	Duplicated in State Z
Taxable income before net operating loss deduction and special deductions	$ 227,500	$ 227,500
Add ACRS	$15,000	
Less, NJ Depreciation	12,000	3,000	-0-
Taxes imposed on or measured by income from State Z return	28,800		22,500
N.J.C.B.T. paid or accrued—add back	22,500	22,500	
Municipal bond interest—add back		+ 7,000	+ -0-
		$ 260,000	250,000
Dividend exclusion—NJ State Z	10,000 -0-	− 10,000	− 10,000
Entire Net Income		$ 250,000	
Portion of entire net income duplicated			240,000
Apportionment (computed below)			× .25
Tax @ 9%		22,500	60,000
Tax @ 10½%			$ 6,300
Reduction 60,000 @ 9%		− 5,400	
Reduced Tax		$ 17,100	

Corporation B computed its apportionment on its State Z return as follows:

	State Z	Everywhere	%
Property			
Owned	$140,000	$ 500,000	
Leased (at 8 annual rentals)	+ 40,000	+ 100,000	
	180,000 ÷	600,000	.30
Receipts	200,000 ÷	1,000,000	.20
double weighted			.20
Payroll	90,000 ÷	300,000 +	.30
Total			1.00
Average 1.0 ÷ 4			.25

The formula apportionment had it been determined in State Z consistent with the Corporation Business Tax Act would have been:

	State Z	Everywhere	
Property owned	$ 140,000 ÷	$ 500,000	.28
Receipts	200,000 ÷	1,000,000	.20
Payroll	90,000 ÷	300,000 +	.30
			.78
Business Allocation Factor .78-3			.26

Since the apportionment fraction (.25) used in State Z does not exceed the Business Allocation Factor as it would have been determined under the Act and these Rules, it is used for purposes of determining the reduction.

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RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules of Practice
Transmission of Contested Cases to OAL

Adopted Amendment: N.J.A.C. 1:1-5.2

Proposed: September 4, 1984 at 16 N.J.R. 2320(a).
Adopted: October 9, 1984, by Ronald I. Parker, Acting Director, Office of Administrative Law.
Filed: October 12, 1984 as R.1984 d.490, **without change.**

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

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): June 19, 1985.

Summary of Public Comments and Agency Responses:

One comment was received from the Department of Civil Service which thanked the OAL for incorporating into the reproposed rule its suggestion that the notification requirement of concurrent jurisdictional claims be extended to any party or agency aware of such claim.

Full text of the adoption follows.

1:1-5.2 Transmission of contested cases to the Office of Administrative Law; service on parties; receipt by the Office of Administrative Law

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

(e) If an agency has transmitted a case to the Office of Administrative Law, any party or agency aware that another agency is claiming jurisdiction over any part of the transmitted case shall immediately notify the Office of Administrative Law, the other parties and affected agencies of the second jurisdictional claim.

AGRICULTURE

(b)

DIVISION OF DAIRY INDUSTRY

Notice of Intent

Adopted Amendment: N.J.A.C. 2:52-2.1, 2.2, 3.1, 3.2 and 2:43-4.1 and 4.2

Proposed: August 6, 1984 at 16 N.J.R. 2028(a).
Adopted: October 2, 1984, by Woodson W. Moffett, Jr., Director, Division of Dairy Industry.
Filed: October 9, 1984 as R.1984 d.488, **without change.**

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

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): June 26, 1985.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

SUBCHAPTER 2. DEALER NOTICE OF INTENT TO SERVE UNLICENSED STORE

2:52-2.1 Notice of intent

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

1. With a two-week notice to the present supplier and to the Division of Dairy Industry. Such notice shall be filed by the proposed new supplier on forms provided for that purpose.

2. Without notice, if the Director finds after investigation, that the supplier(s) is failing to provide adequate service or to supply products desired by the store or is supplying milk and milk products which do not meet minimum standards of the appropriate health authority.

3. Without notice, if such change is mutually agreeable to all parties.

(b) Approval to serve the unlicensed store may be denied if the Director determines that the offer violates the Milk Control Act or rules and regulations issued pursuant thereto. Also until the store pays all indebtedness, less any legal rebates and discounts earned, for milk and fluid milk products purchased from the previous supplier(s) approval to change supplier(s) shall be withheld.

2:52-2.2 Commencement of the two-week period and approval

The two-week period referred to in N.J.A.C. 2:52-2.1(a) 1 shall commence upon receipt of the form in the office of the Division of Dairy Industry. All parties to the change shall be notified of any approval or denial within the two-week period.

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SUBCHAPTER 3. DEALER NOTICE OF INTENT TO CHANGE SOURCE OF SUPPLY

2:52-3.1 Change in source of supply

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

1. With a two week notice to the present supplier(s) and to the Division of Dairy Industry. Such notice shall be filed by the dealer making the change on forms provided for that purpose.

2. Without notice if the Director finds after investigation that the supplier(s) is failing to provide adequate service or to supply products desired by the dealer requesting the change or is supplying milk and milk products which do not meet minimum standards of the appropriate health authority.

3. Without notice, if such change is mutually agreeable to all parties.

(b) Approval to change supplier(s) may be denied if the Director determines that the offer violates the Milk Control Act or rules and regulations issued pursuant thereto. Also, until the dealer pays all indebtedness, less any legal rebates and discounts earned, for milk and fluid milk products purchased from the previous supplier(s) approval to change supplier(s) shall be withheld.

2:52-3.2 Commencement of the two-week period and approval

The two-week period referred to in N.J.A.C. 2:52-3.1(a) 1 shall commence upon receipt of the form at the office of the Division of Dairy Industry. All parties to the change shall be notified of any approval or denial within the two-week period.

SUBCHAPTER 4. NOTICE OF INTENT TO CHANGE SOURCE OF SUPPLY

2:53-4.1 Notice of intent

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

1. With a two week notice to the present supplier to the Division of Dairy Industry. Such notice shall be filed by the store on forms provided for that purpose.

2. Without notice, if the Director finds after investigation, that the supplier(s) is failing to provide adequate service or to supply products desired by the store or is supplying milk and milk products which do not meet minimum standards of the appropriate health authority.

3. Without notice, if such change is mutually agreeable to all parties.

(b) Approval to change supplier(s) may be denied if the Director determines that the offer violates the Milk Control Act or rules and regulations issued pursuant thereto. Also until the store pays all indebtedness, less any legal rebates and discounts earned, for milk and fluid milk products purchased from the previous supplier(s) approval to change supplier(s) shall be withheld.

2:53-4.2 Commencement of the two-week period and approval

The two week period referred to in N.J.A.C. 2:53-4.1(a) 1 shall commence upon receipt of the form in the office of the Division of Dairy Industry. All parties to the change shall be notified of any approval or denial within the two week period.

(a)

DIVISION OF DAIRY INDUSTRY

Sales Below Cost

Adopted Amendments: N.J.A.C. 2:52-6.1, 6.2, 6.3, and 2:53-3.2

Proposed: August 6, 1984 at 16 N.J.R. 2030(a).
Adopted: October 2, 1984, by Woodson W. Moffett, Jr., Director, Division of Dairy Industry.
Filed: October 9, 1984 as R.1984 d.488, **without change.**

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

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): November 1, 1985, for 2:53-3; November 5, 1989 for 2:52-6.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

SUBCHAPTER 6. SALES BELOW COST: DEALER

2:52-6.1 Sales below cost prohibited

It shall be unlawful and a violation of these regulations for any dealer licensee to directly or indirectly be a party to, or assist in, any transaction to sell or offer to sell milk and milk products within the State of New Jersey, or for sale in the State of New Jersey at less than the cost thereof as hereinafter defined; but nothing in this regulation shall prevent a dealer from defensively meeting the price or offer of a competitor for a product or products of like quality and nature in similar quantities; but nothing in this section shall prohibit bulk, distress or business-closing sale if prior notice of such sale has been filed with the director of the Division of Dairy Industry; provided however that the burden of proving and properly documenting the meeting of a competitive price shall rest with the licensee asserting the claim.

2:52-6.2 Cost defined

The term "cost" as used herein shall include, but not be limited to, the basic cost of raw or reconstituted milk or derivatives thereof as determined in accordance with the joint State-Federal orders administered by the Division of Dairy Industry and the United States Department of Agriculture in the State of New Jersey; the cost of any added ingredients; and all other costs associated with the business of the dealer, for example, but not limited to, the cost of material, labor, salaries of executives and officers, the cost of receiving, cooling, processing, manufacturing, storing and distributing the products sold; rent, depreciation, selling expense, maintenance charges, delivery expense, license fees, taxes, insurance, advertising, advertising allowances, gifts, free service and all other costs as may be incurred, allocated proportionately to

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each unit of product sold in accordance with generally accepted cost accounting principles.

2:52-6.3 Certain costs to be averaged

(a) In computing cost as used herein, all costs of doing business with the exception of raw products and ingredient costs shall be based on average costs for the dealer in question during the previous 12 months, adjusted to appropriately reflect any significant changes in costs of operation in the averaging period or such shorter time as the licensee may have been in business.

(b) In determining cost for a specific account, the value of any gifts and free services must be included in cost to be averaged for the 12 month period, except where a written contract for a specified term exists between the dealer and the recipient customer, the value of such gifts and free services may be amortized over the remaining term of the contract.

(c) All costs of delivery shall be based on average costs for the dealer in question during the previous 12 months and allocated proportionately to each unit of product delivered except where specific delivery cost records are maintained for each method and size of delivery, the actual direct cost of the delivery shall be the basis of the allocation and shall be prorated to each unit of product included in the delivery.

SUBCHAPTER 3. SALES BELOW COST; STORES

. . .

2:53-3.2 Cost defined

The term "cost" as used herein shall include the net invoice cost of the milk and milk products plus all other costs directly or indirectly related to the sale of the milk and milk products. Such cost shall be determined in accordance with generally accepted cost accounting principles and be allocated proportionately to each unit of product sold and shall include without limitation all salaries of executives and officers, all costs of labor, rent, depreciation, selling, maintenance, delivery, license fees, taxes, insurance and all other costs as may be incurred by the store.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Private Enforcing Agencies; Premanufactured Construction; Fees

Adopted Amendments: N.J.A.C. 5:23-4.12, 4.22 and 4.25

Proposed: August 6, 1984 at 16 N.J.R. 2031(a).
Adopted: September 24, 1984 by John P. Renna, Commissioner, Department of Community Affairs.
Filed: October 3, 1984 as R.1984 d.481, **without change.**

Authority: N.J.S.A. 52:27D-124.

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 1, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

5:23-4.12 Private enforcing agencies—establishment

(a) Private on-site inspection and plan review agencies:

1.-3. (No change.)

4. The application shall contain information relating to:

i.-ii. (No change.)

iii. The range of salaries and other compensation of all of the inspectors and other technical personnel of the applicant.

iv.-vii. (No change.)

5.-7. (No change.)

(b) Private inplant inspection agencies:

1.-3. (No change.)

4. The application shall contain information relating to:

i.-ii. (No change.)

iii. The range of salaries and other compensation of all of the inspectors and other technical personnel of the applicant.

iv.-ix. (No change.)

5.-6. (No change.)

5:23-4.22 Premanufactured construction fees

(a) Premanufactured insignia of certification fee: Each inspection agency requesting the department to issue an insignia of certification for premanufactured construction shall pay a fee of $100.00 for each insignia.

(b) Premanufactured component insignia of certification fee: Each inspection agency requesting the department to issue a component insignia of certification for premanufactured components shall pay a fee of $50.00 for each component insignia.

5:23-4.25 Premanufactured construction

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

(k) Certified premanufactured construction shall bear an insignia of certification. Such insignia of certification shall be furnished by the department to the inplant inspection agency under the procedures outlined in this section.

1. The manufacturer shall permanently locate the insignia of certification in a readily accessible and visible location identified in the premanufactured system documentation.

2. Each insignia of certification shall bear an indestructible serial number furnished by the department which cannot be removed without destroying it.

3. If the size, shape or other physical characteristic of the premanufactured component makes impractical the use of such insignia of certification, the department may specify such alternative forms of insignia as may be appropriate.

4. Only one department insignia shall be required for one- and two-family dwelling premanufactured construction even if the construction is comprised of two or more modules (boxes). However, each module (box) shall be properly identified by the manufacturer's serial number and the inplant inspection agency's insignia number.

5. All premanufactured construction other than one- and two-family dwellings shall require a department insignia as follows:

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i. For one module (box) construction, one premanufactured construction insignia of certification shall be required.

ii. For multimodule (multibox) construction, each module (box) shall require a premanufactured component insignia of certification.

iii. For premanufactured building elements such as, but not limited to, wall panels, trusses or pre-stressed concrete wall units, each element shall require a component insignia. For elements inspected and grouped in one lot of not more than 25 elements, one component insignia shall be required for each lot.

(l)-(r) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Licenses Required; Trainee Personnel

Adopted Amendment: N.J.A.C. 5:23-5.4

Proposed: July 2, 1984 at 16 N.J.R. 1643(a).
Adopted: October 8, 1984 by John P. Renna, Commissioner, Department of Community Affairs.
Filed: October 16, 1984 as R.1984 d.494, **with technical changes** not requiring public notice and comments (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 52:27D-124.

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 1, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions shown in brackets with asterisks *[thus]*).

5:23-5.4 Licenses required

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

(d) Rules concerning trainee personnel are:

1. Public *[and private]* enforcing agencies may establish code enforcement trainee positions to employ persons who *[are reasonably expected to]* ***may be eligible to be*** lincensed within *[two]* ***five*** years.

2. Persons employed as trainees shall *[register]* ***be registered by their municipal construction official*** with the *[office of Code Enforcement Licensure of the Bureau of Construction Code Enforcement]* ***Department of Community Affairs, Bureau of Construction Code Enforcement, Licensing Section*** on the form provided by the Licensing Section within one month of the effective date of their employment.

3. Persons meeting the following experience requirements shall be eligible to be employed as trainees:

i. ***(Reserved)***

ii. Building inspector trainee—***a minimum of*** three years of *[involvement]* ***experience*** with building*[s]* ***construction*** as a journeyman, *[inspector,] contractor, *[or]* designer, *[;]* ***architect or engineer.***

iii. Plumbing inspector trainee—***a minimum of*** *[five]* ***three*** years as a journeyman plumber, *[;]* ***designer, architect or engineer.***

iv. Electrical inspector trainee—***a minimum of*** *[five]* ***three*** years as a journeyman electrician, *[;]* ***designer, architect or engineer.***

4. A trainee shall only perform functions that may be performed by a person having the lowest level of licensure of any technical inspector license class.

5. A trainee shall not perform any administrative functions of a subcode official or construction official.

6. To remain employed by an enforcing agency, a trainee must enroll in, and successfully complete, the appropriate approved course(s) within two years of the effective date of ***his*** employment *[.]* ***as required in N.J.A.C. 5:23-5.5(b).***

7. To remain employed by an enforcing agency, a trainee must pass the appropriate modules of the National Certification Test in his specific subcode area within *[two]* ***five*** years of the effective date of employment.

8. Trainees shall not perform the inspections required by N.J.A.C. 5:23-2.18 except under the direct supervision of an official or inspector licensed in the subcode area in which the trainee position has been approved. The licensed supervisor must be on site with the trainee during performance of all required inspections.

i. Trainees may perform inspections that are not required by N.J.A.C. 5:23-2.18 without direct supervision.

ii. Trainees may perform an inspection of a singular specific point on a project, or a repetitive singular specific point on one or more projects, if directed to do so by a licensed supervisor where no code interpretation is required. In any such case, the inspection report shall be completed by the trainee and reviewed and countersigned by the licensed supervisor.

iii. Trainees shall not act as subcode or construction officials or sign any permits, stickers, approved plans or inspection reports except as otherwise permitted by i. and ii. above.

9. Records of authorized supervised inspections by trainees and other on-the-job training activities must be signed by the supervisor and kept in the *[each]* trainees job files.

10. Trainees shall renew their registration yearly and shall notify the *[Office of Code Licensure]* ***Department of Community Affairs, Bureau of Construction Code Enforcement, Licensing Section*** of any change in employment status or address within one month of any change.

11. Trainees who receive satisfactory trainee evaluation ratings by their supervisors and who occupy municipal trainee positions under registration with the Department may use the trainee experience as acceptable inspector experience to meet the experience requirements for licensure in accordance with N.J.A.C. 5:23-5.5.

12. The supervisor of the trainee must possess a valid code enforcement license in the same subcode as the registered trainee working under his direct supervision.

13. (Reserved)

14. (Reserved)*

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EDUCATION

(a)

STATE BOARD OF EDUCATION

School Districts
Long-Range Facilities Plans

Adopted Amendments: N.J.A.C. 6:3-1.23 (recodified from N.J.A.C. 6:22-1.8)

Proposed: July 16 1984 at 16 N.J.R. 1850(a).
Adopted: October 3, 1984 by State Board of Education, Saul Cooperman, Secretary.
Filed: October 18, 1984 as R.1984 d.504, **with substantive changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 18A:4-15, 18A:4-35, 18A:18A-16 and 18A:20-36 et seq. (see N.J.A.C. 1:30-3.5).

Effective Date: November 5, 1984.
Operative Date: July 1, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): June 1, 1988.

Summary of Public Comments and Agency Responses and Reason for Making Change:

The Department of Education received two letters of comment; one from a county office and one from a local school district. The suggestions made or questions raised were:

1. More time is needed to complete the long-range facilities plans.
2. More time is needed for input into the code.
3. Are only two methods acceptable for projecting enrollments?

The responses of the Department of Education of these comments were:

1. The due date for the plans was changed from January 1 to July 1, 1985, as recommended.
2. The commenter was advised that the time for input into the code was fixed by the State Board of Education in accordance with the provisions of the Administrative Procedure Act.
3. The commenter was advised that only two methods for projecting pupil population are acceptable.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions shown in brackets with asterisks *[thus]*).

6:3-1.23 Long-range facilities plans

(a) Long-range facilities plans projecting a five-year estimate of capital construction needs shall be maintained by each school district. The purpose of the long-range facility plan is to provide the individual district with a tool to use on a regular basis. Updating is required every five years; however, it is strongly recommended that this be used as a planning tool on an annual basis.

(b) The original master plan submitted by July 1, 1979 included a thorough description and analysis of local and regional demographic factors which influence general population growth and public school enrollments, a thorough description and analysis of local geographic features, socioeconomic characteristics of the populations, community aspirations and financial ability to support education, population mobility, transportation and traffic patterns and facilities, the educational program, administrative structure of the school system, condition and utility of existing educational and recreational facilities, zoning ordinances, land use, utilities available throughout the district and public cultural facilities.

(c) Updated long-range facilities plans shall be submitted to the appropriate county superintendent of schools before *[January]* ***July*** 1, 1985, whenever construction plans are sent to the Bureau of Facility Planning Services, and every five years thereafter.

(d) The updated long-range facilities plan shall include the following:

1. An updated enrollment projection which forecasts district enrollment by grade over the next five years, with an indication as to whether this projection was done by a cohort method or percent of population;
2. Anticipated facilities needs on a year-by-year basis.

(e) The following items need to be completed only if changes in these areas have occurred or are anticipated since the last submission of a master plan or long-range facilities plan:

1. Local and regional demographic factors including:
i. Anticipated residential, commercial and industrial development;
ii. Housing trends;
iii. Road development.
2. Changes in the educational program, grade organization, and/or facilities including but not limited to an addition to a school; a new school; a new administration building, bus garage, or similar facility; and the closing of a school;
3. Changes in joint school and/or community use of facilities.

(f) The format of the long-range facilities plan shall be such that it can be updated annually for local use.

(g) All floor plans and functional capacities included in the long range facilities plan shall be shown in accordance with the most recent approval of the Department of Education. Temporary or emergency partitions shall not be shown as approved walls.

6:22-1.8 (Reserved)

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(a)

STATE BOARD OF EDUCATION

Research, Planning and Evaluation Statewide Assessment

Readoption with Amendments: N.J.A.C. 6:39-1

Proposed: July 16, 1984, at 16 N.J.R. 1852(a).
Adopted: October 3, 1984, by State Board of Education, Saul Cooperman, Secretary.
Filed: October 18, 1984, as R.1984 d.505, **without change**.

Authority: N.J.S.A. 18A:4-15, 18A:4-24, 18A:7A-1 et seq.

Effective Date for Readoption: October 18, 1984.
Effective Date for Amendments: November 5, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): October 18, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readoption follows.

SUBTITLE G. RESEARCH, PLANNING AND EVALUATION

CHAPTER 39. EVALUATION

SUBCHAPTER 1. STATEWIDE ASSESSMENT

6:39-1.1 Authority of the commissioner

(a) The Commissioner of Education, with the approval of the State Board of Education, shall conduct an assessment of pupil achievement in the public school system of the State and of any grades therein by such means, tests and examinations which he or she deems proper, and shall report to the State Board the results of such inquiries and such other information with regard thereto as the State Board may require.

(b) All such means, tests, if determined to be appropriate by the commissioner, and examinations to be administered pursuant to this rule shall be conducted by and in all operating school districts in New Jersey and shall meet State criteria.

(c) School districts shall conduct such means, tests and examinations in the manner and at the times prescribed by the commissioner.

(d) School districts shall report to the Department of Education the results of such means, tests and examinations in the manner and at the times prescribed by the commissioner.

6:39-1.2 Levels of pupil proficiency

(a) The State Board of Education, after consultation with the commissioner shall establish uniform Statewide levels of pupil proficiency in reading, writing and mathematics skills on the Statewide assessment instruments pursuant to N.J.S.A. 18A:7A-6.

(b) In the event that certain grades are not administered the statewide assessment instruments, the Department of Education shall establish, for those grades, equivalent standards of pupil proficiency on tests which measure performance in reading, writing and mathematics skills and meet State criteria.

(c) All pupils performing below the established levels of pupil proficiency in reading, writing and mathematics skills, as determined under N.J.A.C. 6:39-1.2(a) and (b), shall be provided appropriate instructional services according to the district's basic skills improvement plan, pursuant to N.J.S.A. 18A:7A-6.

1. A waiver of this requirement may be granted if the program of needs assessment conducted pursuant to N.J.A.C. 6:8-3.4(a) clearly demonstrates such enrollment is unnecessary or enrollment of a pupil above the levels of pupil proficiency as established in (a) and (b) above is necessary.

6:39-1.3 Dissemination of information

(a) Notwithstanding the provisions of N.J.A.C. 6:3-2 [1. et seq.], individual pupil data shall be released only to a pupil, his or her parent or legal guardian, and school personnel and school officials deemed appropriate by the commissioner.

(b) The State Department of Education shall produce and distribute to chief school administrators as uninterpreted reports for tests developed by the Department: rosters of pupil performance and other reports as deemed appropriate by the commissioner.

(c) The State Department of Education shall provide an interpreted State report to the State Board and the Commissioner or Education.

(d) Summary reports for the class(es), school(s) and district shall be distributed to chief school administrators, as indicated in (b) above, in such a manner as to provide a 45-day period from receipt of all reports for analysis of data. During this period such material shall not be available for public distribution.

(e) Upon completion of the analysis, as indicated in (d) above, but in no case later than the 45-day period established by the commissioner, and upon approval by the district board of education, summary reports for class(es), school(s) and district shall be made available to the public.

(f) Individual pupil reports for tests developed by the Department shall be returned to districts in duplicate for all pupils tested. One copy of the report shall be maintained with the pupil's permanent records, and one copy shall be made available to the pupil, his or her parent or legal guardian in a timely fashion.

(g) Rosters of pupil performance for tests developed by the Department shall be distributed to chief school administrators as indicated in (b) above in such a manner as to provide a 30-day interpretation period prior to reporting to the district board of education and the public. Following this 30-day period, the commissioner shall make available to the public reports about each district which at a minimum shall list the number of pupils tested and percent of pupils at or above the established levels of pupil proficiency, by grade and by test for tests developed by the Department and for certain other grades as deemed appropriate by the commissioner on tests administered by each district.

(h) At the time the commissioner makes available to the public the information stated in (g) above, all districts shall make available to the public the number of pupils tested and the percent of pupils at or above the established levels of pupil proficiency for each school and the district, by grade and by test.

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(i) The commissioner may make exceptions to the above rules, such as those required by the provisions of the Public School Education Act of 1975 (N.J.S.A. 18A:7A-1 et seq.) as well as special reports requested by local school districts.

6:39-1.4 Interpretation of data

(a) The State Department of Education will provide technical assistance in the development of essential interpretative material by local districts.

(b) The State Department of Education may provide interpretations for local, county and State use.

(c) All results which are made available to the public must be accompanied by interpretative materials.

6:39-1.5 Exclusion of pupils

Any pupil who has been classified as handicapped, pursuant to N.J.S.A. 18A:46-1 et seq., shall participate in the testing program unless specific exemption from participating in this program is provided within that pupil's Individualized Education Program (N.J.A.C. 6:28).

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Endangered and Nongame Species Advisory Committee

Adopted New Rule: N.J.A.C. 7:24-4.19

Proposed: August 6, 1984 at 16 N.J.R. 2033(a).
Adopted: October 18, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: October 19, 1984 as R.1984 d.509, **without change.**

Authority: N.J.S.A. 13:1B-3(f), 13:1D-9(h), and 23:2A-7(e).

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): March 25, 1989.
DEP Docket No. 051-84-07.

Summary of Public Comments and Agency Responses:

One written comment was received emphasizing that the subjects of biological research are frequently nongame animals to be managed under the Endangered and Nongame Species Conservation Act. Accordingly, the commenter suggested the following two changes:

1. Increase committee membership affiliated with academic/research communities from four to five, more specifically requiring that two members be identified with biomedical research and that three members be identified with wildlife management; and
2. Increase committee membership affiliated with the public health/veterinary medicine communities from one to two, more specifically requiring that one member be identified with public health (as a veterinarian or physician) and that one member be identified as a research veterinarian.

Concomitantly, it was suggested that membership affiliated with non-profit organizations be reduced by one and membership representing the public at large be reduced by one.

The department has determined that the suggested change in Committee membership would be inappropriate because it would disproportionately increase the representation of biological research interest groups dealing primarily with exotic species at the expense of those representing other interests. The Endangered and Nongame Species Conservation Act clearly focuses on the protection and management of non-exotic wildlife, that is, those wildlife species indigenous to the State of New Jersey. Similarly, the regulatory program established pursuant to the Act focus on these same species.

Full text of the adoption follows.

7:24-4.19 Endangered and Nongame Species Advisory Committee

(a) The Endangered and Nongame Species Advisory Committee (committee) shall consist of 11 members appointed by the Commissioner. Prior to the making of any said appointments, the Commissioner shall consult with the committee as to their recommendations.

1. Members shall be reflective of various public groups concerned with, and supportive of, the endangered and nongame species program established by P.L. 1973, c.309, codified at N.J.S.A. 23:2A-1 to -13, and shall possess special knowledge, expertise, and/or interest relating to endangered and nongame species of New Jersey. Member affiliation shall be as follows:

Affiliation	Number of Members
i. Academic/research communities	4
ii. Public health/veterinary medicine	1
iii. Qualified non-profit organization (as defined by the Internal Revenue Code at $501(c)(3)) with strong interest in promoting the non-consumptive use of wildlife	3
iv. Public at large (that is, not in the capacity of an organizational representative)	3

2. Of the 11 members to be appointed by the commissioner, initially, two shall be appointed for a term of one year, three for a term of two years, three for a term of three years, and three for a term of four years. Thereafter, all appointments shall be made for terms of four years. All appointed members shall serve, after the expiration of their terms, until their respective successors are appointed. Any vacancy occurring in the appointed membership of the committee, by expiration of term or otherwise, shall be filled by the Commissioner in the identical manner as the original appointment, for the unexpired term only, notwithstanding that the previous incumbent may have held over and continued in office as aforesaid.

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3. No person shall be appointed to the committee for more than two consecutive four-year terms, and no person, once appointed to the committee for a three-year term, shall be appointed to the committee to consecutively serve for more than one four-year term.

4. The Commissioner may remove any member of the committee for cause upon notice and opportunity to be heard.

5. The committee shall select its chairperson from its membership, subject to the approval of the Commissioner, for a term of four years, and consecutive terms shall be permitted.

(b) The committee shall advise and assist the Commissioner in matters related to the intent of "The Endangered and Nongame Species Act," P.L. 1973, c.309, codified at N.J.S.A. 23:2A-1 to -13. Notwithstanding subsequent departmental action, the Commissioner shall respond in writing to all reasonable written comments on policy received from the committee.

(c) The committee shall transmit its business during regular meetings, held once each month, at a time and place designated by the committee. Adequate notice, as defined under the "Open Public Meetings Law," P.L. 1975, c.231, codified at N.J.S.A. 10:4-6 to -21, shall be given to the Secretary of State. Six members present shall constitute a quorum.

(d) Members of the committee shall serve without compensation, but shall be reimbursed for expenses actually incurred in attending committee meetings and in the performance of their duties as members thereof.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Fish and Game Council
1985-86 Fish Code

Adopted Amendment: N.J.A.C. 7:25-6

Proposed: August 6, 1984 at 16 N.J.R. 2034(a).
Adopted: October 16, 1984 by Anthony DiGiovanni, Chairman, Fish and Game Council.
Filed: October 18, 1984 as R.1984 d.498 **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1B-30 et seq. and 23:1-1 et seq.

Effective Date: November 5, 1984.
Operative Date: January 1, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): December 31, 1985.
DEP Docket No: 049-84-07.

Summary of Public Comment and Agency Response:

A **public hearing** concerning the proposal was held on September 11, 1984 at 363 Pennington Avenue, Trenton, New Jersey. Three people attended but offered no comment on the proposal. Two letters were received supporting the proposed code. Changes from proposal reflect typographic corrections and liberalization of striped bass size and bag limits reflecting the failure of enactment of more stringent legislation.

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 6. 1985-86 FISH CODE

7:25-6.0 General Provisions

(a) Authority. This Code is adopted pursuant to the provisions of N.J.S.A. 13:1B-29 et seq. and the provisions of N.J.S.A. 23:1-1 et seq.

(b) Judicial notice. N.J.S.A. 13:1B-34 provides in pertinent part, "(C)opies of the State Fish & Game Code, and its amendments, duly certified by the chairman of the council, shall be received in evidence in all court or other judicial proceedings in the State."

(c) Time. The hours listed in this Code are EST or EDT at date.

(d) This Code, when adopted and when effective, shall supersede the provisions of the 1984-85 Fish Code. Codification of this Code in the N.J.A.C. publication was suspended inasmuch as this Code is a temporary rule (one year unless continued). Subchapter 6 of Chapter 25 of Title 7 of the Administrative Code has been reserved for the Fish Code.

7:25-6.1 Trout Season and Angling in Trout-Stocked Waters
Authority: N.J.S.A. 23:5-1

(a) The trout season for 1985 shall commence 12:01 a.m. January 1, 1985 and extend to midnight March 24, 1985. The trout season shall re-open at 8:00 a.m. Saturday, April 13, 1985 and extend to include March 23, 1986. (See separate regulations for Greenwood Lake, the Delaware River between New Jersey and Pennsylvania, Round Valley Reservoir, Musconetcong River "No Kill" Area and the Van Campens Brook Natural Trout Fishing Area.)

(b) It shall be unlawful to fish for any species of fish between midnight on March 24, 1985 and 8:00 a.m. on April 13, 1985 in ponds, lakes or those portions of streams that are listed herein for stocking during 1985.

(c) Waters with listed stocking dates shall be closed to all fishing from 5:00 a.m. to 5:00 p.m. on listed dates; included in these waters are all feeder and tributary streams for a distance of 100 feet from the main channel.

(d) Trout stocked waters for which in-season closures will be in force; waters will be closed from 5:00 a.m. to 5:00 p.m. on dates indicated.

1. Big Flat Brook - 100 ft. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River - April 19, 26; May 3, 10, 17, 24, 31.

2. Black River - Route 206, Chester to Dam at lower end of Hacklebarney State Park - April 18, 25; May 2, 9, 16, 23, 30.

3. Manasquan River - Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area - April 15, 22, 29; May 6, 13, 20, 27.

4. Metedeconk River, N. Br. - Aldrich Road Bridge to Ridge Avenue - April 15, 22, 29; May 6, 13, 20, 27.

5. Metedeconk River, S. Br. - Bennets Mills dam to twin wooden foot bridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood - April 15, 22, 29; May 6, 13, 20, 27.

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6. Musconetcong River - Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong - April 19, 26; May 3, 10, 17, 24, 31.

7. Paulinskill River - Limecrest Railroad Spur Bridge, Sparta Township, to Columbia Lake dam - April 18, 25; May 2, 9, 16, 23, 30.

8. Pequest River - Source to Delaware River - April 19, 26; May 3, 10, 17, 24, 31.

9. Pohatcong Creek - Route 31 to Delaware River - April 16, 23, 30; May 7, 14, 21, 28.

10. Ramapo River - State line to Pompton Lake - April 18, 25; May 2, 9, 16, 23, 30.

11. Raritan River, N. Br. - Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River - April 17, 24; May 1, 8, 15, 22, 29.

12. Raritan River, S. Br. - Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River - April 16, 23, 30; May 7, 14, 21, 28.

13. Rockaway River - Longwood Lake dam to Jersey City Reservoir in Boonton - April 15, 22, 29; May 6, 13, 20, 27.

14. Toms River - Ocean County Route 528 Holmansville to confluence with Maple Root Branch and Route 70 to County Route 571 - April 15, 22, 29; May 6, 13, 20, 27.

15. Wallkill River - W. Mt. Road to Route 23, Hamburg - April 15, 22, 29; May 6, 13, 20, 27.

16. Wanaque River - Greenwood Lake Dam to Jct. with Pequannock River, excluding Wanaque Reservoir and Lake Inez - April 19, 26; May 3, 10, 17, 24, 31.

(Note: The Division reserves the right not to stock on the above dates when emergency situations prevail.)

(d) No person shall catch, take, kill or possess trout during the closed period (5:00 a.m. to 5:00 p.m.) on any of the waters listed for in-season closures N.J.S.A. 23:5-1.

(e) Trout stocked waters for which no in-season closures will be in force. Figure in parenthesis indicates the anticipated number of stockings to be carried out from April 15 through May 31. (Note: The Division reserves the right to suspend stocking when emergency conditions prevail.)

1. Atlantic County

Birch Grove Park Pond - Northfield - (3)
Hammonton Lake - Hammonton - (3)

2. Bergen County

Hackensack River - Lake Tappan to Harriot Avenue, Harrington Park - (4)
Hohokus Brook - Forest Road to Whites Pond - (1)
Indian Lake - Little Ferry - (4)
Pascack Creek - Orchard Street, Hillsdale, to Lake Street, Westwood - (4)
Saddle River - State Line to Grove Street, Ridgewood - (6)
Tienekill Creek - Closter, entire length - (1)
Whites Pond - Waldwick - (2)

3. Burlington County

Crystal Lake - Willingboro - (3)
Rancocas Creek, Southwest Branch - Medford, Mill Street Park to Branch St. Bridge - (3)
Sylvan Lake - Burlington - (2)

4. Camden County

Big Lebanon Run - Neely's Pond dam to Grenloch Lake - (2)
Grenlock Lake - Turnersville - (2)
Hopkins Pond - Haddonfield - (3)

5. Cape May County

Dennisville Lake - Dennisville - (2)

6. Cumberland County

Cohansey River - Dam at Seeley's Pond to Powerline above Sunset Lake, Bridgeton - (3)
Giampietro Park Lake - Vineland - (3)
Mary Elmer Lake - Bridgeton - (3)
Maurice River - Willow Grove Lake dam to Sherman Avenue, Vineland - (3)
Shaw's Mill Pond - Newport - (3)

7. Essex County

Branch Brook Park Lake - Newark - (4)
Diamond Mill Pond - Millburn - (4)
Verona Park Lake - Verona - (4)

8. Gloucester County

Greenwich Lake - Gibbstown - (4)
Harrisonville Lake - Harrisonville - (3)
Iona Lake - Iona - (3)
Mullica Hill Pond - Mullica Hill - (2)
Raccoon Creek - Ewan Lake dam to Mullica Hill Pond - (2)
Swedesboro Lake - Swedesboro - (3)

9. Hudson County

Woodcliff Lake - North Bergen, James J. Braddock Park - (4)

10. Hunterdon County

Alexandria Brook - Milford, entire length - (2)
Alexauken Creek - Mt. Airy, entire length - (2)
Amwell Lake - Linvale - (4)
Beaver Brook - Annandale, entire length - (2)
Capoolong Creek - Pittstown, entire length - (6)
Delaware - Raritan Feeder Canal - Bulls Island to Prallsville Lock - (6)
Everittstown Brook - Everittstown, entire length - (2)
Frenchtown Brook - Frenchtown, entire length - (1)
Hakihohake Creek - Milford, entire length - (2)
Little York Brook - Little York, entire length - (2)
Lockatong Creek - Opdyke Road Bridge, Kingwood Township to Delaware-Raritan Feeder Canal - (3)
Milford Brook - Milford, entire length - (1)
Mt. Pleasant Brook - Mt. Pleasant, entire length - (0)
Mulhockaway Creek - Pattenburg, source to Spruce Run Reservoir - (2)
Neshanic River - Kuhl Road to Hunterdon County Route 514 (1)
Prescott Brook - Clinton Township, entire length - (1)
Rockaway Creek, N/B - Tewksbury and Readington Township, entire length - (4)
Rockaway Creek, S/B - Lebanon to Whitehouse, entire length (3)
Round Valley Reservoir - Lebanon - (1)
Spring Mills Brook - Spring Mills, entire length - (0)
Spruce Run - Glen Gardner and Lebanon Township, entire length - (3)
Spruce Run Reservoir - Clinton - (5)
Sydney Brook - Sydney, entire length - (0)
Tetertown Brook - Tetertown, entire length - (0)
Wickecheoke Creek - Covered Bridge, Sergeantsville to Delaware River - (1)

11. Mercer County

Assunpink Creek - Assunpink Site 5 dam upstream of Rt. 130 Bridge to Carnegie Road, Hamilton Township - (4)
Colonial Lake - Lawrence Township - (2)
Rosedale Lake - Rosedale - (4)
Stony Brook - Woodsville to Port Mercer - (4)

12. Middlesex County

Farrington Lake - North Brunswick - (4)
Ireland Brook - Farrington Lake to point 500 ft. upstream of Riva Avenue - (0)
Lawrence Brook - Dam at Farrington Lake to 2nd RR Bridge (Raritan Railroad) below Main St. Milltown - (5)
Roosevelt Park Pond - Edison Township - (4)

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13. Monmouth County
Big Brook - Clover Hill, Route 34 to Swimming River Reservoir - (2)
Englishtown Mill Pond - Englishtown - (2)
Garvey's Pond - Navesink - (2)
Hockhocksen Brook - Hockhocksen Road to Garden State Parkway bridge (northbound) - (3)
Holmdel Park Pond - Holmdel - (2)
Hop Brook - Holmdel, Route 520 to Swimming River Reservoir (2)
Mingamahone Brook - Farmingdale, Hurley Pond Road to Manasquan River - (1)
Mohawk Pond - Red Bank - (1)
Pine Brook - Tinton Falls, Jersey Central Railroad to Hockhocksen Brook - (2)
Shark River - Hamilton, Route 33 to Remsen Mill Road - (3)
Spring Lake - Spring Lake - (2)
Takanassee Lake - Long Branch - (2)
Topenemus Lake - Freehold - (2)
Willow Brook - Holmdel, Route 520 to Swimming River Reservoir - (2)
Yellow Brook - Heyers Mill Road to Muhlenbrink Rd., Atlantic Township - (3)
14. Morris County
Beaver Brook - Rockaway, entire length - (3)
Burnett Brook - Ralston, entire length - (2)
Burnham Park Pond - Morristown - (1)
Den Brook - Union Hill, entire length - (1)
Drakes Brook - Flanders, entire length - (1)
Flanders Brook - Mt. Olive, entire length - (3)
Hibernia Brook - Hibernia, entire length - (4)
India Brook - Mt. Freedom to Rt. 24, Ralston, entire length - (2)
India Brook Impoundment - Colemans Hollow - (2)
Lake Hopatcong - Lake Hopatcong - (2)
Lake Musconetcong - Netcong - (2)
Ledgewood Brook - Ledgewood - (2)
Mill Brook - Center Grove, entire length - (2)
Mt. Hope Pond - Mt. Hope - (2)
Passaic River - White Bridge to Dead River - (6)
Pompton River - Pequannock Township (see Passaic Co.) - (6)
Reservoir Brook - Brookside, entire length - (1)
Rhinehart's Brook - Hacklebarney State Park, entire length (2)
Russia Brook - Jefferson Township, Ridge Road to Lake Swannanoa - (2)
Speedwell Lake - Morristown - (2)
Trout Brook - Hacklebarney State Park, entire length - (2)
Washington Valley Brook - Morristown, entire length - (3)
15. Ocean County
Lake Shenandoah - Lakewood, Ocean County Park - (3)
Prospertown Lake - Prospertown - (2)
16. Passaic County
Barbour's Pond - West Paterson - (2)
Belcher's Creek - West Milford, entire length - (0)
Cooley's Brook - West Milford, entire length - (0)
Greenwood Lake - West Milford - (3)
Oldham Pond - North Haledon - (2)
Pequannock River - Route 23, Smoke Rise to North Main Street, Butler - (3)
Pompton Lake - Pompton Lakes - (2)
Pompton River - Pompton Lake to Newark - Paterson Turnpike (6)
Ringwood Brook - State line to Sally's Pond, Ringwood Park - (4)
Sheppard's Lake - Thunder Mountain, Ringwood Borough - (3)
17. Salem County
Schadler's Sand Wash Pond - Pennsgrove - (3)
Harrisonville Lake - Harrisonville - (3)
Maurice River - Willow Grove Lake Dam to Sherman Avenue, Vineland - (3)
18. Somerset County
Harrison Brook - Liberty Corner, entire length - (3)
Lamington River - Rt. 523 (Lamington Road) at Burnt Mills to Jct. with North Branch of Raritan River - (6)
Passaic River - White Bridge to Dead River - (6)
Peapack Brook - Peapack, entire length - (5)
Raritan River - Jct. of Raritan River N/Br and S/Br to dam at Edgewater Road - (4)
Rock Brook - Zion, entire length - (2)
Middle Brook; E/Br. - Martinsville, entire length - (2)
19. Sussex County
Alm's House Brook - Myrtle Grove, Hampton Township, entire length - (2)
Andover Junction Brook - Andover, entire length - (3)
Beaver Run Brook - Beaver Run, entire length - (1)
Bier's Kill - Shaytown, entire length - (2)
Big Flat Brook, Upper - Saw Mill Lake, High Point State Park to 100 ft. above Steam Mill Bridge on Crigger Road - (1)
Clove River - Junction of Route 23 and Mt. Salem Road to Route 565 bridge - (3)
Cranberry Lake - Byram Township - (2)
Culver's Lake Brook - Frankford Township, entire length - (2)
Dragon Brook - Cranberry Lake, Byram Township, entire length - (3)
Dry Brook - Branchville, entire length - (0)
Franklin Pond Creek - Hamburg Mt. W.M.A., entire length - (3)
Glenwood Brook - Lake Glenwood to Stateline - (1)
Hardystonville Brook - Hardystonville, entire length - (1)
Iliff Lake - Andover Township - (3)
Kymer's Brook - Andover, entire length - (2)
Lake Musconetcong - Netcong - (2)
Lake Hopatcong - Lake Hopatcong - (2)
Lake Ocquittunk - Stokes State Forest - (6)
Little Flat Brook - Sandyston Township, entire length - (3)
Little Swartswood Lake - Swartswood - (2)
Lubbers Run - Byram Township, entire length - (3)
Neldon Brook - Swartswood, entire length - (2)
North Church Brook - Monroe, entire length - (1)
Papakating Creek - Plains Road bridge to Route 565 Lewisburg - (2)
Papakating Creek, W. Br. - Libertyville, entire length - (2)
Parker Brook - Stokes State Forest, entire length - (1)
Pond Brook - Middleville, entire length - (2)
Roy Spring Brook - Stillwater, entire length - (2)
Saw Mill Lake - High Point State Park - (6)
Shimers Brook - Montague Township, entire length - (1)
Sparta Junction Brook - Sparta Junction, entire length - (3)
Stony Brook - Stokes State Forest, entire length - (2)
Stony Lake - Stokes State Forest - (3)
Swartswood Lake - Swartswood - (3)
Trout Brook - Middleville, entire length - (2)
Tuttles Corner Brook - Tuttles Corner, entire length - (2)
Wawayanda Lake - Highland Lakes - (3)
20. Union County
Green Brook - Route 527, Berkely Heights to Route 22, Scotch Plains - (2)

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Lower Echo Park Pond - Mountainside - (2)
Milton Lake - Madison Hill Road Bridge to Milton Lake Dam, Rahway - (2)
Rahway River - Morris Ave. (Route 524 to St. George Ave. (Route 27), Rahway - (4)
Seeleys Pond - Berkely Heights - (2)
21. Warren County
Barker's Mill Brook - Vienna, entire length - (2)
Bear Creek - Southtown, entire length - (2)
Beaver Brook - Silver Lake Dam to Pequest River - (2)
Blair Creek - Hardwick Center to Blair Lake - (2)
Blair Lake - Blairstown - (0)
Buckhorn Creek - Roxburg, entire length - (2)
Dark Moon Brook - Johnsonburg, entire length - (1)
Delawanna Brook - Delaware Lake to Delaware River - (1)
Dunnfield Creek - Delaware Water Gap National Recreation Area, entire length - (3)
Furnace Brook - Oxford, entire length - (2)
Furnace Lake - Oxford - (5)
Honey Run - Swayze's Mill Road to Route 519, Hope Township (2)
Jacksonburg Creek - Jacksonburg, entire length - (3)
Johnsonburg Creek - Johnsonburg, entire length - (1)
Lopatcong Creek - Route 519 to South Main Street, Phillipsburg - (3)
Merrill Creek - Stewartsville, entire length - (2)
Mountain Lake - Buttzville - (5)
Muddy Run - Hope Township, entire length - (2)
Pohatcong Creek - Mt. Bethel to Route 31 - (2)
Pophandusing Creek - Oxford Road, Hazen to Delaware River - (2)
Roaring Rock Brook - Brass Castle, entire length - (2)
Silver Lake - Hope - (5)
Trout Brook - Hackettstown, entire length - (3)
Trout Brook - Hope, entire length - (2)
Yards Creek - Mount Vernon to Paulinskill River - (2)

(f) There will be no minimum size on brook trout, brown trout, rainbow trout or hybrids thereof except as designated for Special Regulation Trout Fishing Areas. Authority N.J.S.A. 23:5-7.

(g) No person shall take, kill, or have in possession in one day more than 6 in the aggregate of brook trout, brown trout, rainbow trout or hybrids thereof during the period extending from 8:00 A.M. April *[7, 1984]* ***13, 1985*** until midnight May 31, *[1984]* ***1985***, or more than 4 of these species during the periods of January 1, *[1984]* ***1985*** to midnight March *[18, 1984]* ***24, 1985*** and June 1 *[1984]* ***1985*** through midnight March *[17, 1985]* ***23, 1986*** except as designated for Special Regulation Trout Fishing Areas and Round Valley Reservoir.

(h) Landlocked Atlantic salmon (Salmo salar), if caught may be retained during the open season for trout prescribed herein. Authority: N.J.S.A. 23:5-1.

7:25-6.2 Fly-Fishing Waters
Authority: N.J.S.A. 13:1B-31, 23:5-10, 23:5-11, 23:5-17

(a) From and after 5:00 a.m. on Monday April 22, 1985 to and including November 30, 1985 the following stretches are open to fly-fishing only, and closed to all fishing from 5:00 a.m. to 5:00 p.m. on the days listed for stocking:

1. Big Flat Brook, Sussex County - from the concrete bridge on Route 206 downstream to the Roy Bridge on Mountain Road, a distance of approximately 4 miles, except that portion known as the Blewett Tract, regulated below (see b.1).

2. South Branch of the Raritan River, Hunterdon County - the stretch of water known as the "Ken Lockwood Gorge", a distance of approximately 2½ miles.

(b) Beginning January 1, 1985 to midnight March 24, 1985 and from 8:00 a.m. on April 13, 1985 to midnight, March 23, 1986, the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 a.m. to 5:00 p.m. on days listed for stocking:

1. Big Flat Brook, Sussex County - an approximate 0.5 mile portion, clearly defined by markers, known as the Blewett Tract, which extends from the Three Bridges Road to a point upstream of the junction of the Big Flatbrook and the Little Flatbrook.

(c) The following stretch is open to fly fishing only year-round, but is closed to all fishing from 5:00 a.m. to 5:00 p.m. on the days listed for stocking.

1. Musconetcong River, Morris and Warren Counties - the stretch starting at the bridge on Schooley's Mountain Road, extending downstream 1 mile to the entrance of the river into the Johnson property, this stretch being clearly defined by markers. This stretch is designated as a "no kill" area and all trout caught must be returned to the water unharmed.

(d) The following regulations shall apply to the above designated fly-fishing waters:

1. Fishing in Fly-Fishing Waters is permitted 24 hours daily except on those days during April and May when they are closed for stocking (See separate regulation for Natural Trout Fishing Areas). Authority: N.J.S.A. 23:5-11; 23:5-17.

2. Not more than 6 trout may be killed daily during the April 7 through May 31 portion of the season; at other times the limit is four.

Any number of trout may be caught provided such trout are immediately returned to the water unharmed, except that the Musconetcong fly-fishing stretch is designated a "no kill" area and all trout caught in this stretch must be immediately returned to the water unharmed. Authority: N.J.S.A. 23:5-10.

3. No bait or lures of any kind may be used except artificial flies which are expressly limited to dry flies, wet flies, bucktails, nymphs and streamers. Expressly prohibited are metal, plastic or wooden lures, plugs, spinners and flies with spinners attached, or any multiple-hooked device. In the Musconetcong "no kill" area, only single pointed barbless hooks may be used. Authority: N.J.S.A. 23:5-11, 23:5-15.1.

4. Also expressly prohibited are spinning reels or any type of angling whereby the fly is cast directly from the reel. Authority: N.J.S.A. 23:5-11.

5. No person may have in possession while engaged in angling on the waters designated as fly waters, any natural bait, live or preserved, in that period of time during which flyfishing only is in effect. Authority: N.J.S.A. 23:5-11; 23:5-15.1.

7:25-6.3 Natural Trout Fishing Areas
Authority: N.J.S.A. 23:5-10, 23:5-11, 23:5-17, 13:1B-31

(a) The following unstocked stretch of water is hereby designated as a Natural Trout Fishing Area:

1. Van Campens Brook, Warren County - entire length.

(b) The following regulations apply to the above-designated Natural Trout Fishing Area:

1. Van Campens Brook is open to fishing year-round. Authority: N.J.S.A. 23:5-1.

2. No bait or lures of any kind may be used except artificial lures and flies. Authority: N.J.S.A. 23:5-11; 23:5-15.1.

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3. No person may have in possession while engaged in angling on the waters designated as Natural Trout Fishing Areas any natural bait, live or preserved. Authority: N.J.S.A. 23:5-11, 23:5-15.1.

4. No person shall kill or have in possession while fishing any trout less than ten inches in total length. Authority: N.J.S.A. 23:5-7.

5. No person shall have in possession while engaged in angling on the waters designated as Natural Trout Fishing Areas, any more than one dead, creeled or otherwise appropriated trout, except that additional fish may be caught providing they are returned to the water immediately and unharmed. Authority: N.J.S.A. 23:5-10, 23:5-7.

7:25-6.4 Round Valley Reservoir

(a) The minimum size of smallmouth bass (Micropterus dolomieui) shall be 13 inches. There shall be no size limit on largemouth bass (Micropterus salmoides). Daily bag and possession limit for largemouth bass and smallmouth bass shall be 5 in aggregate. Authority: N.J.S.A. 23:5-7, 23:5-10.

(b) The minimum size of brown trout and rainbow trout shall be 13 inches. Daily bag and possession limit for brown trout and rainbow trout shall be 2 in aggregate. Authority: N.J.S.A. 23:5-7, 23:5-10.

(c) There shall be no closed season for brown trout and rainbow trout. Authority: N.J.S.A. 23:5-1.

(d) The season for lake trout shall extend from 12:01 a.m. January 1, 1985 to midnight September 30, 1985, Authority: N.J.S.A. 23:5-1.

(e) The legal size for lake trout shall be from 18 inches to 22 inches and in excess of 28 inches. The daily bag and possession limit shall be two, of which only one may be between 18 inches and 22 inches and only one may be in excess of 28 inches. Authority: N.J.S.A. 23:5-7.

(f) No person shall have in possession, while on the state-owned lands and waters at Round Valley Reservoir, any fish, or any part thereof, which has been mutilated so that its size at capture cannot be determined, or so that it is unidentifiable as to species, except that this restriction shall not apply to fish which are being prepared for immediate on-site consumption. Authority: N.J.S.A. 23:5-7.

7:25-6.5 Baitfish

(a) Except as provided for in trout - stocked waters listed in this code, up to 35 baitfish per person per day may be taken from the freshwaters of the state with a seine not over 50 feet in length in all ponds and lakes which have an area of over 100 acres, and in all other waters with a seine not over 30 feet in length, year-round. Minnow traps not larger than 24 inches in length with a funnel mouth no greater than 2 inches in diameter may be used in any of the freshwater of the state. Authority: N.J.S.A. 23:5-11.

(b) In waters listed in this code to be stocked with trout during 1984, it is prohibited to net, trap or attempt to net or trap baitfish from March 18 to June 15th except where the taking is otherwise provided for. For the remainder of the year, up to 35 baitfish per person per day may be taken with a seine not over 10 feet in length and 4 feet in depth or a minnow trap not larger than 24 inches in length with a funnel mouth no greater than 2 inches in diameter. Authority: N.J.S.A. 23:5-11.

(c) Baitfish may be taken from the freshwaters of the state in numbers greater than 35 per day, under special permit issued by the Division at its discretion. Authority: N.J.S.A. 23:5-11.

7:25-6.6 Nets

(a) Except as provided for the taking of baitfish, it shall be illegal to take fish from the freshwaters of the State, including tidal freshwaters, by means of nets except as hereafter provided for.

(b) In the tidal freshwaters of New Jersey other than the Delaware River, its tributaries and tributaries to Delaware Bay:

1. No person shall catch or take or attempt to catch and take fish of any kind or description by means of a net, or use a net of any character, except for fyke nets and nets commonly used for the purpose of taking of baitfish, from Saturday at 2 p.m. until the following Sunday at twelve midnight. Authority: N.J.S.A. 25:5-1, 13:1B-30, 13:1B-31.

2. It shall be legal to take baitfish by means of a bait seine not more than one hundred and fifty feet in length or a dip net not to exceed twenty four inches in diameter. Authority: N.J.S.A. 23:5-11.

3. It shall be legal to take foodfish as defined in N.J.A.C. 7:25-6.16(k) by the following means:

i. Haul seines, the mesh of which shall not be larger than three inches stretched while being fished and not to exceed seventy fathoms in length, whether singly or attached, for all species except striped bass. November first to April thirtieth.

ii. Fykes, with leaders shall not exceed 30 fathoms in length and no part of the net or leaders to be larger than three inches stretched mesh while being fished, for all species excepting striped bass. November first to April thirtieth.

iii. Miniature fykes or pots for the taking of catfish, suckers and eels, the same not to exceed sixteen inches in diameter. March fifteenth to December fifteenth.

iv. Drifting gill nets, the smallest mesh of which shall be five inches while being fished, and shall not exceed fifty fathoms in length, for all species excepting striped bass. March first to June fifteenth. Authority: N.J.S.A. 23:5-1, 23:5-11.

(c) In the waters of the tributaries of the Delaware River, in New Jersey, between Trenton Falls and Birch Creek:

1. No person shall catch or take or attempt to catch and take fish of any kind or description by means of a net, or use a net of any character, except for fyke nets and nets commonly used for the purpose of taking baitfish, from Saturday at two p.m. until Sunday at twelve o'clock midnight next ensuing in each week. Authority: N.J.S.A. 23:5-1, 13:1B-30, 13:1B-31.

2. It shall be legal to take baitfish by means of minnow seine not more than one hundred feet in length; a dip net not more than five feet square; a minnow trap, the opening of which shall not be more than one and one-quarter inches in diameter; or a scoop net with a single handle and with a diameter of not more than two feet. Authority: N.J.S.A. 23:5-11.

3. It shall be legal to take foodfish as defined in N.J.S.A. 7:25-6.16(k) by means of a seine, gill net, eelpot or fyke net, each without wings, or a parallel net at the edge of low water. Authority: N.J.S.A. 23:5-11.

4. It shall be illegal to take or attempt to catch and take Atlantic sturgeon by means of a seine or a gill net the meshes of which are less than thirteen inches stretched measure while being fished, or to catch and take or attempt to catch and take any other foodfish with a seine the meshes of which shall be less than two and one-half inches stretched measure while being fished, or any gill net the meshes of which shall be less than five and one-quarter inches stretched measure while being fished, provided that gill nets with a mesh not smaller than three inches may be used from March 1–June 10th in each

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year, for the purpose of taking herring only. No person shall catch and take or attempt to catch and take any food fish, except Atlantic sturgeon, by means of a seine or gill net between June 10th in each and every year, and March 1st next ensuing. Suckers may be taken with a seine only from October 15th in each and every year to March 15th next ensuing. Authority: N.J.S.A. 23:5-1, 23:5-11, 13:1B-30, 13:1B-31.

5. No person shall catch and take or attempt to catch and take fish of any kind, with a pound net, or net of any character, which is anchored or staked or fastened down in any manner. permanently or otherwise, or use any net so anchored or fastened down in any manner, except for a parallel net set at the edge of low water, but no such net shall be set within five hundred feet of a sluice, breach or intake emptying into the Delaware River or its tributaries. Authority: N.J.S.A. 23:5-11.

6. Eelpots and fyke nets, each without wings, may only be used from July 1, to May 31, both dates inclusive, in each year, for the purpose of catching carp, catfish, eels, and suckers only provided, that the entrance of said eelpot and fyke net shall not be more than six inches in diameter and the outside diameter not more than thirty inches. All other species of fish which may be caught in said nets must be returned unharmed immediately to the waters from which taken. Authority: N.J.S.A. 23:5-1, 23:5-11, 13:1B-30, 13:1B-31.

7. Parallel nets whose meshes are not less than three and one-half inches stretched measure, when being fished, may be used from September 1 to May 31, next ensuing in each year for the purpose of taking carp only.

Seines with meshes not smaller than two and one-half inches, and cast nets may be used from September 1 to May 31 for the purpose of taking catfish and carp only. No such net shall be set in a manner that will impede navigation. All fish other than catfish and carp shall be returned unharmed to the water below low-water mark. Authority: N.J.S.A. 23:5-1, 23:5-11, 13:1B-30, 13:1B-31.

(d) In the tidal freshwater portions of the tributaries to the Delaware Bay and River between New Jersey and Delaware.

1. No person shall catch or take or attempt to catch or take fish of any kind by means of a net or use a net of any kind, except for fyke nets and nets commonly used for the purpose of taking of baitfish, from Saturday at two p.m. until Sunday at twelve o'clock midnight next ensuing in each week. Authority: N.J.S.A. 23:5-1, 13:1B-30, 13:1B-31.

2. It shall be legal to take baitfish by means of a minnow seine not more than one hundred feet in length; a dip net not more than five feet square; a minnow trap, the opening of which shall not be more than one and one-quarter inches diameter or a scoop net with a single handle and with a diameter of not more than two feet. Authority: N.J.S.A. 23:5-11.

3. No person shall catch and take or attempt to catch and take Atlantic sturgeon with any device excepting a seine or gill net, the meshes of which shall be not less than thirteen inches stretched measure while being fished.

4. Shad may be taken with a drifting gill net, the meshes of which shall be not less than five and one-quarter inches stretched while being fished, from February 1 to June 15. Authority: N.J.S.A. 23:5-1, 23:5-11, 13:1B-30, 13:1B-31.

5. All foodfish may be taken with:

i. A drifting gill net, the meshes of which shall be not less than two and three-quarters inches stretched measure, while being fished, and not exceeding two hundred feet in length, from April 1 to November 30.

ii. A hauling seine, the meshes of which shall be not less than two and three-quarters inches stretched measure while being fished, and not exceeding seventy fathoms in length at any time of year.

iii. Parallel nets, the mesh of which are not less than three inches stretched measure while being fished, and cast nets may be used for the capture of carp, suckers and catfish only from July 15 to May 31, but no net shall be set within five hundred feet of another net or within five hundred feet of a sluice, breach or intake emptying into the tributaries of the Delaware river and bay.

iv. Eel pots or fyke nets, each without wings, provided the entrance to said eel pots and fyke nets shall not exceed six inches in diameter and the outside diameter not exceed thirty inches may be used at any time for the taking of eels only. Authority: N.J.S.A. 23:5-1, 23:5-11, 13:1B-30, 13:1B-31.

6. Not more than one gill net or hauling seine shall be used from a boat. Authority: N.J.S.A. 23:5-11.

7:25-6.7 Snagging Prohibited

(a) The foul hooking of largemouth bass (Micropterus salmoides), smallmouth bass (Micropterus dolomieui), chain pickerel (Esox niger), northern pike (Esox lucius), muskellunge (Esox masquinongy) or any hybrid thereof, walleye (Stizostedion vitreum vitreum), brook trout (Salvelinus fontinalis), lake trout (Salvelinus namaycush), brown trout (Salmo trutta), rainbow trout (Salmo gairdneri) or any of the hybrids thereof, shall be prohibited in open waters. Any of the aforementioned fish so hooked must be immediately returned to the water. This shall not apply to fish so taken through the ice during the ice fishing season (see separate regulations for Greenwood Lake, and for the Delaware River between New Jersey and Pennsylvania). Authority: N.J.S.A. 23:5-11.

7:25-6.8 Warmwater Fish

(a) Except as noted for waters stocked with trout, closed seasons are hereby eliminated in open (unfrozen) waters on all freshwater fish and on striped bass (Morone saxatilis) in and upstream of any impounded or inland lake or pond. The season for taking of striped bass from all other fresh waters is March 1 to December 31. (See Delaware River between New Jersey and Pennsylvania, and ice fishing sections for separate regulations). Authority: N.J.S.A. 23:5-1.

(b) The size limits on rock bass (Ambloplites rupestris), black crappie (Pomoxis nigromaculatus), white crappie (Pomoxis annularis), redfin pickerel (Esox americanus americanus) and chain pickerel (Esox niger) are hereby eliminated in all waters except in Lake Hopatcong, Swartswood Lake (Sussex County), Farrington Lake (Middlesex County), and Hammonton Lake (Atlantic County) where there shall be a minimum size of 15 inches for chain pickerel. (See separate regulations for Greenwood Lake.) Authority: N.J.S.A. 23:5-7; 23:5-10, 13:1B-31.

(c) The provision that a person may not take or have in possession more than 25 in the aggregate of fish commonly classed as fresh water game and food fish is hereby abolished. (See code and statutes for bag limits on individual species.) Authority: N.J.S.A. 23:5-10.

(d) The minimum size of largemouth bass (Micropterus salmoides) and smallmouth bass (Micropterus dolomieui) shall be 9 inches in all waters except for Mountain Lake (Warren County), Parvin Lake (Salem County), Lake Musconetcong (Sussex County), Mercer Lake (Mercer County), and Lake Carasaljo including the South Branch of the Metedeconk River on South Lake Drive and Lake Manetta to the bridge over Watering Place Brook on Sunset Avenue (Ocean County) where the minimum size shall be 12 inches. Daily bag and possession limit for largemouth bass and smallmouth

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bass shall be not more than 5 in the aggregate. (See separate regulations for Greenwood Lake, and the Delaware River between New Jersey and Pennsylvania, and Round Valley Reservoir.) Authority: N.J.S.A. 23:5-7; 23:5-10.

(e) Warmwater fish in excess of the daily limit may be caught provided they are returned to the water immediately and unharmed. Authority: N.J.S.A. 23:5-10.

(f) Eels (Anguilla rostrata) may not be taken from non-tidal waters of this State by use of eel baskets, fykes, or traps of any kind, except that eel weirs may be operated under permit of the Division in accordance with Statute 23:3-55. Authority: N.J.S.A. 23:5-11.

(g) The minimum length on northern pike (Esox lucius) shall be 24 inches, and 30 inches for the muskellunge (Esox masquinongy) and tiger muskie (Esox lucius X Esox masquinongy). The daily bag and possession limit for these species shall be 2 in aggregate. Authority: N.J.S.A. 23:5-7, 23:5-10.

(h) Fishing for all species of fresh water fish is permitted 24 hours daily except on those days that certain trout waters are closed for stocking during April and May. Authority: N.J.S.A. 23:5-17.

(i) Daily bag and possession limit for chain pickerel (Esox niger) and walleye (Stizostedion vitreum vitreum) shall be not more than five of each. Authority: N.J.S.A. 23:5-10.

(j) The minimum length on walleye (Stizostedion vitreum vitreum) shall be 15 inches. Authority: N.J.S.A. 23:5-7.

(k) The minimum length for striped bass (Morone saxatilis) ***and their hybrids*** shall be *[26]* ***18*** inches and the daily bag and possession shall be two in lakes. For all other freshwaters, tidal and non-tidal, the minimum length shall be *[26]* ***18*** inches and the daily bag and possession limit shall be *[four]* ***five*** (see exception for the Delaware River).

7:25-6.9 Ice Fishing
Authority: N.J.S.A. 23:5-3; 23:5-11

(a) Ice fishing shall be permitted whenever ice is present. (See separate regulations for trout-stocked waters.)

(b) A person, while fishing through the ice, may use not more than 5 devices for the taking of fish. The types of devices that may be used are: (a) ice supported tip-ups or lines with one hook attached; (b) an artificial jigging lure with not more than one burr of 3 hooks that measure not more than ½ inch from point to point; (c) an artificial jigging lure with not more than 3 single hooks measuring not more than ½ inch from point to shaft; (d) an artificial jigging lure with a combination of the hook limitations described in (b) and (c). Natural bait may be used on the hooks of the artificial jigging lure. All devices that are not hand-held must be clearly marked with the name and address of the user and shall not be left unattended.

(c) When ice is not present, open water regulations will be in effect. (See separate regulations for Greenwood Lake and for the Delaware River between New Jersey and Pennsylvania.)

7:25-6.10 Bow and Arrow Fishing

(a) It shall be legal to take any species of fish except brook trout (Salvelinus fontinalis), lake trout (Salvelinus namaycush), brown trout (Salmo trutta), rainbow trout (Salmo gairdneri), landlocked Atlantic salmon (Salmo salar), largemouth bass (Micropterus salmoides), smallmouth bass (Micropterus dolomieui), chain pickerel (Esox niger), northern pike (Esox lucius), muskellunge (Esox masquinongy) or any hybrid thereof, or walleye (Stizostedion vitreum vitreum), at any time by use of longbow and arrow with line attached, provided a person has a proper fishing license. (See separate regulations for Greenwood Lake, for the Delaware River between New Jersey and Pennsylvania, and for the waters listed for trout stocking during the current season.) Authority: N.J.S.A. 23:5-11.

7:25-6.11 Closed Waters

(a) It is illegal to fish, place any contrivance for the taking of fish, or attempt to catch or kill fish by any manner or means in any fish ladder or within 20 feet of any fish ladder entrance or exit. Authority: N.J.S.A. 23:5-11.

(b) It is illegal to fish or attempt to catch or kill fish by any manner or means in waters within the boundaries of the State Fish Hatcheries, except where specifically permitted, i.e. the Musconetcong River and Pequest River. Authority: N.J.S.A. 13:1B-31.

7:25-6.12 Emergency Closure Notice

It shall be illegal to fish or attempt to catch or kill fish by any manner or means in any waters for which the Director of the Division of Fish, Game, and Wildlife, upon approval of the Fish and Game Council, issues an Emergency Closure Notice. Such notice shall be effective and/or rescinded immediately upon public notification. It shall be based upon imminent threat to the well being of the fishery resource and/or its users, and may include any exceptions to the total ban on fishing that the Director deems practical. N.J.S.A. 23:5-11.

7:25-6.13 Greenwood Lake
Authority: N.J.S.A. 13:1B-31; 23:5-1; 23:5-3; 23:5-10; 23:5-11; 23:5-17; 23:9-126.

In cooperation with the New York State Department of Environmental Conservation, Division of Fish and Wildlife, the following regulations for Greenwood Lake, which lies partly in Passaic County, New Jersey, and partly in Orange County, New York are made a part of the New Jersey State Fish and Game Code and will be enforced on the whole lake by the conservation authorities of both States:

(a)	Season	Size	Bag Limit
Trout	No closed season	No minimum	3
Largemouth bass & smallmouth bass	No closed season	9" minimum	5 singly or in aggregate
Chain pickerel	No closed season	No minimum	10
All other species	No closed season	No minimum	No limit

Authority: N.J.S.A. 23:5-1, 23:5-10

(b) On Greenwood Lake, it shall be illegal for any ice fisherman to use at any time more than five devices for the taking of fish. All devices that are not hand held must be plainly marked with the name and address of the angler. The ice fishing season is November 15 to the next following April 30. Authority: N.J.S.A. 23:5-11.

(c) On Greenwood Lake, fishing will be permitted 24 hours a day. Authority: N.J.S.A. 23:5-17.

(d) Either New York or New Jersey fishing licenses will be honored on all of Greenwood Lake. Authority: N.J.S.A. 23:9-126.

(e) Bow and arrow fishing for carp, suckers, herring, catfish and eels will be permitted on Greenwood Lake by properly licensed fishermen. Authority: N.J.S.A. 23:5-11.

7:25-6.14 Delaware River Between New Jersey and Pennsylvania

In cooperation with the Pennsylvania Fish Commission, the following regulations for the Delaware River between New Jersey and Pennsylvania are made a part of the New Jersey State Fish and Game Code and will be enforced by the conser-

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vation authorities of each state. Authority: N.J.S.A. 23:9-6; 23:9-7; 23:9-13; 23:9-16.

(a)	Season	Size Limit	Bag Limit
Trout	April 15-Sept. 30	No minimum	5
Largemouth bass & smallmouth bass	No closed season	9" minimum	5 in aggregate
Walleye	No closed season	15" minimum	5
Chain Pickerel	No closed season	12"	5
Muskellunge, & any hybrid thereof	No closed season	30" minimum	2
Northern pike	No closed season	24" minimum	2
Striped bass	March 1-Dec. 31	*[26]* **18*" minimum	*[4]* **5*
Baitfish, fish bait	No closed season	No minimum	50
Shortnose sturgeon	Closed-endangered species		
All other freshwater species	No closed season	No minimum	No limit

Authority: N.J.S.A. 23:9-12, 23:9-13, 23:9-34.

(b) Fishing licenses of either State will be recognized in the Delaware River from water's edge to water's edge and fishermen will be permitted to take off in a boat from either shore and on returning, to have in possession any fish which may be legally taken, however, any person fishing from the shore must obtain a license in that State on whose shore fishing is done. Residents of Pennsylvania must possess a New Jersey non-resident license if they fish from the New Jersey bank, and residents of New Jersey must have a Pennsylvania license if they fish from the Pennsylvania bank.

(c) Angling may be done with two rods each with one line or two hand lines or one of each. Not more than 3 single hooks or 3 burrs of 3 hooks each may be used per line. Authority: N.J.S.A. 23:9-6; 23:9-8.

(d) Ice fishing shall be legal whenever ice is present. Open (unfrozen) water bag and size limits shall apply. The maximum size of the ice hole shall not exceed 10 inches in diameter. Five tip-ups or any combination of 5 devices that will include tip-ups and not more than 2 rods and lines or 2 hand lines or one of each may be used. Authority: N.J.S.A. 23:9-6; 23:9-8; 23:9-12; 23:9-13.

(e) Spears (not mechanically propelled) and longbows may be used to take shad, eels, carp, suckers, herring and bullheads by properly licensed fishermen, except within fifty rods (825 feet) of an eel weir. Authority: N.J.S.A. 23:9-8.

(f) Bait fish may be taken and possessed for personal use only but not to exceed 50 per day. Authority: N.J.S.A. 23:9-7.

(g) Eel weirs for the catching of carp, catfish, eels, and suckers only, may be operated under permit from the Division of Fish, Game and Wildlife at any time of the year and at any time of day. Authority: N.J.S.A. 23:9-14.

7:25-6.15 Fresh Tidal Tributaries of the Delaware River and Bay

(a) The minimum length on Atlantic sturgeon (Acipenser oxyrhynchus) shall be 60" with no daily bag limit. Authority: N.J.S.A. 23:5-10, 13:1B-30, 13:1B-31.

7:25-6.16 Definitions

Unless the context clearly implies a differing usage, the following definitions shall apply in this code:

(a) Code - The State Fish Code.

(b) Division - The Division of Fish, Game and Wildlife.

(c) Director - Director of the Division of Fish, Game and Wildlife.

(d) Open Waters (All Sections except 6.8) - Those waters in which angling is permitted, particularly in reference to time.

(e) Open Waters (Section 6.8) - Those waters not covered with ice.

(f) Closures (Closed Waters) - Those waters in which angling is not permitted, particularly in reference to time (also Closed Season).

(g) Snagging - Snagging shall mean the hooking of a fish, in other than inside the mouth, through the action of the fisherman.

(h) Natural Bait - Natural bait shall mean any bait that in its live, preserved or original form would be consumed by fish.

(i) Trout - The term "trout" shall include the following species and all hybrids and strains thereof:

1. Brook trout	Salvelinus fontinalis
2. Lake trout	Salvelinus namaycush
3. Brown trout	Salmo trutta
4. Rainbow trout	Salmo gairdneri

(j) Baitfish - The term "baitfish" shall include the following species:

1. Alewife (land locked form)	Alosa pseudoharengus
2. Golden shiner	Notemigonus crysoleucas
3. Banded killifish	Fundulus diaphanus
4. Mummichog	Fundulus heteroclitur
5. Spotfin killifish	Fundulus luciae
6. Rainwater killifish	Lucania parva
7. American brook lamprey	Lampetra lamottei
8. Fathead minnow	Pimephales promelas
9. Bluntnose minnow	Pimephales notatus
10. Stonecat	Noturus flavus
11. Tadpole madtom	Noturus gyrinus
12. Margined madtom	Noturus insignis
13. All shiner, dace, and minnows of the following genera:	Notropis, Rhinichthys, and Semotilus

(k) Foodfish - The term "foodfish", for purposes of Section 7:25-6.6 only, means the following species.

1. Atlantic sturgeon	Acipenser oxyrhynchus
2. White sucker	Catostomus commersoni
3. Carp	Cyprinus carpio
4. American eel	Anguilla rostrata
5. Blueback herring	Alosa aestivalis
6. Hickory shad	Alosa mediocris
7. American shad	Alosa sapidissima
8. Gizzard shad	Dorosoma cepedianum
9. Alewife (anadromous form)	Alosa pseudoharengus
10. Yellow perch	Perca flavescens
11. White perch	Morone americana
12. White catfish	Ictalurus catus
13. Black bullhead	Ictalurus melas
14. Brown bullhead	Ictalurus nebulousus
15. Yellow bullhead	Ictalurus natalis
16. Channel catfish	Ictalurus punctatus
17. Bowfin	Amia calva

18. Also any marine fish species that is legal for taking in marine waters, except striped bass.

(l) Warmwater Fish - The term "warmwater fish" shall include the following species and all hybrids and strains thereof:

1. Largemouth bass	Micropterus salmoides
2. Smallmouth bass	Micropterus dolomieui
3. Black crappie	Pomoxis nigromaculatus
4. White crappie	Pomoxis annularis
5. Rock bass	Ambloplites rupestris
6. Redbreast sunfish	Lepomis auritus
7. Green sunfish	Lepomis cyanellus

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8. Pumpkinseed	Lepomis gibbosus
9. Bluegill	Lepomis macrochirus
10. Longear sunfish	Lepomis megalotis
11. Redear sunfish	Lepomis microlophus
12. Yellow perch	Perca flavescens
13. Walleye	Stizostedion vitreum vitreum
14. White perch	Morone americana
15. White catfish	Ictalurus catus
16. Black bullhead	Ictalurus melas
17. Brown bullhead	Ictalurus nebulousus
18. Yellow bullhead	Ictalurus natalis
19. Channel catfish	Ictalurus punctatus
20. Redfin pickerel	Esox americanus americanus
21. Northern pike	Esox lucius
22. Muskellunge	Esox masquinongy
23. Chain pickerel	Esox niger
24. Bowfin	Amia calva
25. Carp	Cyprinus carpio

(m) Other fish species ***, and all hybrids and strains thereof,*** which are provided for by the provisions of this code, either directly or implied, are as follows:

1. Landlocked Atlantic salmon	Salmo salar
2. Shortnose sturgeon	Acipenser brevirostrum
3. Atlantic sturgeon	Acipenser oxyrhynchus
4. Striped bass	Morone saxatilis
5. White sucker	Catostomus commersoni
6. Creek chubsucker	Erimyzon oblongus
7. American eel	Anguilla rostrata
8. Blueback Herring	Alosa aestivalis
9. Hickory shad	Alosa mediocris
10. American shad	Alosa sapidissima
11. Gizzard shad	Dorosoma cepedianum
12. Alewife (anadromous form)	Alosa pseudoharengus

(n) Size limit - size limit shall mean the legal length of fish and may be expressed as a minimum size or a maximum size of a fish that may be retained. Length shall be the maximum total length.

(o) Bag or possession limit - The total number of fish that are legally retainable. Most normally this is expressed on a daily basis.

(p) Unattended - User not available for questioning by officer at the time of inspection.

(q) Possession - refers to all fish, alive or dead, under the control of the fisherman .

HEALTH

(a)

HEALTH FACILITIES EVALUATION

Plan Review Fee Schedule

Adopted New Rule: N.J.A.C. 8:31-30.1

Proposed: August 6, 1984 at 16 N.J.R. 2047(a).
Adopted: October 15, 1984, by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).
Filed: October 18, 1984 as R.1984 d.497, **without change**.

Authority: N.J.S.A. 26:2H-5, N.J.A.C. 5:23-2.28, N.J.A.C. 5:23-11(2) and 5:23-4.20(b).

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): November 5, 1989.

Summary of Public Comments and Department Responses:
No comments received.

Full text of the adoption follows.

8:31-30.1 Architectural and mechanical plan review fee

(a) The Department of Health will utilize 20 percent of the local municipality schedule in computing the plan review fee for health care facilities. The municipality will charge the balance of 80 percent for the other aspects of construction, i.e., inspections, permits, and the like.

(b) The Department of Health will utilize the fee schedule outlined in N.J.A.C. 5:23-4.20 of the Uniform Construction Code.

(c) All fees paid to the Department of Health shall be non-refundable. All fees shall be paid by check or money order, payable to the "Treasurer, State of New Jersey".

(b)

HOSPITAL REIMBURSEMENT

1985 Financial Elements and Reporting

Adopted Amendment: N.J.A.C. 8:31B-4.6, 4.65

Proposed: September 4, 1984 at 16 N.J.R. 2326(a).
Adopted: October 15, 1984, by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: October 18, 1984 as R.1984 d.500, **without change**.

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

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): October 17, 1986.

Summary of Public Comments and Agency Responses:

Comments: All respondents agreed with the proposed reporting deadlines. Two parties commented that criteria for extension should be identified.

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All respondents were in favor of the Private Room Differential Income being treated as Case C when the room is specifically requested by the patient.

Response: The Department feels that is has demonstrated exceptional reasonableness regarding the extension of deadlines and feels that no further modification is warranted.

Full text of the adoption follows.

8:31-4.6 Reporting period

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

(c) Each calendar year's Financial Elements and Reporting Forms as defined in N.J.A.C. 8:31B-4.131 are due on May 31 of the following year. Each year's Audited Financial Statement is due on May 31 of the following year. Failure to meet these time frames may result in penalties as stated in N.J.A.C. 8:31B-3.3.

8:31B-4.65 Patient convenience items

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

(f) Private Room Differential Income above a hospital's most common charge for a semi-private room for similar routine services, when specifically requested by the patient is excluded and treated as Case C. Where ordered by the attending physician for medical necessity, income is excluded and treated as Case C. Hospitals should maintain separate revenue classifications for medically necessary and patient convenience private room revenue. Patients admitted or transferred to private rooms because of the unavailability of semi-private should be charged at the semi-private room rate, with a courtesy allowance (Policy Discount) generated for the differential (see N.J.A.C. 8:31B-4.15). No attempt need to be made to identify private room Routine Service cost differentials.

(a)

THE COMMISSIONER

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

Adopted Amendments: N.J.A.C. 8:33H-1.1, 2.1, 3.1-3.6

Proposed: August 20, 1984 at 16 N.J.R. 2200(a).
Adopted: October 15, 1984 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: October 18, 1984 as R.1984 d.502, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

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

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order 66(1978): September 18, 1985.

Summary of Public Comments and Departmental Responses:

Written comments were received during the comment period. Commentors include:

New Jersey State Department of Human Services
New Jersey State Division of Medical Assistance and Health Services
New Jersey Department of the Public Advocate
New Jersey Association of Health Care Facilities
New Jersey Association of Non-Profit Homes for the Aging
Presbyterian Homes of New Jersey
Life Care Services Corporation
Gerontological Planning Associates, in a report to the New Jersey Housing and Mortgage Finance Agency

Comments: The Division of Medical Assistance and Health Services indicates several suggested changes in the General Provisions. It suggests that a long-range plan should accompany a transfer of ownership if it is not on file. A transfer of owi. rship should not provide a reason for excepting the existence of a long-range plan and, therefore, this exception should be removed. Also, it is suggested that reference be made in this section to the time frame requirements for the completion of construction within the Certificate of Need process. Further, it recommends the rewording of the phase relating to Local Medical Assistance Unit Activities to: "Documentation from the Medicaid District Office that Periodic Medical Reviews reflect optimal utilization control activities, when applicable," which it feels more accurately delineates the process.

Response: While potentially valid, the removal of the exception to long-range plan submission for transfer of ownership will not be addressed at this time, as the Department is in the process of effecting a temporary suspension of the long-term care facility long-range plan requirement for the purpose of allowing sufficient time to study and improve the process. The construction time frame requirements properly belong in the general Certificate of Need Manual, which is currently in the process of major revision. The requested language regarding Medicaid utilization activities has been added to this section.

Comment: The Division of Medical Assistance and Health Services questions whether 65 years and over appropriately defines the elderly for purposes of this manual, as age 60 is currently used by other entities within State government, and suggests changing the definition to age 60 years and over.

Response: The Department has consistently utilized the 65 years and over age breakdown in long-term care facilities and services planning and for purposes of determining the target or at-risk population in bad need methodology calculations, as confirmed by the recent State Nursing Home Task Force. In view of the improved health status and increased longevity of the elderly, it would be counter-productive to lower the age breakdown in determining the need for costly institutional long-term care services; in reflecting these population characteristics, the Department's bed need methodology is weighted in favor of the elderly age 75 years and over.

Comment: The Division of Medical Assistance and Health Services is concerned about the definition of Medicaid-eligible patients, which appears to prohibit the inclusion of the private to Medicaid patient, particularly as to how these patients could be dealt with under the 35 percent minimum direct admission requirement. It suggests that the word "not" be stricken from the second sentence of the definition, so that private to Medicaid patients (both private pay and spend down patients) are covered under utilization requirements, as even these latter persons are Medicaid eligible for ancillary services while paying privately for nursing home care.

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The Association of Health Care Facilities specifically requests that the definition of Medicaid-eligible patients be amended to allow "short-term spend down" categories to count toward the 35 percent direct Medicaid requirement. It notes that facilities admit patients who don't quite financially qualify for Medicaid and who must spend down to the $1,500 eligibility figure. This is known upon admission and beds for such individuals could become a problem if "short-term spend downs" do not count. The Association recommends that the proposed regulation be amended to allow this category to count if the spend down period is within the one year time frame in which any Certificate of Need holder must meet the 35 percent quota. The regulations may have to be amended in other sections also in order to carry forth this definition change.

Response: The Department introduced the 35 percent minimum direct Medicaid-eligible patient admission requirement specifically in response to the tremendous difficulties that Medicaid patients were experiencing in gaining admission to long-term care facilities, in view of the increasing number of facilities which imposed the requirement of a contract for private payment for varying durations as a condition for admission prior to eventual acceptance of Medicaid reimbursement. This practice served to impose severe financial hardship on many patients' families, as well as to deny access to long-term care for many Medicaid patients who had no responsible family members or ones with sufficient assets. This situation does not appear to have been sufficiently alleviated, particularly since the Medicaid utilization requirement has been imposed only on those new facilities and bed additions approved subsequent to May 1982, to warrant the complete dissolution of the requirement, which would be the consequence of including private to Medicaid patients in the "direct" Medicaid eligible definition. It does not appear that many potential Certificate of Need applicants for long-term care beds have been discouraged nor that legitimate private pay patients have been discriminated against as a result of this requirement. However, the Department acknowledges the potential problem of the short-term spend down patient sufficient to warrant the limited relaxation of the definition to include an initial maximum 60-day spend down period. Extension of the period to within the initial one year time frame for compliance would serve to again limit the intended access for many patients.

Comment: The Department of Human Services notes the increase in the maximum size of residential health care facilities from 100 to 240 beds, acknowledging that financial feasibility apparently requires that free standing RHCFs often exceed 100 beds. While it expresses the continued belief that "smaller is better" when it comes to RHCFs and prefers the more homelike, noninstitutional, and "normal" environments possible in a smaller facility, it realizes the practical necessity of permitting larger RHCFs. In this regard, the Division recommends that language be included noting that, while 240 beds is the maximum, smaller structures are preferable. Moreover, it urges that it be indicated that larger facilities should be designed in a manner that makes them as "homelike and noninstitutional" as possible.

The Association of Non-Profit Homes for the Aging objects to this change because no factually-based rationale supporting such an increase accompanies the proposal and larger residential care facilities run the risk of becoming impersonal and contradictory of the State's goal of providing a homelike environment.

Response: The Department agrees that smaller facilities are preferable for the purpose of maintaining the more desirable noninstitutional environment. However, in view of increasingly stringent life safety codes and costs of new facility construction, as opposed to the conversion of older multiple dwellings which was prevalent earlier, it was recognized that financial feasibility required larger facilities in order to provide the greatest number of beds most needed for limited payment SSI recipients. An independent financial feasibility study comparing 100 versus 240 beds in this regard was submitted by the first applicant for new facility maximum size construction. In view of the common concerns expressed, the language requested by the Medicaid Division has been added to the maximum size guideline.

Comment: The Department of Human Services expresses concern regarding the siting of residential health care facilities in that RHCFs, boarding homes and group homes tend to be concentrated in certain geographical areas, usually older urban locations. In several areas, for example, Asbury Park, East Orange, Newark, etc., communities have raised significant concerns regarding saturation. The local social and health services network are overburdened by the inordinate concentrations of service dependent but ambulatory residents. It urges that language be added to specify that additional RHCFs should not be located in areas they will overburden the local health, social service, and community support systems.

Response: The Department acknowledges this concern and has added the requested language to the general bed need standard.

Comment: The Division of Medical Assistance and Health Services supports the development of a guideline for the maximum size of medical day care centers and 50 slots appears to be a reasonable limitation. It also feels that the 75 percent occupancy rate reflected for medical day care is a reasonable standard. The Division is totally supportive of addressing medical day care as a separate service in the establishment of need.

The Association of Non-Profit Homes for the Aging is concerned by the absence of a rationale to support the establishment of a 50-slot maximum size limit for new medical day care programs. In addition, it proposes that religiously-sponsored medical day care programs should be permitted to serve their special constituencies without reference to a mandated occupancy level, thereby permitting the sponsor to meet its elderly's particular religious, social, and cultural needs.

Response: The Department instituted need and other selective criteria for medical day care as a separate service in response to proliferation of Certificate of Need approved programs, largely as part of new long-term care facility projects seeking to include a required alternative level of care to enhance their prospects for approval. It was feared that should the majority of these projects reach implementation, many would suffer from severe under-utilization due to their number and proximity, thereby undermining their cost-effectiveness as a lower level alternative. The Department developed these criteria in close cooperation with knowledgeable Medicaid Division staff who had been continuously involved with the development of the service in New Jersey. Based on long-standing experience, it was determined that 50 slots represented an optimum size in terms of adequate utilization, effective service delivery, and service area travel time. It should be noted that, as a guideline, the maximum size may be exceeded in exceptional circumstances. While all health

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care services should be optimally utilized, regardless of sponsorship, the occupancy rate should be viewed as more of a measure than a mandate, to be considered in requests for expansion or development of additional medical day care facilities.

Comment: The Division of Medical Assistance and Health Services continues to support the emphasis on noninstitutional alternatives and institutional housing alternatives to inpatient long-term care. This method of addressing the subject provides greater flexibility to the applicant then previous references in the manual. The provision of consultation prior to submission of the application will provide an up-to-date perspective on types of alternatives which are most needed and should be included in the Certificate of Need process.

The Association of Non-Profit Homes for the Aging generally supports the concept of residential services as a wise means of providing for the needs of the expanding elderly population, but urges caution in mandating these services because residential health care is not financed or conceived in a manner that could support a substantial expansion of the existing system. The unreasonably low SSI payment level dictates that new facilities must be large (and therefore impersonal) in order to be feasible. The payment system must encourage establishment of a more personal (and therefore beneficial) scale. The Department should initiate cooperative efforts with the Department of Human Services to upgrade residential health care in a manner consistent with the recommendations of the Nursing Home Task Force made last year.

The Department of the Public Advocate indicates that the regulations should be revised to ensure that adequate residential care beds are constructed. The Statewide Health Coordinating Council has received Certificate of Need applications that offer to construct both nursing home and residential health care beds. By offering to construct RHC beds, applicants are given a priority status when competing for long-term care beds with other applicants. However, it has come to the SHCC's and the Public Advocate's attention that some applicants are delaying the construction of RHC beds and only constructing LTC beds. This situation allows applicants to undermine the Certificate of Need review process. To remedy this situation, it recommends adding the following language to the required documentation relating to addition of beds: "A written commitment to construct long-term care facilities and residential care facilities on a concurrent basis."

Response: The Department has emphasized residential alternatives to long-term care beds, as these are currently determined to be the most effective and needed as confirmed by the State Nursing Home Task Force. Other types of alternatives such as congregate housing are acceptable within this context. While it is acknowledged that the current Supplemental Security Income payment level is relatively low, the SSI admissions minimum required of applicants has been kept at a low 10 percent of bed complement. This practice does not appear to have discouraged applications for the several thousand residential health care beds, both freestanding and long-term care facility based, which have been approved in the past few years. Many of these RHCFs were under 40 beds in size. In fact, recent trade journal articles relating to LTC facility financing have encouraged the establishment of RHCFs as a source of private pay patients. The private pay charges for RHC are generally considerably lower than those for LTC and, if the higher level of care is not really needed, thus makes appropriate residential care acceptable to a greater number of persons. The Department agrees that the preferential status accorded LTC facility applicants proposing RHC beds warrants the remedy recommended by the Public Advocate. The requested language will be proposed in a future amendment.

Comment: The Department of Human Services indicates its support of the Medicaid utilization amendments which propose a range of revisions intended to clarify current practice. However, it notes that legislation currently pending may either obviate the need for these regulations or, conversely, require further significant changes in them. Several bills now being considered by the legislature would prohibit the use of private pay contracts for Medicaid eligibles and/or require admissions on a first-come, first-served basis in facilities below the average Medicaid utilization rate. It is not entirely clear what impact these potential laws would have on the existing 35 percent Certificate of Need standards. Rather than attempt to anticipate the effects, it simply should be recognized that, in the near future, the manual may need to be again revised to be consistent with the pending laws.

The Division of Medical Assistance and Health Services recommends that the words "license issuance" is replaced by "Medicaid approval"; if the utilization criteria is based upon license issuance, private pay patients receive preferential treatment as it could take several weeks for Medicaid status after licensure. In regard to non-compliance measures, the Division feels that the wording is too vague in terms of which Department unit will be responsible for "appropriate licensure action" and the "imposition of admission restrictions", if directed at Medicaid admissions, would not serve as a punitive measure for most long-term care facilities. It suggests that fines would be more effective.

Response: The Department prefers to retain the time period references to license issuance in that it is a process over which it exerts some control, as is the case in the corresponding non-compliance measures. By the same token, an applicant could deliberately delay application for Medicaid certification and further extend preferential treatment of private pay patients. A legitimate delay of several weeks in the receipt of Medicaid status should not unduly affect Medicaid utilization as facility occupancy is usually phased in over at least several weeks. It is felt to be generally known that the Department's licensing unit is responsible for licensure actions and that this does not require further clarification. The imposition of admission restrictions would not be directed at Medicaid patients but at private pay patients to achieve the required Medicaid utilization. Fines are another action which could be taken if determined necessary.

Comment: The Department of the Public Advocate indicates that the regulations should be revised to ensure greater accessibility to health care for low income individuals, as this is a major goal of health planning. In implementing this goal, the State Health Coordinating Council and the Department have required applicants for Certificates of Need to provide a reasonable volume of free and below cost services to low income persons and to accept certain patients whose services are reimbursed by government payors. Thus, long-term care facility applicants are required to accept 35 percent of direct Medicaid-eligible and Medicare patients for all new nursing home beds, and home health agencies are required to provide free and below cost services in an amount equal to 10 percent of their total services. These requirements began as conditions on Certificates of Need and were converted to regulations, which have the legal force of guaranteeing that all providers of a particular service are treated equally. Similarly, the SHCC and the Department have required health area providers to seek to establish residential health care services to provide individuals who are eligible for Supplemental Security

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Income (SSI) with those services. Specifically, all Certificates of Need for RHC services must make a minimum of new or expanded beds available to persons who are SSI eligible. To ensure consistency with the present practice relating to home health care services, the Public Advocate recommends that the following language be added to the regulations: "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 make available at least 10 percent of presently existing and new beds to persons receiving or eligible for Supplemental Security Income."

Response: The Department acknowledges the need to ensure accessibility to residential health care services for SSI recipients. The requested language will be proposed in a future amendment.

Comment: The Presbyterian Home of New Jersey expressed strong concern regarding the significant proposed changes in the requirements for continuing care or life care communities/facilities which is felt will have a negative effect on their development. Primarily, it objected to the increases in the required minimum number of residential units from 200 to 300 units which correspondingly increases the required ratio of residential units to long-term care beds from 3.3:1 to 5:1 based upon a minimum 60-bed nursing facility. Presbyterian Homes notes that before a community of this type is pursued an independent economic feasibility study, which analyzes specific demographic data, is prepared; usually, the primary services area is considered to be no greater than 30 miles from the project location and the secondary area up to 50 miles. Also, in areas of substantial development such as northeast New Jersey, significant acreage may not be available; height, density, and other zoning requirements, may preclude a 300-unit facility where a 200-unit facility would fit more readily. In addition, Presbyterian Homes feels that if the 5:1 ratio is maintained and only 60 long-term care beds are allowed for 300 residential units, then provisions for added nursing beds should be made based on demonstrated need of the life care facility. The requirements of 60-bed multiples probably should not be applied to long-term care beds for a life care/continuing care community. While economy of scale is important in freestanding long-term care facilities because substantial public monies are utilized to pay for patient care, it should be noted that the costs of a fully operating nursing unit of a life care/continuing care community is paid from private money through resident fees. Since the elderly population will grow, not only in absolute numbers but in average age, the change proposed would restrict the service needs of the residents of these communities. The Presbyterian Homes points to its own experience with the Meadow Lakes life care community (320 resident units and 90 long-term care beds), which had an average age of 73 years for the resident population when it first opened and reached full occupancy; nearly 20 years later the average age of the resident population is 85 years and that of the residents in the nursing center is 91 years. Therefore, Presbyterian Homes suggests that the regulations presently in effect remain as is, which would accomplish the flexibility that is necessary in serving the elderly in New Jersey.

The Association of Non-Profit Homes for the Aging is concerned that the Department would change its rules as soon after initial adoption and without experience in the effects of the original regulation. It, therefore, urges that this part of the proposal be withdrawn as premature and unwarranted, presenting the following additional arguments which militate against the proposal: 1. Only one of the four existing life care communities in the State has more than the proposed minimum of 300 apartments and the other three appear to be operating efficiently (in Pennsylvania, only 3 of 27 life care communities exceed 300 apartments); 2. The New Jersey Housing and Mortgage Finance Agency, which is developing guidelines for the development of new life care communities in New Jersey, appears not to have been contracted; 3. The existing mandated ratio of apartments to nursing beds has not been proven inadequate in practice; and 4. The existing exemption from the indigency requirements also has been disproven in practice.

The Gerontological Planning Associates firm was the consultant to the New Jersey Housing and Mortgage Finance Agency and this specific recommendation regarding the Department's long-term care regulation comes from their report: "The Agency should further analyze the effect of the 5 to 1 (independent units to nursing beds) ratio necessary for a continuing care retirement community to undergo special review under the Certificate of Need process. We believe that this requirement will seriously limit the types of CCRCs which can be built in New Jersey is 60 beds)."

Life Care Services Corporation also expresses concern with restricting the exemption from certain Certificate of Need standards for life care communities to only those having a minimum of 300 independent living units. It, too, believes this requirement could greatly hinder the development of life care communities in New Jersey. Not only would this restriction limit the development of new communities to larger market areas, but it also would drastically limit available sites due to common density restrictions in local zoning codes. The combined effects of having to either locate a market able to support 300 units and a site where the zoning could accommodate this density, or the alternative of seeking market areas able to support a smaller project (i.e., less than 300 units) with an existing need for long-term care beds could preclude much of the State for new life care development. Though it recommends reducing the minimum facility size to at most 200 units, Life Care Services Corporation fully supports the other provisions of the proposed regulations restricting the number of nursing care beds and access by nonresidents.

Response: The Department's intent in promulgation of a policy amendment exempting life care communities from certain long-term care facility review criteria was to encourage their development as an alternative approach to heavy reliance on institutional care and to enhance the available options within the existing system of long-term care services. The intent was not to permit totally unrestrained development and excess capacity in the face of existing resources, nor to provide a loophole for additional long-term care facility construction in the face of large bed excesses statewide. The Department believes that sufficient experience has been gained in a year of Certificate of Need application reviews to amend certain revisions in the regulation. Life care is not a new or untested concept requiring further experience for evaluation purposes, nor is it an unknown entity within the State. The Department feels that it is more prudent to address potential problems prior to the approval and implementation of numerous large and costly projects, rather than to wait for widespread and permanent evidence that its concerns may have been justified or that it may just have entirely too much of a good thing.

The Department believes that the increase in the required minimum number of residential units and corresponding need ratio is warranted based upon the existing long-term care bed need methodology and the noninstitutional emphasis of life

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care communities. While the methodology allows a maximum ratio of 4.5 beds per 100 elderly persons, the life care exemption previously allowed for a minimum ratio of 15 beds per 100 elderly at complete double occupancy of the 200 residential units and total life care resident occupancy of the long-term area beds. At worst, with single residential occupancy and 70 percent required LTD occupancy by life care residents, the maximum ratio was 21 beds per 100 elderly. The proposed increase reduces the ratios under the best and worst cases illustrated above to 10 and 14 beds per 100 elderly. In addition, the provision of congregate services in the residential units should serve to further delay the internal need for institutional care among life care residents, despite their more advanced age, in comparison to the general elderly population. Thus, the residential unit increase serves to better justify exempting life care communities from the long-term care bed need and competitive review by providing greater assurance that the majority of beds will be utilized by their residents and that there will not be an adverse impact on surrounding facilities. The Department would like to point out in this regard that while states such as Pennsylvania may have a predominance of smaller life care communities with under 300 units, many states such as Pennsylvania include their communities in their long-term care bed need.

The Department feels that should future experience reveal the need for additional LTC beds within the life care community, this situation can be realistically dealt with through various approaches preferable to overbedding at the onset. Economy of scale should be a consideration in life care in order to retain costs at a reasonable level for resident affordability and to maintain the operation's financial viability. By the same token, the very fact that the life care primary service area is considered to be within a 30-mile radius of the proposed site should encourage the use of self-limiting factors such as land and zoning requirements to prevent the advancement of multiple service areas upon one another. Situations such as the approval of three life care communities within the same municipality in Ocean County during the past year may provide reason for concern if they are duplicated throughout the State.

Comment: The Presbyterian Homes notes that the proposed regulations state that evidence of approved financing for the residential units of a life care community must be provided before the Department will review any plans for the long-term care facility. It indicates that this probably will not pose a problem if it refers to architectural plan review only. However, if this applies to the Certificate of Need process the proposed developer is in a "Catch 22" situation, as the financial community normally wants the developer to have all approvals before they commit funds, including zoning variances if needed, site plans, and Certificate of Need. It hopes that financing will not be applied to Certificate of Need.

Response: The Department believes that the reference to review of long-term care facility construction plans, as apposed to Certificate of Need applications, is clear in regard to evidence of approved financing for residential housing.

Comment: The Department of Human Services notes that the amendments codify the long-term care bed need in the form of a guideline. The methodology is the bed-to-population ratio recommended by the State Nursing Home Task Force. It has the Department of Human Services' full support and should be vigorously adhered to in order to avoid unnecessary institutional overexpansion. Within the next year or two, the bed ratio should be examined again in light of the increased emphasis on home and community-based services. If it is successful in expanding the non-institutional sectors of long-term care services through its various initiatives, it should be possible to reduce the current ratio of beds to the at-risk population. Alternatively, the 1,800 "slots" of the Department of Human Services' Community Care Program for the Elderly and Disabled might be included in the bed count. Regardless of the approach eventually selected, it should be recognized that achieving a balanced long-term care system will enable us to further reduce our reliance on institutional capacity.

Response: The Department confirms its intent to adhere to the long-term care bed need methodology and acknowledges the necessity of periodic review in response to changing activities and circumstances in the area of long-term care services. The Department has continually sought to implement its long-standing planning goals regarding the promotion of a more comprehensive system of long-term care services and the limitation of institutional expansion as the only response to the long-term care needs of the frail elderly.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***, deletions from proposal shown in brackets with asterisks *[thus]*).

SUBCHAPTER 1. GENERAL PROVISIONS

8:33H-1.1 General provisions

(a)-(d) (No change)

(e) Long-term care facilities seeking Certificate of Need approval to add beds to an existing facility or to construct a new facility must demonstrate an efficient use of existing beds. Among the factors to be considered in assessing the efficient use of existing beds shall include:

1. (No change)

2. Documentation *[that the facility is participating in its Local Medical Assistance Unit assessment activities,]* * **from the Medicaid District Office that Periodic Medical Reviews reflect optimal utilization control activities,*** when applicable; and

3. (No change)

SUBCHAPTER 2. DEFINITIONS

8:33H-2.1 Definitions

In this chapter certain terms 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-

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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. ***The only exception to this definition will be in regard to those patients who are subject to a "spend down" period of 60 days or less upon admission to a long-term care facility.***

"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.

SUBCHAPTER 3. STANDARDS AND GUIDELINES FOR PLANNING AND CERTIFICATE OF NEED REVIEWS OF LONG-TERM CARE FACILITIES AND SERVICES

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 240 beds. This guideline may be exceeded in situations where existing facilities currently exceed 240 beds. ***Since it is generally acknowledged that smaller facilities are preferable in terms of resident care, larger facilities should be designed in a manner that provides as homelike and noninstitutional an environment as possible.***

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 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 care beds shall be governed by the formula and methodology described in N.J.A.C. 8:33H-3.10. In determining the need for residential health care beds, emphasis shall be placed on the "State Nursing Home Task Force" report of July 21, 1983 and on local Health Systems Agency findings of need. ***Additional residential health care beds should not be located in areas where they will overburden the local health, social services, and community support systems.***

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 contractural 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

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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 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.

5. Standard III 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 be occupied by direct admission 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 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 occupied by direct admission 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 occupied by direct admission 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 occupied by direct admission Medicare to Medicaid and Medicaid-eligible patients no later than one year from license issuance.

(2) Over a 12-month period of time, a "reasonable" percentage of the facility's total long-term care bed complement must be 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).

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.

6. Standard III-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 300 residential units, may apply for exemption from the long-term care bed need, utilization criteria, and batching cycle requirements. 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 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

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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 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.

2. Standard IV-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.)

v. The conversion will not substantially impair the State's ability to implement the "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, 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 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)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need
Megavoltage Radiation Oncology Services

Adopted New Rules: 8:33I-1.1, 1.2, 1.3
Adopted Amendments: N.J.A.C. 8:33I-1.4, 1.5
Adopted Repeal: N.J.A.C. 8:33I-1.1

Proposed: August 20, 1984 at 16 N.J.R. 2205(a).
Adopted: October 15, 1984, by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: October 18, 1984 as R.1984 d.501, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

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

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): November 2, 1986.

Summary of Public Comments and Department Responses:

Comments were received during the comment period from the following:

Dover General Hospital (DGH)
New Jersey Hospital Association (NJHA)
Radiological Society of New Jersey (RSNJ)

Comment: All three of the commentors objected to the proposed annual minimum utilization for the addition of a second uit (600 patients or 10,500 patient visits) as being set

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too high. The NJHA proposed the use of "projected" rather than "actual" patients or patient visits as an alternative. The RSNJ recommended 450 to 500 patients per year for second units and 750 to 800 patients per year for third units. DGH recommends that additional units should be considered when a minimum utilization of 300 patients or 6,000 treatments per year is achieved and case mix characteristics indicate a need for higher photon energies and/or electron energies.

Response: The minimum annual utilization required for the addition of a second unit represents approximately 84 percent utilization of the equipment and was a unanimous recommendation of the Commissioner's Ad Hoc Technical Advisory Committee. The minimum utilization standard that is proposed also assumes that the existing megavoltage unit is not being used for simulation purposes, since all multiple unit megavoltage programs are being required to have a simulator on site. The presence of a simulator increases the capacity of the existing megavoltage unit by restricting its use to megavoltage treatment purposes.

There are also two distinct utilization standards being proposed. The number of patients as well as the number of patient visits is proposed as a means of assessing megavoltage equipment utilization. Use of these two standards is intended to allow for variations in treatment practices, with some megavoltage programs currently requiring fewer treatment visits per patient than other programs. The proposed standards are intended to indicate an appropriate level of utilization well above the minimum requirements (300 patients, 6200 patient visits) since these minimum requirements represent somewhat less than 50 percent of a megavoltage unit's capacity.

The fact that few existing megavoltage units are in compliance with the proposed utilization requirements for second units can be largely attributable to the relatively large number of existing megavoltage providers and the fact that many existing programs utilize their treatment equipment for simulation purposes. The Department is prepared to amend its minimum utilization requirements for second units, however, which reduces the actual utilization to 500 patients and 9,000 patient visits while also requiring a projection that the 600 patients and 10,500 patient visits is achievable within two years of installation of the second unit.

Comment: Two commentors questioned the appropriateness of establishing a moratorium on new megavoltage programs in the State. The NJHA recommended a clause allowing for geographic isolation and other mitigating circumstances as documented by the applicant and/or the HSA. DGH recommended the possible addition of new programs if "unusual circumstances" as defined by the HSA existed.

Response: The most recent New Jersey cancer incidence figures provided by the Department's Cancer Registry Program indicate a total of 30,612 incident cancer cases reported in 1980. Utilizing cancer incidence rates for males (426.97 per 100,000) and females (405.21 per 100,000) and 1985 population projections, a total of 31,617 incident cancer cases can be projected for 1985. Assuming identical cancer incidence rates and 1990 population projections, a total of 32,827 incident cancer cases can be projected for 1990. Since approximately 50 percent of cancer patients can be expected to receive radiotherapy treatment during the course of their illness, it can be expected that 15,809 cancer patients will require radiotherapy treatment in 1985 and 16,414 in 1990.

The current hospital-based inventory of existing and approved megavoltage radiotherapy units in the State totals 52 units. If these units were to be utilized for only the minimum acceptable patient volume (300 patients annually) the existing hospital-based megavoltage equipment operating at minimal capacity would serve 15,600 patients annually, a figure that nearly equals the 1985 projected cancer cases (15,809 cancer cases) and is only 800 patients short of meeting the 1990 projected demand for these services (16,414 cancer cases). In short, each existing or approved hospital-based megavoltage unit would have to average only 315 patients per year to meet the Statewide demand projected for 1990. Perhaps more importantly, these figures do not include the privately-owned megavoltage units in New Jersey (which number eleven and provide services to a significant volume of patients). It is therefore readily apparent that the current number and location of existing megavoltage resources in the State is sufficient to meet current and future demand for these services. A revision of the rule to allow for additional megavoltage resources would only serve to reduce the patient volume at each existing megavoltage site, duplicating these services and escalating the cost of providing these services Statewide.

Comment: Two commentors questioned the policy of excluding medium/high energy equipment from single unit megavoltage programs. The Radiological Society in particular felt strongly that dual energy megavoltage units can be appropriate for single unit departments and that the denial of this type of equipment would be a "disservice". The NJHA termed the exclusion of dual energy units to be "in contradiction to the intent of the regulation" and recommended the allowance of dual energy equipment in single unit programs "where the application can justify its clinical effectiveness and cost efficiencies".

Response: The Department has recognized that its proposed prohibition of dual energy megavoltage units in single unit departments has raised considerable apprehension within the medical community. The major concern over dual energy megavoltage units, apart from its additional cost, is its need for adequate training of personnel because of its more complex operational requirements. Since dual energy units are rapidly becoming state of the art equipment in single unit departments, their exclusion regardless of an applicant's justification might be detrimental to a program's overall delivery of this service. Amended language has been added at N.J.A.C. 8:33I-1.2 (a) 2 i. to permit consideration of dual energy equipment in single unit departments provided documentation is provided that a sufficient volume of patients will benefit from this equipment and suitable training of key personnel will be conducted prior to installation.

Comment: Physicist members of the Radiological Society of New Jersey (RSNJ) questioned the appropriateness of requiring less than one full-time equivalent qualified radiological physicist for single unit megavoltage departments with linear accelerator equipment.

Response: The need and importance of a qualified radiological physicist in all megavoltage oncology programs is recognized in the proposed rule. The amount of radiological physicist coverage is largely determined by the volume of patients (particularly new patients) treated at any given site. The "Blue Book" report by the Committee for Radiation Oncology Studies of the National Institutes of Health (Febru-

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ary, 1981) recommended one full-time equivalent radiation physicist for every 400 new cancer patients. This recommendation is consistent with the proposed rule, since a full-time equivalent qualified radiation physicist is required in multiple unit megavoltage departments which would be also required to have the necessary volume of patients to justify a full-time physicist. The Department believes that the proposed minimum coverage requirements for a qualified radiation physicist is appropriate as written and should be retained.

In addition upon review of previous applications for these services the Department has found that the documentation of projections of professional component charges and remunerations required at N.J.S.A. 8:33I-1.5(a) 4 has not been adequately addressed by applicants, is an extra burden to the hospitals, and is not necessary for the achievement of the purposes of this proposed rule. This requirement is therefore being deleted from the rule.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***, deletions from proposal shown in brackets with asterisks *[thus]*).

8:33I-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.

8:33I-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 and 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 reinbursement 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 programs ***where they have documented compliance with minimum utilization requirements as defined in 1. above and can justify the equipment in terms of clinical effectiveness and cost efficiency.***

(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 (at its existing unit) of *[10,000]* ***9,000*** actual patient visits *[600]* ***500*** actual patients and project the achievement of 10,500 patient visits and 600 patients within two years of installation of the second megavoltage unit.

2. Multiple unit megavoltage programs must have medium/high energy equipment capability (as defined at N.J.A.C. 8:33I-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. 8:3311.1) ****1. above***.

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.

8:33I-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. 8:33I-1.5 (a)(10).

8:33I-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 is required in multiple unit programs.

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

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(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.

8:33I-1.5 General criteria

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

1.-3. (No change)

4. Provide full written documentation of the purchase and operational costs of the proposed megavoltage unit. The applicant must include both direct and indirect costs, that is, personnel, maintenance agreements, supplies and overhead. The cost of the remodeling or renovating necessary to accommodate the therapy unit should be included. Projections of anticipated revenues during the first two years of operation must be supplied with the certificate of need application. *[An applicant Facility must include in its projections the gross remunerations and charges for its professional component.]*

5.-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 404, CN 360, Trenton, New Jersey 08625.

10. An ad hoc technical advisory committee shall review and comment on this regulation 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.

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 equipment, 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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(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Ambulatory Care Facilities Standards for Licensure

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

Proposed: August 20, 1984 at 16 N.J.R. 2208(a).
Adopted: October 15, 1984, by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: October 18, 1984 as R.1984 d.497, **without change.**

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

Effective Date: November 5, 1984 for amendment.
Expiration Date pursuant to Executive Order No. 66(1978): August 9, 1986.

Summary of Public Comments and Department Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:43A.

Full text of the adoption amendment to the readoption follows.

8:43A-1.10 Expiration date of chapter
This chapter concerning Ambulatory Care Facilities shall expire on August 9, 1986.

HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medical Day Care Manual Billing Procedures

Readoption: N.J.A.C. 10:65-2

Proposed: September 4, 1984 at 16 N.J.R. 2336(a).
Adopted: October 18, 1984 by George J. Albanese, Commissioner, Department of Human Services.
Filed: October 19, 1984 as R.1984 d.508, **without change.**

Authority: N.J.S.A. 30:4D-6b(12)(16), 7 and 7b.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:65-2.

(c)

DIVISION OF PUBLIC WELFARE

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

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

Proposed: August 20, 1984 at 16 N.J.R. 2219(b).
Adopted: October 18, 1984, by George J. Albanese, Commissioner, Department of Human Services.
Filed: October 19, 1984, as R.1984 d.506, with **technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

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

Effective Date: November 5, 1984.
Operative Date: December 1, 1984.
Expiration Date pursuant to Executive Order 66(1978): July 25, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

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 mu-

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nicipality, 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.)

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]****(a)1-2*** below exist. In addition, these regulations shall apply to an emergency (as described in *[(a)1-3]****(a)1-2*** below) which occurred within the seven calendar days immediately prior to the application for General Assistance if the applicant(s) is determined eligible at the time of application under established procedures and standards.

1.-2. (No change.)

(b) Standards for emergency grants are:

1.-4. (No change.)

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

(a)

DIVISION OF PUBLIC WELFARE

General Assistance
Unearned Income

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

Proposed: August 6, 1984 at 16 N.J.R. 2056(a).
Adopted: October 18, 1984 by George J. Albanese, Commissioner, Department of Human Services.
Filed: October 19, 1984 as R.1984 d.507, **without change.**

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

Effective Date: November 5, 1984.
Operative Date: December 1, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): July 25, 1988.

Summary of Public Comments and Agency Responses:

Comment: Comment was received from the Department of the Public Advocate. Although the Public Advocate does acknowledge that general assistance recipients have always been expected to maximize current income, he suggests that the regulation should include a statement indicating that an applicant be given an explanation as to how he or she can increase available unearned income.

Response: The entire process of establishing General Assistance eligibility, pursuant to requirements at N.J.A.C. 10:85-3 and 8 imposes a duty on the Municipal Welfare Department to explore with the applicant all sources of potential income. Such exploration embraces guidance to other programs and/or services to effect the availability of an optimum amount of income. The Department thus believes that further modification of the proposed text is not warranted.

Full text of the adoption follows.

10:85-3.3 Financial eligibility

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

(e) Rules concerning unearned income are:

1. Definition: Unearned income includes net income from roomers, roomer-boarders (except as in (c)2ii above), table-boarders, rental of apartments or housekeeping units, returns from capital investments such as dividends and interest, bene-

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fits and pensions, annuities, contributions from relatives or others, compensation payment and so forth.

i. All unearned income which is actually being received during the period for which assistance is being provided shall be counted in determining eligibility and in computing the grant. When available unearned income can be increased by action of an applicant/recipient, e.g., terminate a voluntary tax deduction, the applicant/recipient must, as a condition of eligibility, take such action.

ii. (No change.)

2.-5. (No change.)

(f) (No change.) (See current proposal at 16 N.J.R. 683(a) April 2, 1984.)

(g) (No change.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Child Abuse and Neglect Cases

Readoption: N.J.A.C. 10:129

Proposed: August 20, 1984 at 16 N.J.R. 2224(a).
Adopted: October 11, 1984 by George J. Albanese, Commissioner, Department of Human Services.
Filed: October 11, 1984, as R.1984 d.489, **without change**.

Authority: N.J.S.A. 9:6-8.36(a).

Effective Date: October 11, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): October 11, 1989.

Summary of Public Comment and Agency Responses: **No comments received**.

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

INSURANCE

(b)

DIVISION OF ADMINISTRATION

Petitions for Rules

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

Proposed: August 20, 1984 at 16 N.J.R. 2224(b).
Adopted: October 19, 1984 by Kenneth D. Merin, Commissioner, Department of Insurance.
Filed: October 19, 1984, as R.1984 d.511, **without change.**

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 52:14B-4(f).

Effective: November 5, 1984.
Expiration Date Pursuant to Executive Order 66(1978): November 5, 1989.

Summary of Public Comments and Agency Responses:

The Department of Insurance received on public comment on the proposed new rule concerning public petitions for rulemaking action by the Department (N.J.A.C. 11:1-15). This commenter, a representative of the Mutual Service Office, expressed concern over the proper interpretation of N.J.A.C. 11:1-15.2(a)(4). This paragraph specifies that a request for rulemaking action must include the Department's authority to take the requested action. This writer felt that the provision was unclear and, if the authority referenced in the rule was not that specified at N.J.S.A. 52:14B-4(f), questioned whether or how a petitioner would be able to furnish the necessary information.

The Department believes that it is reasonable to expect a petitioner for rulemaking action to focus on the issue of the statutory as well as any other legal basis, authorizing the Department to undertake the requested regulatory action. Further, this provision of the rule simply parallels a requirement already set forth in the statutes (N.J.S.A. 52:14B-4(f)(3)) and, accordingly, has been retained in the adopted rule.

Full text of the adoption 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:

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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 LICENSING

Educational Requirements for License Examinations in Property and Casualty Insurance

Adopted Amendments: N.J.A.C. 11:2-1.1

Proposed: July 16, 1984; 16 N.J.R. 1940(a).
Adopted: October 19, 1984 by Kenneth D. Merin, Commissioner, Department of Insurance.
Filed: October 19, 1984, as R.1984 d.515, **with changes** not requiring additional notice and comment. (See N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e); 17:22-6.6; 17:46C-13.

Effective: November 5, 1984.
Expiration Date Pursuant to Executive Order 66(1978): November 16, 1986.

Summary of Public Comments and Agency Responses:

One comment was received during the public comment period from Laura M. Flachs, of the insurance firm of Shenberger and Flachs, Inc., on behalf of the Professional Insurance Agents Association of New Jersey. Ms. Flachs' remarks concerned two areas: the small amount of time devoted to "Protecting [sic] and Evaluating Needs" in comparison with the hours devoted to "insurance related topics" and the possible addition of a waiver of the educational prerequisite for licensing of an individual holding the Certified Insurance Counselor (CIC) designation.

With regard to Ms. Flachs' first comment, she suggested that "perhaps more time should be considered for need evaluation and less time on 'insurance related topics.' " The Department's view is that the content of "insurance related topics" is the basic definitional material essential for comprehension of fundamental insurance concepts and that area should not be deemphasized.

It has been the Department's conclusion that the bulk of preparation should highlight the basics, and the one hour devoted in the course outline to prospecting and evaluating needs correlates with the standardized property and casualty test, where that topic represents only two percent of the total material tested.

With regard to Ms. Flachs' second comment regarding waiver for completion of the Certified Insurance Counselor (CIC) designation, N.J.S.A. 17:22-6.9 clearly limits the commissioner's power to grant a waiver. The property and casualty underwriter designation is expressly mentioned as being eligible for waiver in the statute. No other designation is so mentioned. To include any other designation would require legislative amendment after an extensive review.

The Department of Insurance has, in any case, analyzed the areas covered in the CIC course in comparison with those covered in the New Jersey property and casualty insurance examination. The Department has determined that, first, one-third of the latter examination, that portion dealing with New Jersey law, is not covered in the CIC course. Also, the CIC course in total covers only 12 percent of the total topics on the property and casualty examination for New Jersey. Although the CIC course includes many substantive areas of value, the areas of dissimilarity to the subject matter required of New Jersey property and casualty license examinees are too great to consider waiver of the educational requirement.

Three revisions have been made by the Department as a result of close review of the proposal. The first revision adds several words in N.J.A.C. 11:2-1.1(a) for the sole purpose of clarifying any ambiguity with regard to the distinction between listed requirements for full property and casualty insurance licensure (N.J.A.C. 11:2-1.1(a)(1)) as separate from the more limited license courses of paragraphs 2, 3, 4 and 5.

The second revision removes "Legal Services Insurance" from the course outline for morgtage guaranty insurance. N.J.S.A. 17:46A-4(e)(1) prohibits mortgage guaranty companies from transacting any class of insurance other than mortgage guaranty insurance. Since mortgage guaranty companies cannot write legal services insurance, item IV has been deleted from the course outline.

The third change made by the Department is the addition of the phrase "household employees" to the term "inservant workers' compensation" for purposes of clarification.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

11:2-1.1 Educational prerequisites for license examinations in property and casualty insurance.

(a) The following program***s*** of stud*[ies]***y*** must be successfully completed as *[a]* prerequisite to admission to

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the State examination for an agent's, broker's, or solicitor's license in *[the]* ***each indicated*** property and casualty insurance field.

1. ***Full*** property and casualty insurance course outline

General property insurance concepts		Hours of Classroom Instruction
I.	Insurance/Insurance related topics	10 hours
II.	Policy provisions	8 hours
III.	Types of policies	11 hours
IV.	Perils, exclusions, deductibles and liability	8 hours
V.	Prospecting and evaluating needs	1 hour
VI.	Servicing clients	1 hour
VII.	Presentation and acceptance	1 hour
General casualty insurance concepts		
I.	Insurance/Insurance related topics	10 hours
II.	Policy provisions	8 hours
III.	Types of policies	11 hours
IV.	Perils, exclusions, deductibles and liability	8 hours
V.	Prospecting and evaluating needs	1 hour
VI.	Servicing clients	1 hour
VII.	Presentation and acceptance	1 hour
New Jersey laws regarding property and casualty insurance		
I.	Commissioner	2 hours
II.	Definitions	2 hours
III.	Licensing	3 hours
IV.	Business practices	6 hours
V.	Homeowner '76	2 hours
VI.	Fair plan	1 hour
VII.	No fault automobile	8 hours
VIII.	*[Workmen's]* ***Workers'*** compensation	4 hours
IX.	Boiler and machinery	1 hour
X.	Inservant workers' compensation ***(household employees)***	1 hour
XI.	Individual health	4 hours
XII.	Group health	3 hours
XIII.	Legal services insurance	1 hour
	Review and examination	3 hours
Total hours of study		121 hours

2. ***Limited lines;*** Bail bonds course outline

		Hours of Classroom Instruction
I.	Introduction and responsibilities of agents	5 hours
II.	Laws pertaining to the licensing of agents, brokers and solicitors	3 hours
III.	Surety bonds—general principles	5 hours
IV.	Legal services insurance	1/2 hour
V.	Review and examination	2 1/2hours
	Total hours	16 hours

3. ***Limited lines;*** Automobile physical damage and liability insurance course outline

		Hours of classroom instruction
I.	General information	7 hours
II.	Automobile physical damage insurance	15 hours
III.	Legal services insurance	1/2 hour
IV.	Liability	6 hours
V.	Review and examination	1 1/2 hours
	Total hours	30 hours

4. ***Limited lines;*** Credit insurance course outline

		Hours of classroom instruction
I.	Introduction and responsibilities of agents	5 hours
II.	Laws pertaining to the licensing of agents, brokers and solicitors	6 hours
III.	Principles of credit insurance	10 hours
IV.	Legal services insurance	1/2 hour
V.	Review and examination	2 1/2 hours
	Total hours	24 hours

5. ***Limited lines;*** Mortgage guaranty insurance course outline

		Hours of classroom instruction
I.	Introduction and responsibilities of agents	5 hours
II.	Laws pertaining to the licensing of agents, brokers and solicitors	6 hours
III.	Principles of mortgage guaranty insurance	10 hours
*[IV.	Legal services insurance]*	*[1/2 hour]*
[V.]	***IV.*** Review and examination	*[2 1/2]* ***3*** hours
	Total hours	24 hours

(b) Curricula developed by insurance education programs must follow the prescribed course outline set forth in (a) above. A detailed curriculum, "Property and Casualty Course Outline," may be obtained from:

Insurance Education Specialist
Division of Licensing
New Jersey Department of Insurance
201 East State Street
CN 325
Trenton, NJ 08625

(c) Modifications to the prescribed course outlines will be permitted only upon good cause shown and at the discretion of the Commissioner. Any permitted modification, however, must retain the New Jersey law portion specified in (a) above.

(d) Courses completed in a duly recognized college or university which are equivalent to the program of studies established by the Commissioner may be considered in lieu of prescribed courses given in schools approved by the Department. If the evaluation of such a course as described by the college or university discloses that it substantially conforms to the established minimum course outline, it will constitute compliance with the educational requirement under N.J.S.A. 17:22-6.1 et seq.

(e) A waiver of the education requirement for the licensing examination will be granted on the following bases:

1. A minimum of five years broad and responsible experience in the applicable field of insurance.

2. A previously held salaried company employee license issued pursuant to N.J.S.A. 17:22-6.10.

3. Previously licensed in New Jersey or another state in the applicable field of insurance.

4. Successfully passing five or more parts of the chartered property and casualty underwriter program.

(f) Applicants are responsible for test preparation if a waiver is granted. An applicant granted a waiver will be permitted to take the examination twice. If unsuccessful after two attempts, the applicant will be required to satisfactorily complete a course of instruction approved by the Department. An application for waiver may be obtained from: The New

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Jersey Department of Insurance, Insurance Education Specialist, License Division, CN 325, 201 East State Street, Trenton, NJ 08625.

(a)

DIVISION OF ADMINISTRATION

Educational Requirements for Licensing Educational Prerequisites for Examinations for Licenses in the Life and Health Insurance Field

Adopted Amendment: N.J.A.C. 11:2-1.3

Proposed: July 16, 1984 at 16 N.J.R. 1943(a).
Adopted: September 28, 1984 by Kenneth D. Merin, Acting Commissioner, Department of Insurance.
Filed: October 1, 1984, as R.1984 d.447, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:46C-13, 17B:22-9(d) as amended by P.L. 1983, c.533, 17B:22-10(d), 17B:22-17(c), 17B:22-21(c).

Effective: November 5, 1984.
Expiration Date pursuant to Executive Order 66(1978): November 16, 1986.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

11:2-1.3 Educational prerequisites for license examinations in life and health insurance

(a) The following program of studies must be successfully completed as a prerequisite to admission to the State examination for an agent's, broker's or solicitor's license in the life and health insurance field:

1. Life insurance course outline

	General life insurance concepts	Hours of classroom instruction
I.	Types of policy and coverage	4 hours
II.	Policy provisions, options and benefits	5 hours
III.	Completing the application and delivering the policy	3 hours
IV.	Taxes, retirement and other insurance concepts	2 hours
	New Jersey laws regarding life insurance	
I.	Laws, rules and regulations pertinent to life, accident and health insurance	4 hours
II.	Business practices	2 hours
III.	Protection of beneficiaries from creditors	1 hour
IV.	Fraternal benefit societies	1 hour
V.	Life insurance solicitation	1 hour
VI.	Minors	½ hour
VII.	Legal services insurance	½ hour
		24 hours

2. Health insurance course outline

	General health insurance concepts	Hours of classroom instruction
I.	Types of policies and coverage	4 hours
II.	Policy provisions, options and benefits	5 hours
III.	Completing the application and delivering the policy	3 hours
IV.	Group insurance, taxation and other insurance concepts	3 hours
V.	Other provisions affecting insurance benefits	2 hours
	New Jersey laws regarding health insurance	
I.	Laws, rules and regulations pertinent to life, accident and health insurance	4 hours
II.	Policy clauses and provisions	2½ hours
III.	Legal services insurance	½ hour
		24 hours

3. Life and health insurance course outline

	General life/health insurance concepts	Hours of classroom instruction
I.	Types of policies and coverage	6 hours
II.	Policy provisions, options and benefits	5 hours
III.	Completing the application/delivering the policy	3 hours
IV.	Taxes, retirement, group insurance and other insurance concepts	5 hours
V.	Other provisions affecting the insurance benefits	2 hours
	New Jersey laws regarding life and health insurance	
I.	Laws, rules and regulations pertinent to life, accident and health insurance	6 hours
II.	Business practices	2 hours
III.	Policy clauses and provisions	3 hours
IV.	Fraternal benefit societies	1 hour
V.	Life insurance solicitation	1 hour
VI.	Minors	1 hour
VII.	Legal services insurance	1 hour
		36 hours

(b) Curricula developed by insurance education programs must follow the prescribed course outlines set forth in (a) above. A detailed curriculum, "Life & Health Course Outline," may be obtained from:

Insurance Education Specialist
Division of Licensing
New Jersey Department of Insurance
CN 325
201 E. State Street
Trenton, NJ 08625

(c) Modification to the prescribed course outlines will be permitted only upon good cause shown and at the discretion of the Commissioner. Any permitted modification, however, must retain the New Jersey law portion specified in (a) above.

(d) Courses completed in a duly recognized college or university, which are equivalent to the program of studies established by the Commissioner, may be considered in lieu of the prescribed courses given in schools approved by the Department.

(e) If the evaluation of such a course as described by the college or university discloses that it substantially conforms to the established minimum course outline, it will constitute compliance with the educational requirement under N.J.S.A. 17B:17-1(c), and 17B:22-1 et seq.

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(f) The Commissioner may grant a waiver of the educational requirement if the applicant was previously licensed in New Jersey or in another state in the applicable field of insurance. Applicants are responsible for test preparation if the commissioner grants a waiver. An applicant granted a waiver will be permitted to take the examination twice. If unsuccessful after two attempts, such applicant will be required to complete satisfactorily a course of instruction approved by the Department. An application for waiver of educational requirement may be obtained from:

The New Jersey Department of Insurance
Insurance Education Specialist
License Division
CN 325
201 East State Street
Trenton, New Jersey 08625

(g) Ticket-selling agents under the present statute (N.J.S.A. 17B:22-12) are required to become licensed, but do not have to qualify by examination. N.J.S.A. 17B:22-10, however, makes it necessary for the applicant seeking any form of life and health agent's license to complete successfully a program of studies established by regulation. The present regulation requires any applicant for an agent's license with health authority to complete satisfactorily a 24-hour course in health insurance. In lieu of meeting the 24-hour requirement, applicants for a ticket-selling agent's license, limited to the sale of accident insurance ticket policies covering the risks of travel, are required to have a 10-hour course of instruction with the following content:

1. General elements of insurance, 2 hours;
2. Fundamental elements of underwriting, 1 hour;
3. Policy provisions and requirements, 4 hours;
4. Agents' duties and responsibilities, 2 hours;
5. Course review and examination, 1 hour.

(a)

DIVISION OF ADMINISTRATION

Insurance Group
Readable Policies

Adopted Amendments: N.J.A.C. 11:2-18, Exhibit B

Proposed: July 16, 1984; 16 N.J.R. 1945(a).
Adopted: October 19, 1984; Kenneth D. Merin, Commissioner, Department of Insurance.
Filed: October 19, 1984, as R.1984 d.514, **without change.**

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 56:12-1 et seq.

Effective: November 5, 1984.
Expiration Date pursuant to Executive Order 66(1978): November 15, 1987.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

EXHIBIT B

AFFIDAVIT OF COMPLIANCE

NAME OF INSURER: _____ FORM NO.: _____

I certify that this contract and related writings comply with the Plain Language Law (N.J.S.A. 56:12-1 et seq.) and with N.J.A.C. 11:2-18.

I certify that the score of the text of the form on the Flesch reading ease test is _____ and that the test score has been accurately calculated as required by N.J.A.C. 11:2-18.

I also certify that the form(s) is printed in not less than 10 point type, one point leading and/or the application in not less than 8 point type, one point leading as required by N.J.A.C. 11:2-18.4.

DATE: _____ _____
NAME AND TITLE OF INSURER'S OFFICER

_____
SIGNATURE

(b)

DIVISION OF ADMINISTRATION

Automobile Insurance
Personal Injury Protection Option

Adopted Amendments: N.J.A.C. 11:3-14.3, 14.4 and 14.5

Proposed: July 2, 1984 at 16 N.J.R. 1692(a).
Adopted: October 1, 1984 by Kenneth D. Merin, Acting Commissioner, Department of Insurance.
Filed: October 1, 1984, as R.1984 d.480, **without change.**

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), P.L. 1983 c.362 and P.L. 1984 c.40.

Effective: November 5, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

11:3-14.3 Optional medical expense benefit deductibles for personal injury protection coverage

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(a) Effective December 3, 1983, each insurer must provide, at appropriately reduced premiums, the option to select medical expense benefit deductibles of $500.00, $1,000 and $2,500 on all automobile policies which include personal injury protection coverages.

(b) The medical expense deductibles shall apply on a per accident basis.

(c) A medical expense deductible elected by the named insured shall apply only to the named insured and any resident relative in the named insured's household, who is not a named insured under another automobile policy and not to any other person eligible for personal injury protection benefits required to be provided in accordance with N.J.S.A. 39:6A-4.

(d) Pursuant to Section 17 of P.L. 1983, c.362 the notice of the deductibles shall be in writing and shall be accompanied by a statement of the possible coordination of other health benefit coverages, prescribed by the Commissioner of Insurance. The minimum language which must be included in the notice is as follows:

The law permits you to select a deductible for the medical portion of your Personal Injury Protection Coverage. You can, under this law, select an "aggregate" deductible of $500.00, $1,000 or $2,500. The deductible is "aggregate" in that the medical bills of all persons to whom the deductible applies are combined to satisfy it. This option may be of interest to those persons who have other health insurance that will pay the deductible amount.

Is a PIP medical expense deductible the right choice for you? If you are willing to pay the amount of the deductible yourself, or if you have health insurance such as Blue Cross-Blue Shield, Medicare, or medical expense benefits from another source that covers you and your resident relatives in auto accidents, you may wish to consider selecting a PIP deductible. Bear in mind health coverages may also contain coinsurance provisions and deductibles which you may have to pay and, your health coverage may not apply to every resident relative in your household.

If you select a deductible, it means that your auto insurance will not pay up to the amount of the deductible for any medical bills for you or your resident relatives which result from injuries suffered in an accident. Costs above that figure will continue to be met by your auto insurance carrier.

For example, if you and three resident relatives are injured in an auto accident and you have selected a $500.00 aggregate deductible, you will be responsible for a total of $500.00 in medical costs.

Medical bills for each of four persons covered by the deductible are added together to satisfy the $500 amount. If you select a $2,500 deductible and you and three resident relatives are injured in an auto accident, you will be responsible for $2,500 in medical costs.

You are not required to select a deductible, of course, and you are free to continue to carry the identical coverage you now have.

Whether or not to choose a deductible, should depend upon our ability to pay a portion of your medical costs, or whether your health insurance carrier will meet the cost.

You should bear in mind that not all health insurance policies contain provisions for payment of a PIP medical expense deductible amount, so it is important that you examine your health policy or contact your health insurer or employer to determine your health policy's provisions.

CAUTION: BEFORE YOU CHOOSE A PIP MEDICAL EXPENSE DEDUCTIBLE, YOU SHOULD FIND OUT IF AND TO WHAT EXTENT YOUR HEALTH CARE COVERAGE WILL PAY FOR MEDICAL EXPENSES FROM AUTO ACCIDENTS.

(e)-(h) (No change.)

11:3-14.4 Optional exclusion of income continuation benefits, essential services benefits, death benefits and funeral expense benefits

(a) Automobile insurers offering personal injury protection coverage shall, at an appropriately reduced premium, provide the named insured the option to exclude all of the following benefits from such coverage:

1. Income continuation benefits;
2. Essential services benefits;
3. Death benefits;
4. Funeral expense benefits.

(b) Election of the exclusion shall result in the elimination of all elements of personal injury protection coverage except medical expense benefits.

(c) An exclusion elected by the named insured in accordance with this subchapter shall apply only to the named insured, and any resident relative in the named insured's household, who is not a named insured under another automobile insurance policy but not to any other person eligible for personal injury protection benefits to be provided in accordance with N.J.S.A. 39:6A-4.

(d)-(i) (No change.)

11:3-14.5 Setoff option entitling an automobile insurer paying PIP medical expense benefits to reimbursement under certain conditions

(a) Automobile insurers offering personal injury protection coverage shall, at appropriately reduced premiums, provide a setoff option whereby the named insured agrees to reimburse the insurer from any award, judgment or settlement for noneconomic loss for the medical expense benefits paid by it, up to a maximum of 20 percent of the award, judgment or settlement.

(b) A setoff option elected by the named insured in accordance with this section shall apply only to the named insured, who is not a named insured under another automobile insurance policy and any resident relative in the named insured's household, but not to any other person eligible for personal injury protection benefits to be provided in accordance with N.J.S.A. 39:6A-4.

(c)-(g) (No change.)

(a)

DIVISION OF ADMINISTRATION

Automobile Insurance
Standards for Buyer's Guide/Written Notice

Adopted Amendments: N.J.A.C. 11:3-15.6

Proposed: July 2, 1984 at 16 N.J.R. 1693(a).
Adopted: October 1, 1984 by Kenneth D. Merin, Acting Commissioner, Department of Insurance.
Filed: October 1, 1984 as R.1984 d.479, **without change.**

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Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), P.L. 1983 c.362 and P.L. 1984 c.40.

Effective: November 5, 1984.
Expiration Date pursuant to Executive Order 66(1978): April 2, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

11:3-15.6 Specific coverages and options to be included in written notice and buyer's guide

(a) At least the following coverages and options shall be included in the written notice and buyer's guide:

1. Optional higher limits of bodily injury and property damage liability, if available.

2. Tort threshold of $200.00 with option to select $1,500 in accord with sections 14 and 14.1 of P.L.1983, c.362.

3. Personal injury protection coverage:

i. Optional medical expense benefit deductibles of $500.00, $1,000 and $2,500 applicable on a per accident basis in accord with section 13A of P.L.1983, c.362. as amended by P.L.1984, c.40.

ii. Optional exclusion for all benefits except medical expense benefits in accord with section 13b of P.L.1983, c.362.

iii. Setoff option in accord with section 13c of P.L.1983, c.362.

iv. Additional personal injury protection coverage in accord with N.J.S.A. 39:6A-10.

4. Comprehensive and collision coverages with deductibles and copayment options in accord with P.L.1983, c.359.

5. Higher limit uninsured and underinsured motorist coverage in accord with P.L.1983, c.362.

(a)

DIVISION OF ACTUARIAL SERVICES

Reserve Standards for Individual Health Insurance Policies

Adopted Amendments: N.J.A.C. 11:4-6

Proposed: August 20, 1984 at 16 N.J.R. 2225(a).
Adopted: October 19, 1984 by Kenneth D. Merin, Commissioner, Department of Insurance.
Filed: October 19, 1984, as R.1984 d.512, **without change.**
Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17B:19-5.
Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order 66(1978): November 5, 1989.

Summary of Public Comments and Agency Responses: **No comment received.**

Full text of the adoption follows.

SUBCHAPTER 6. RESERVE STANDARDS FOR INDIVIDUAL HEALTH INSURANCE POLICIES

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.

11:4-6.4 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) This subchapter contains minimum standards for active life reserves. 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.

11:4-6.5 Types of individual health insurance policies

(a) Type A are policies which are guaranteed renewable for life or to a specified age such as 60 or 65, at guaranteed premium rates.

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(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.

(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 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.

(d) Type D are all other individual policies.

(e) The 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 (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.

(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.

(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.

11:4-6.6 Reserve standards for policies of Type A, B or C

(a) The maximum interest rate for reserves shall be the maximum rate permitted by law in the valuation of currently issued life insurance.

(b) The mortality assumptions used for reserves shall be according to a table permitted by law in the valuation of currently issued life insurance.

(c) Morbidity or other contingency:

1. The minimum standard for total disability due to accident or sickness, shall be the 1964 Commissioner's Disability Table.

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.

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.

4. The minimum standard for accidental death benefits shall be the 1959 Accidental Death Benefits Table.

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.

(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.

(e) The minimum reserve shall be on the basis of a two-year preliminary term.

(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.

(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:

1. The use of mid-terminal reserves in addition to either gross or net pro rata unearned premium reserves;

2. Optional use of either the level premium, the one-year preliminary term, or the two-year preliminary term method;

3. Prospective valuation on the basis of actual gross premiums with reasonable allowance for future expenses;

4. The use of approximations such as those involving age groupings, groupings of several years of issue, average amounts of indemnity;

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;

6. The use of a composite annual claim cost for all or any combination of the benefits included in the policies valued.

(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.)

11:4-6.14 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)

DIVISION OF ACTUARIAL SERVICES

Individual Life Insurance Gender Blended Mortality Tables

Adopted New Rule: N.J.A.C. 11:4-22

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Proposed: June 18, 1984 at 16 N.J.R. 1452(a).
Adopted: September 28, 1984 by Kenneth D. Merin, Acting Commissioner, Department of Insurance.
Filed: October 1, 1984 as R.1984 d.478, **with technical changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and N.J.S.A. 17B:25-19h(viii) and (xi).

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): October 15, 1989.

Summary of Public Comments and Agency Responses:

The Department of Insurance received four written comments on the proposed new rule concerning gender blended mortality tables (N.J.A.C. 11:4-22).

An insurance industry trade association, the American Council of Life Insurance (ACLI), pointed out certain editorial errors which appeared in the definition of "1980 CET Table F" set forth in the proposal at N.J.A.C. 11:4-22.2. A key phrase, "1980 CET Table", was inadvertently omitted from this definition, and the code citation and heading for the section immediately following N.J.A.C. 11:4-22.2 was erroneously included in the definition. The adoption has been amended to reflect both the correct text of the definition, and the proper display of the code citation and heading for the following section, N.J.A.C. 11:4-22.3. The ACLI also noted an error in the formula found in the proposal at N.J.A.C. 11:4-22.3(d). A division line should have appeared between the first and second lines of this formula and is shown in the adopted text which follows.

One insurer noted that the proposed rule authorizes the use of gender blended tables to provide equal cash values and nonforfeiture benefits to males and females; however, it does not authorize the use of these tables for purposes of minimum standards for the valuation of reserves. This rule was proposed in response to the requirements imposed by a United States Supreme Court decision (Norris vs. Arizona Governing Committee 103 S. Ct. 3492). This decision prohibited employers subject to Title 7 of the Civil Rights Act of 1972 from offering employee benefits or defined contribution pension plans which provide benefits that differ by gender. The Department's rule, like the Model Regulation of the National Association of Insurance Commissioners (NAIC) upon which it is based, does not affect minimum valuation standards since the Supreme Court decision did not address state statutory valuation standards.

Finally, two commenters expressed concern regarding the January 1, 1985 cut-off date for the use by insurers of all-male and all-female tables as specified in the proposal at N.J.A.C. 11:4-22.3(c). These commenters recommended that the rule be amended to provide a January 1, 1986 cut-off date for the entire subsection, or, in the alternative, utilize the 1986 date for certain policies converted from group insurance. The commenters argued that revision of the date was necessary in order to allow insurers sufficient time for implementation of the rule's requirements and, with respect to group conversions, to permit insurers additional time to determine the applicability of the Norris decision to such conversions. The commenters also noted that use of the 1986 date would be consistent with the approach taken in the NAIC Model Regulation. In consideration of the comments offered, the Department has revised subsection (c) to incorporate the January 1, 1986 date.

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 4

ACTUARIAL SERVICES

SUBCHAPTER 22. INDIVIDUAL LIFE INSURANCE: USE OF GENDER BLENDED MORTALITY TABLES

11:4-22.1 Purpose

The purpose of this subchapter is to permit individual life insurance policies to provide the same cash surrender values and paid-up nonforfeiture benefits to both men and women. No change in minimum valuation standards is intended by these rules.

11:4-22.2 Definitions

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

"1980 CSO Table, with or without Ten Year Select Mortality Factors" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 National Association of Insurance Commissioners (NAIC) Amendments to the Model Standard Valuation Law and Model Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioner's 1980 Standard Ordinary Mortality Table, with or without Ten-Year Select Mortality Factors.

"1980 CSO Table (M), with or without Ten-Year Select Mortality Factors" means that mortality table consisting of the rates of mortality for male lives from the 1980 CSO Table, with or without Ten-Year Select Mortality Factors.

"1980 CSO Table (F), with or without Ten-Year Select Mortality Factors" means that mortality table consisting of the rates of mortality for female lives from the 1980 CSO Table, with or without Ten-Year Select Mortality Factors.

"1980 CET Table" means that morality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Valuation Law and Model Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioner's 1980 Extended Term Insurance Table.

"1980 CET Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 1980 CET Table.

"1980 CET Table (F)" means that mortality table consisting of the rates of mortality for female lives from the *[11:4-22.3 Construction of gender blended tables for use in the determination of minimum nonforfeiture benefits and minimum reserves]* ***1980 CET Table***.

11:4-22.3 Construction of gender blended tables for use in the determination of minimum nonforfeiture benefits and minimum reserves

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(a) For any policy of insurance on the life of either a male or female insured delivered or issued for delivery in this State after September 11, 1981, a life insurer which has elected or which elects an operative date under N.J.S.A. 17B:25-19h (xi) may file with the Department of Insurance for use as part of the policy form, the approved gender blended mortality tables as described in (b) below and attached as the Appendix to this subchapter, or a description thereof, to determine minimum cash surrender values and minimum amounts and minimum periods of paid-up nonforfeiture benefits.

1. An approved mortality table which is a blend of the 1980 CSO Table (M) and the 1980 CSO Table (F) with or without Ten-Year Select Mortality Factors may at the option of the company be substituted for the 1980 CSO Table, with or without our Ten-Year Select Mortality Factors; and

2. A mortality table which is of the same blend as used in (1) but applied to form a blend of the 1980 CET Table (M) and the 1980 CET Table (F) may at the option of the company be substituted for the 1980 CET Table.

(b) The following describes the gender blended tables approved for use pursuant to N.J.S.A. 17B:25-19h(viii). These tables are contained in the Appendix to this subchapter and are part of this proposal:

1. 100 percent Male 0 percent Female for tables to be designated as the "1980 CSO-A" and "1980 CET-A" tables;

2. 80 percent Male 20 percent Female for tables to be designated as the "1980 CSO-B" and "1980 CET-B" tables;

3. 60 percent Male 40 percent Female for tables to be designated as the "1980 CSO-C" and "1980 CET-C" tables;

4. 50 percent Male 50 percent Female for tables to be designated as the "1980 CSO-D" and "1980 CET-D" tables;

5. 40 percent Male 60 percent Female for tables to be designated as the "1980 CSO-E" and "1980 CET-E" tables.

6. 20 percent Male 80 percent Female for tables to be designated as the "1980 CSO-F" and "1980 CET-F" tables;

7. 0 percent Male 100 percent Female for tables to be designated as the "1980 CSO-G" and "1980 CET-G" tables.

(c) The tables described in paragraphs 1 and 7 of (b) above are not to be used with respect to policies issued on or after *[January 1, 1985]* ***January 1, 1986***, except where the proportion of persons insured is anticipated to be 90 percent or more of one sex or the other.

(d) Gender blended tables with Ten-Year Select Mortality Factors may be derived by applying select factors to gender blended tables without select factors where the select factors are derived by using the following formula:

$$^{Z}F_t^T = \frac{(Z)F_t^M + .6(1-Z)\,F_t^F}{Z + .6(1-Z)}$$

where

$^{Z}F_t^T$ is the gender blended select factor for year t

F_t^M is the male select factor for year t

F_t^F is the female select factor for year t

Z is the ratio of male lives to the total lives at the pivotal age

11:4-22.4 Unfair discrimination

It shall not be a violation of N.J.S.A. 17B:30-12 c. for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

11:4-22.5 Separability

If any provision of this subchapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

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APPENDIX
TABLE 1
1980 CSO-A AND 1980 CET-A MORTALITY TABLES
BASED ON BLENDING 1980 CSO AND 1980 CET
MORTALITY TABLES 100 PERCENT MALE–0
PERCENT FEMALE

RATES OF MORTALITY
1,000 q_x AGE NEAREST BIRTHDAY

Age (x)	1980 CSO-A	1980 CET-A	Age (x)	1980 CSO-A	1980 CET-A	Age (x)	1980 CSO-A	1980 CET-A
0	4.18	5.43	34	2.00	2.75	67	30.44	39.57
1	1.07	1.82				68	33.19	43.15
2	0.99	1.74	35	2.11	2.86	69	36.17	47.02
3	0.98	1.73	36	2.24	2.99			
4	0.95	1.70	37	2.40	3.15	70	39.51	51.36
			38	2.58	3.35	71	43.30	56.29
5	0.90	1.65	39	2.79	3.63	72	47.65	61.95
6	0.86	1.61				73	52.64	68.43
7	0.80	1.55	40	3.02	3.93	74	58.19	75.65
8	0.76	1.51	41	3.29	4.28			
9	0.74	1.49	42	3.56	4.63	75	64.19	83.45
			43	3.87	5.03	76	70.53	91.69
10	0.73	1.48	44	4.19	5.45	77	77.12	100.26
11	0.77	1.52				78	83.90	109.07
12	0.85	1.60	45	4.55	5.92	79	91.05	118.37
13	0.99	1.74	46	4.92	6.40			
14	1.15	1.90	47	5.32	6.92	80	98.84	128.49
			48	5.74	7.46	81	107.48	139.72
15	1.33	2.08	49	6.21	8.07	82	117.25	152.43
16	1.51	2.26				83	128.26	166.74
17	1.67	2.42	50	6.71	8.72	84	140.25	182.33
18	1.78	2.53	51	7.30	9.49			
19	1.86	2.61	52	7.96	10.35	85	152.95	198.84
			53	8.71	11.32	86	166.09	215.92
20	1.90	2.65	54	9.56	12.43	87	179.55	233.42
21	1.91	2.66				88	193.27	251.25
22	1.89	2.64	55	10.47	13.61	89	207.29	269.48
23	1.86	2.61	56	11.46	14.90			
24	1.82	2.57	57	12.49	16.24	90	221.77	288.30
			58	13.59	17.67	91	236.98	308.07
25	1.77	2.52	59	14.77	19.20	92	253.45	329.49
26	1.73	2.48				93	272.11	353.74
27	1.71	2.46	60	16.08	20.90	94	295.90	384.67
28	1.70	2.45	61	17.54	22.80			
29	1.71	2.46	62	19.19	24.95	95	329.96	428.95
			63	21.06	27.38	96	384.55	499.92
30	1.73	2.48	64	23.14	30.08	97	480.20	624.26
31	1.78	2.53				98	657.98	855.37
32	1.83	2.58	65	25.42	33.05	99	1000.00	1000.00
33	1.91	2.66	66	27.85	36.21			

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APPENDIX
TABLE 2
1980 CSO-B AND 1980 CET-B MORTALITY TABLES
BASED ON BLENDING 1980 CSO AND 1980 CET
MORTALITY TABLES 80 PERCENT MALE—
20 PERCENT FEMALE
(PIVOTAL AGE 45)

RATES OF MORTALITY
1,000 q_x AGE NEAREST BIRTHDAY

Age (x)	1980 CSO-B	1980 CET-B
0	3.92	5.10
1	1.04	1.79
2	.95	1.70
3	.94	1.69
4	.91	1.66
5	.87	1.62
6	.83	1.58
7	.79	1.54
8	.75	1.50
9	.73	1.48
10	.72	1.47
11	.75	1.50
12	.83	1.58
13	.94	1.69
14	1.08	1.83
15	1.24	1.99
16	1.39	2.14
17	1.53	2.28
18	1.62	2.37
19	1.69	2.44
20	1.74	2.49
21	1.75	2.50
22	1.73	2.48
23	1.71	2.46
24	1.69	2.44
25	1.65	2.40
26	1.63	2.38
27	1.61	2.36
28	1.61	2.36
29	1.63	2.38
30	1.65	2.40
31	1.70	2.45
32	1.75	2.50
33	1.83	2.58
34	1.91	2.66
35	2.02	2.77
36	2.14	2.89
37	2.30	3.05
38	2.47	3.22
39	2.68	3.48
40	2.90	3.77
41	3.16	4.11
42	3.42	4.45
43	3.72	4.84
44	4.01	5.21
45	4.35	5.66
46	4.70	6.11
47	5.07	6.59
48	5.45	7.09
49	5.89	7.66
50	6.36	8.27
51	6.90	8.97
52	7.50	9.75
53	8.19	10.65
54	8.96	11.65
55	9.78	12.71
56	10.67	13.87
57	11.58	15.05
58	12.54	16.30
59	13.57	17.64
60	14.72	19.14
61	16.00	20.80
62	17.47	22.71
63	19.16	24.91
64	21.05	27.37
65	23.11	30.04
66	25.29	32.88
67	27.61	35.89
68	30.03	39.04
69	32.66	42.46
70	35.59	46.27
71	38.95	50.64
72	42.84	55.69
73	47.33	61.53
74	52.37	68.08
75	57.84	75.19
76	63.65	82.75
77	69.70	90.61
78	75.95	98.74
79	82.57	107.34
80	89.83	116.78
81	97.94	127.32
82	107.18	139.33
83	117.65	152.95
84	129.10	167.83
85	141.38	183.79
86	154.17	200.42
87	167.49	217.74
88	181.24	235.61
89	195.54	254.20
90	210.53	273.69
91	226.51	294.46
92	244.13	317.37
93	264.04	343.25
94	289.36	376.17
95	324.89	422.36
96	380.97	495.26
97	477.69	621.00
98	657.38	854.59
99	1000.00	1000.00

OFFICE OF THE ADMINISTRATIVE LAW NOTE: Mortality Tables 3 thru 7 in the July 16, 1984 Register are also a part of this adoption and are adopted without change. (See: 16 N.J.R. 1950-1954).

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(a)

DIVISION OF ADMINISTRATION

Auto Body Repair Facilities

Adopted Amendments: N.J.A.C. 11:14-1.3, 2.1, 2.4, 3.1, 3.3, 4.1 and 4.2

Proposed: August 20, 1984; 16 N.J.R. 2235(a).
Adopted: October 19, 1984, by Kenneth D. Merin, Commissioner, Department of Insurance.
Filed: October 19, 1984, as R.1984 d.513, **without change.**

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.

Effective: November 5, 1984.
Expiration Date pursuant to Executive Order 66(1978): July 2, 1989.

Summary of Public Comments and Agency Responses:

The Department of Insurance received one public comment on the proposed amendment to N.J.A.C. 11:14-3.3 dealing with notice and recordkeeping requirements of a licensed auto body repair facility. This commenter, the owner and operator of a licensed auto body repair facility, expressed his concern about the requirements of N.J.A.C. 11:14-3.3 being too costly and time consuming.

In general, it is the Department's view that the proposed amendment requiring written notice of any changes described in paragraph (f) sent to the Commissioner of Insurance by certified mail will not be costly and time consuming to the owners and operators of auto body repair facilities. First, the cost of sending the written notice by certified mail would be minimal. Second, the amount of time it would take to record the changes specified in paragraph (f) and to mail the notice by certified mail would be minimal. Furthermore, the certified mail requirement would be a benefit to the owners and operators of auto repair shops by providing them with a receipt of having sent the written notice to the Department of Insurance.

Full text of the adoption follows.

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" 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.

. . .

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 date of this chapter.

(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 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, 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 any interest in any other auto body repair facility.

(c) Each application for a license shall be duly notarized 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.

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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 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 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 owner 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.

LABOR

(a)

INCOME SECURITY

Unemployment Benefit Payments

Adopted 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
Adopted New Rule: N.J.A.C. 12:17-12

Proposed: August 20, 1984 at 16 N.J.R. 2237(a).
Adopted: October 18, 1984 by Charles Serraino, Commissioner, Department of Labor.
Filed: October 19, 1984 as R.1984 d.516, **with substantive changes** not requiring additional public notice and comments (See N.J.A.C. 1:20-3.5).

Authority: N.J.S.A. 43:21-1 et seq. (L.1984, C.24), specifically 43:21-11.

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Effective Date: November 5, 1984.
Expiration date pursuant to Executive Order No. 66(1978): December 31, 1984 for 12:15-1.2; November 5, 1989 for 12:17-1, -3, -4, -5, 12:20-3 and 12:17-12; January 1, 1986 for 12:17-11.

Summary of Public Comments and Agency Responses and Reasons for Making Changes:

Comments on this proposal were submitted by the New Jersey Business and Industry Association and the Passaic County Legal Aid Society. These were the only comments received.

1. Comment: NJBIA made a number of recommendations to further define and clarify the definition of a dependent and verification of dependency status.

Response: The Department concurs with these recommendations. Appropriate changes have been made to N.J.A.C. 12:17-12.2 and 12.3 to clarify dependency status and verification.

2. Comment: The NJBIA believes it unreasonable to pay dependency benefits for 28 days based solely on the individual's statement. They recommend proof and verification of dependency before benefits are paid and retroactive payment when appropriate.

Response: The Department has estimated that approximately 34 percent of initial claims will involve dependency benefits. The Department is required by the Federal government to make 87 percent of first payments within fourteen days of the first compensable week ending date. The Department does not consider it economically feasible to knowingly make over one-third of its initial determinations incorrectly and then have to adjust these cases at a later date when the individual provides appropriate verification. The Department anticipates that the great majority of individuals claiming dependency benefits will meet these verification requirements within the time frames allowed. In those instances where the claimant fails to provide documentation we believe that our overpayment recovery processes are sufficiently effective to insure that neither chargeable employers nor the Trust Fund will be adversely impacted.

3. Comment: NJBIA recommended that the social security number of dependent children be required.

Response: The law is specific in requiring that the social security number of an individual's spouse be provided when claiming dependency benefits. While the Division will implement procedures requesting the social security numbers of children we do not believe we should deny benefits if they cannot be provided as many minor children neither have nor are required to have a social security number.

4. Comment: NJBIA recommended that the regulations include a provision to insure that fraudulently obtained dependency benefits shall be subject to the fraud provisions of the Unemployment Compensation Law.

Response: The Department agrees and has added this provision at N.J.A.C. 12:17-12.3(e).

5. Comment: The Passaic County Legal Aid Society commented on the proposed change to N.J.A.C. 12:20-3.2 which would permit non-attorneys to represent interested parties at unemployment insurance hearings. In its comments the Legal Aid Society stated that the rule cannot be adopted as a matter of substantive law since it conflicts with the rule of the Office of Administrative Law. In addition, the Legal Aid Society objects to the rule as a matter of policy.

Response: This rule change is based on a recent amendment to the Unemployment Compensation Law (L. 1984, C.24) which was enacted on March 26, 1984. A new subsection (b) was added to N.J.S.A. 43:21-17, and reads as follows:

"(b) In any administrative proceeding before the Division of Unemployment or Temporary Disability Insurance of the Department of Labor, the board of review or the appeal tribunal, the claimant or the employer may appear pro se or employ an attorney or a non-attorney to represent him."

This rule change merely reflects the intent of the Legislature in permitting attorneys or non-attorneys to represent interested parties at unemployment insurance hearings.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal 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 Unemployment and Temporary Disability Insurance in the Department of Labor.

"Department" means the New Jersey Department of Labor.

"Division" means the Division of Unemployment and Temporary Disability Insurance in the Department of Labor.

"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 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 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).

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 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 unemployment insurance claims office nearest the place of employment.

(c)-(f) (No change.)

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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 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 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.

"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 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 calendar week 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 N.J.A.C. 12:17-3.1 shall be filed by the individual in person at a local unemployment insurance claims office and shall constitute such individual's notice of unemployment, and claim for benefits or waiting period credit, with respect to each such week of partial unemployment covered by the claim.

(b) (No change.)

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 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 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 eligible to be claimed as a dependent under provisions of Federal and State income tax law,*** and is the claimant's:

1. Spouse, that is, a person to whom the claimant is legally married; ***and is a dependent;*** or

2. ***Dependent*** *[Unmarried]* ***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]* ***If*** both unemployed spouses establish initial or transitional claims on or after September 30, 1984, *[the]* ***with*** benefit years *[of]* ***or benefit rights*** 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 claimant 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.

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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; ***(if the tax return is not a joint return, the individual tax return for the spouse being claimed as a dependent will be submitted);*** birth, baptismal, or marriage certificate(s) or certified copies thereof; divorce, annulment or adoption decree(s) or certified copies thereof; divorce, annulment or adoption decree(s) or certified 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 redetermined, and the claimant shall be liable for full reimbursement to the Division of benefits paid based on the unverified dependency status. ***The Division shall use all methods provided by law to recover these overpayments. Such methods shall include, but not be limited to, deducting the overpaid amount from any future benefits which may be otherwise due the claimant.***

(e) Any individual who is determined by the Division to have illegally received or attempted to receive dependency benefits as the result of any false or fraudulent representation shall be subject to the disqualification and penalty provisions of N.J.S.A. 43:21-5(g) and 43:21-16.

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, 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, 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

1985 Maximum Weekly Benefit Rates for Unemployment Compensation and State Plan Temporary Disability

Adopted Amendement: N.J.A.C. 12:15-1.3

Proposed: September 4, 1984 at 16 N.J.R. 2343(a).
Adopted: October 11, 1984 by Charles Serraino, Commissioner, Department of Labor.
Filed: October 19, 1984 as R.1984 d.517, **without change.**

Authority: N.J.S.A. 34:1-5, 34:1-20, 43:21-3(c), 43:21-40, L.1984, c.24 and L.1984, c.104.

Effective Date: November 5, 1984.
Operative Date: January 1, 1985.
Expiration Date pursuant to Executive Order 66(1978): December 31, 1985.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

12:15-1.3 Maximum weekly benefit rates

(a) In accordance with the provisions of the Unemployment Compensation Law, the maximum weekly benefit rate for benefits under the Unemployment Compensation Law is hereby promulgated as being $203.00 per week.

(b) The maximum weekly benefit rate for State Plan benefits under the Temporary Disability Benefits Law is hereby promulgated as being $189.00 per week.

(c) These maximum benefits shall be effective for the calendar year 1985 on benefit years and periods of disability commencing on or after January 1, 1985.

(b)

THE COMMISSIONER

1985 Taxable Wage Base Under the Unemployment Compensation Law

Adopted Amendment: N.J.A.C. 12:15-1.4

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Proposed: September 4, 1984 at 16 N.J.R. 2344(a).
Adopted: October 11, 1984 by Charles Serraino, Commissioner, Department of Labor.
Filed: October 19, 1984 as R.1984 d.519, **without change.**

Authority: N.J.S.A. 34:1-5, 34:1-20 and 43:21-7(b)(3).

Effective Date: November 5, 1984.
Operative Date: January 1, 1985.
Expiration Date pursuant to Executive Order 66(1978): December 31, 1985.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows

12:15-1.4 Taxable wage base under the Unemployment Compensation Law

(a) In accordance with the provisions of N.J.S.A. 43:21-7(b)(3), the "wages" of any individual with respect to any one employer for the purpose of contributions under the Unemployment Compensation Law shall include the first $10,000 during the calendar year 1985.

(a)

THE COMMISSIONER

Unemployment Compensation Contribution Rates of Governmental Entities for 1985

Adopted Amendment: N.J.A.C. 12:15-1.5

Proposed: September 4, 1984 at 16 N.J.R. 2344(b).
Adopted: October 11, 1984 by Charles Serraino, Commissioner, Department of Labor.
Filed: October 19, 1984 as R.1984 d.518, **without change.**

Authority: N.J.S.A. 34:1-5, 34:1-20, and 43:21-7.3(e).

Effective Date: November 5, 1984.
Operative Date: January 1, 1985.
Expiration Date pursuant to Executive Order 66(1978): December 31, 1985.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

12:15-1.5 Contribution rate of governmental entities and instrumentalities

(a) In accordance with the provisions of N.J.S.A. 43:21-7.3(e), the contribution rate for all governmental entities and instrumentalities electing to pay contributions under the Unemployment Compensation Law is hereby promulgated as being one and one-half percent (1.5 percent), for the entire calendar year.

(b) This contribution rate shall be effective on taxable wages paid in the calendar year 1985.

(b)

THE COMMISSIONER

Base Week for Unemployment and Disability

Adopted Amendment: N.J.A.C. 12:15-1.6

Proposed: September 4, 1984 at 16 N.J.R. 2345(a).
Adopted: October 11, 1984 by Charles Serraino, Commissioner, Department of Labor.
Filed: October 19, 1984 as R.1984 d.521, **without change.**

Authority: N.J.S.A. 34:1-5, 34:1-20 and 43:21-7(b)(3).

Effective Date: November 5, 1984.
Operative Date: January 1, 1985.
Expiration Date pursuant to Executive Order 66(1978): December 31, 1985.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adopted new rule follows.

12:15-1.6 Base week

In accordance with the provisions of N.J.S.A. 43:21-19(t), the base week amount is hereby promulgated as being $51.00 per week for benefit years commencing on or after September 30, 1984 and periods of disability commencing October 1, 1984 and $54.00 per week for benefit years and periods of disability commencing on or after January 1, 1985.

(c)

THE COMMISSIONER

Unemployment Compensation and Disability Alternative Earnings Test

Adopted New Rule: N.J.A.C. 12:15-1.7

Proposed: September 4, 1984 at 16 N.J.R. 2345(b).
Adopted: October 11, 1984 by Charles Serraino, Commissioner, Department of Labor.

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Filed: October 19, 1984 as R.1984 d.520, **without change.**

Authority: N.J.S.A. 34:1-5, 34:1-20, 43:21-4(e), 43:21-41, L.1984, c.24, and L.1984, c.104.

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order 66(1978): December 31, 1985.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adopted new rule follows.

12:15-1.7 Alternative earnings test
In accordance with the provisions of N.J.S.A. 43:21-4(e) and 43:21-41 in those instances in which the individual has not established 20 base weeks, the alternative earnings amount for establishing eligibility is hereby promulgated as being $4,100 for benefit years commencing on or after September 30, 1984 and periods of disability commencing on or after October 1, 1984 and $4,300 for benefit years and periods of disability commencing on or after January 1, 1985.

(a)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees
Providing Safe and Healthful Workplaces for Public Employees

Adopted New Rules: N.J.A.C. 12:100

Proposed: August 6, 1984 at 16 N.J.R. 2057(a).
Adopted: October 18, 1984 by Charles Serraino, Commissioner, Department of Labor.
Filed: October 19, 1984 as R.1984 d.510, **with changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 34:6A-25 et seq., specifically 34:6A-30.

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order 66(1978): November 5, 1989.

Summary of Public Comments and Agency Responses:

The following summarizes the comments received and provides the Department's responses to these comments. All comments are on file at the Offices of the State Department of Labor.

Comment: The Department of Community Affairs suggested that the rules promulgated under the State Uniform Construction Code Act or the Uniform Fire Safety Act be recognized as not being superseded by the OSHA standards.
Response: The Division of Workplace Standards agrees that N.J.S.A. 34:6A-49 of the Public Employees Occupational Safety and Health Act means that the Commissioner of Community Affairs is free to promulgate his rules and enforce them under his statutes in his areas of jurisdiction. Explanatory statements to this effect have been added to the rules.

Full text of the adoption follows: (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

CHAPTER 100
SAFETY AND HEALTH STANDARDS
FOR PUBLIC EMPLOYEES

SUBCHAPTER 1. GENERAL PROVISIONS

12:100-1.1 Title and citation
This chapter shall be known and may be cited as N.J.A.C. 12:100, Safety and Health Standards for Public Employees.

12:100-1.2 Authority
These rules are promulgated pursuant to the authority of the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

12:100-1.3 Purpose
The purpose of this chapter is to protect employees in the public sector by providing standards, which are at least as effective as the standards promulgated under Section 6 of the Federal Occupational Safety and Health Act of 1970, 29 USC 651 et seq.

12:100-1.4 Scope
This chapter shall apply to all employers, employees, and agencies subject to N.J.S.A. 34:6A-25 et seq., New Jersey Public Employees Occupational Safety and Health Act.

12:100-1.5 Documents referred to by reference
The availability of standards and publications referred to in this chapter is explained in N.J.A.C. 12:100-7.

12:100-1.6 Validity
Should any section, paragraph, sentence or word of this chapter be declared for any reason to be invalid, such decision shall not affect the remaining portions of this chapter.

SUBCHAPTER 2. DEFINITIONS

12:100-2.1 Definitions
The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.
"Act" means the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.
"Approved" means acceptable to the Commissioner of Labor.
"CFR" means Code of Federal Regulations in effect on the effective date of this chapter.

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"Commissioner" means the Commissioner of Labor or his designee.

"Division of Workplace Standards" means the Division of Workplace Standards of the New Jersey Department of Labor, CN 054, Trenton, New Jersey 08625-0054.

"Employee" means any public employee, any person holding a position by appointment or employment in the service of an "employer" as that term is used in the Act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under the Act; provided, however, that elected officials, members of boards and commissions and managerial executives as defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. shall be excluded from the coverage of the Act.

"Employer" means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of:

1. The State, or any department, division, bureau, board, council, agency or authority of the State, except any bi-state agency; or

2. Any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district created pursuant to law.

"N.J.A.C." means New Jersey Administrative Code.

"N.J.S.A." means New Jersey Statutes Annotated.

"Shall" means a mandatory requirement.

"Serious injury" means any injury which requires treatment beyond first aid.

SUBCHAPTER 3. ADMINISTRATION

12:100-3.1 Scope of subchapter

This subchapter shall apply to the administration of the safety and health standards mandated by this chapter.

12:100-3.2 Compliance

(a) Every employer shall comply with the provisions of this chapter.

(b) Every employee shall comply with the provisions of this chapter as they pertain to him or her.

(c) When an employer has provided personal protection equipment in accordance with this chapter, the employee shall utilize such equipment when the hazard for which the equipment was provided exists.

(d) Every employer shall provide a reasonable safeguard against any recognized hazard which could cause serious injury ***or death*** to the employees.

(e) Every employer shall take all prudent measures to comply with written recommendations made by the commissioner, the Commissioner of Community Affairs or the Commissioner of Health to reduce the risk of exposure to unsafe or unhealthy conditions which have been shown to be detrimental to employee health or safety. This provision shall apply for hazards not specifically covered by a standard in this chapter or a standard referenced in this chapter.

12:100-3.3 Interface of state agencies

(a) The New Jersey Department of Labor shall inspect under the provisions of this chapter where the provisions relate to safety issues in accordance with N.J.S.A. 34:6A-35.

(b) The New Jersey Department of Health shall inspect under the provisions of this chapter where the provisions relate to health issues in accordance with N.J.S.A. 34:6A-37 and 34:6A-38.

(c) The New Jersey Department of Community Affairs shall inspect under the provisions of this chapter where the provisions relate to building safety, structural safety, and fire safety in accordance with N.J.S.A. 34:6A-38.

(d) The provisions of (a) through (c) above shall not be construed to diminish the primary responsibility of the Commissioner of Labor for administering and enforcing the State plan in accordance with N.J.S.A. 34:6A-29.

SUBCHAPTER 4. GENERAL STANDARDS

12:100-4.1 Scope of subchapter

This subchapter shall apply to general industry safety and health standards adopted by reference.

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards, are adopted as occupational safety and health standards for the protection of public employees engaged in general operations and shall include:

1. Subpart C—General Safety and Health Provisions;
2. Subpart D—Walking-Working Surfaces;
3. Subpart E—Means of Egress;
4. Subpart F—Powered Platforms, Man Lifts, and Vehicle-Mounted Work Platforms;
5. Subpart G—Occupational Health and Environmental Control;
6. Subpart H—Hazardous Materials;
7. Subpart I—Personal Protective Equipment;
8. Subpart J—General Environmental Controls;
9. Subpart L—Fire Protection;
10. Subpart M—Compressed Gas and Compressed Air Equipment;
11. Subpart N—Materials Handling and Storage;
12. Subpart O—Machinery and Machine Guarding;
13. Subpart P—Hand and Portable Powered Tools and Other Hand-Held Equipment;
14. Subpart Q—Welding, Cutting, and Brazing;
15. Subpart R—Special Industries;
16. Subpart S—Electrical;
17. Subpart T—Commercial Diving Operations; and
18. Subpart Z—Toxic and Hazardous Substances.

(b) Only standards relating to employee safety and health (that is, substantive rules) are adopted by any incorporation by reference as prescribed in (a) above.

(c) Standards listed in (a) above that conflict with or supersede any provisions of the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq. or the code promulgated thereunder, or the Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq. or the code promulgated thereunder, shall not affect or limit the powers, duties, authorities and responsibilities of the Commissioner of Community Affairs or any enforcing agency thereunder in their areas of jurisdiction.

12:100-4.3 Compliance with referenced standards

(a) The standards contained in N.J.A.C. 12:100-4.2 shall apply according to the provisions thereof.

(b) Each employer shall protect his employees by complying with the standards prescribed in N.J.A.C. 12:100-4.2

SUBCHAPTER 5. CONSTRUCTION STANDARDS

12:100-5.1 Scope of subchapter

This subchapter shall apply to construction safety and health standards adopted by reference.

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12:100-5.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1926, Construction Industry Standards, are adopted as occupational safety and health standards for the protection of public employees engaged in construction operations and shall include:

1. Subpart C—General Safety and Health Provisions;
2. Subpart D—Occupational Health and Environmental Controls;
3. Subpart E—Personal Protective and Life Saving Equipment;
4. Subpart F—Fire Protection and Prevention;
5. Subpart G—Signs, Signals, and Barricades;
6. Subpart H—Materials Handling, Storage, Use, and Disposal;
7. Subpart I—Tools—Hand and Power;
8. Subpart J—Welding and Cutting;
9. Subpart K—Electrical;
10. Subpart L—Ladders and Scaffolding;
11. Subpart M—Floors and Wall Openings, and Stairways;
12. Subpart N—Cranes, Derricks, Hoists, Elevators, and Conveyors;
13. Subpart O—Motor Vehicles, Mechanized Equipment, and Marine Operations;
14. Subpart P—Excavations, Trenching, and Shoring;
15. Subpart Q—Concrete, Concrete Forms, and Shoring;
16. Subpart R—Steel Erection;
17. Subpart S—Tunnels and Shafts, Caissons, Cofferdams, and Compressed Air;
18. Subpart T—Demolition;
19. Subpart U—Blasting and Use of Explosives;
20. Subpart V—Power and Transmission and Distribution;
21. Subpart W—Rollover Protective Structures; Overhead Protection; and
22. Appendix—General Industry Standards Identified as Applicable to Construction.

(b) Only standards relating to employee safety and health (that is, substantive rules) are adopted by any incorporation by reference as prescribed in (a) above.

(c) Standards listed in (a) above that conflict with or supersede any provisions of the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq. or the code promulgated thereunder, or the Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq. or the code promulgated thereunder, shall not affect or limit the powers, duties, authorities and responsibilities of the Commissioner of Community Affairs or any enforcing agency thereunder in their areas of jurisdiction.

12:100-5.3 Compliance with referenced standards

(a) The standards contained in N.J.A.C. 12:100-5.2 shall apply according to the provisions thereof.

(b) Each employer shall protect his employees by complying with the standards prescribed in N.J.A.C. 12:100-5.2.

SUBCHAPTER 6. AGRICULTURAL STANDARDS

12:100-6.1 Scope of subchapter

This subchapter will apply to agricultural safety and health standards adopted by reference.

12:100-6.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1928, Agriculture are adopted as occupational safety and health standards for the protection of public employees engaged in agricultural operations and shall include:

1. Subpart B—Applicability of Standards;
2. Subpart C—Roll-Over Protective Structures;
3. Subpart D—Safety for Agricultural Equipment; and
4. Subpart I—Toxic and Hazardous Substances.

(b) Only standards relating to employee safety and health (that is, substantive rules) are adopted by any incorporation by reference as prescribed in (a) above.

12:100-6.3 Compliance with referenced standards

(a) The standards contained in N.J.A.C. 12:100-6.2 shall apply according to the provisions thereof.

(b) Each employer shall protect his employees by complying with the standards prescribed in N.J.A.C. 12:100-6.2.

SUBCHAPTER 7. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

12:100-7.1 Documents referred to by reference

(a) The full title and edition of each of the standards or publications referred to in this chapter are as follows:

1. 29 CFR Part 1910, General Industry Standards,
2. 29 CFR Part 1926, Construction Industry Standards,
3. 29 CFR Part 1928, Agriculture, and
4. N.J.S.A. 34:6A-25 et seq., New Jersey Public Employees Occupational Safety and Health Act.

12:100-7.2 Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following Office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor
Division of Workplace Standards
36 West State Street, Room 313
Trenton, New Jersey

12:100-7.3 Availability of documents from issuing organization

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:100-7.1.

CFR	Code of Federal Regulations Copies available from: Superintendent of Documents Government Printing Office Washington, D.C. 20402
NJSA	New Jersey Statutes Annotated Copies available from: Division of Workplace Standards New Jersey Department of Labor CN 054 Trenton, New Jersey 08625-0054

OFFICE OF ADMINISTRATIVE LAW NOTE: The Department of Labor submitted as part of this proposal copies of 29 CFR Part 1910, 29 CFR Part 1926 and 29 CFR Part 1928 which are incorporated into the rule by reference. These documents may be inspected at the Office of Administrative Law, 88 East State Street, Trenton, New Jersey.

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(a)

THE COMMISSIONER

Workers' Compensation Benefit Rates for 1985

Adopted Amendment: N.J.A.C. 12:235-1.5

Proposed: September 4, 1984 at 16 N.J.R. 2346(a).
Adopted: October 11, 1984 by Charles Serraino, Commissioner, Department of Labor.
Filed: October 19, 1984 as R.1984 d.522, **without change.**

Authority: N.J.S.A. 34:1-5, 34:1-20 and 34:15-12.

Effective Date: November 5, 1984.
Operative Date: January 1, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): December 31, 1985.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

12:235-1.5 Maximum workers' compensation benefit rates
(a) In accordance with the provisions of N.J.S.A. 34:15-12(a), the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being $269.00 per week.
(b) This maximum compensation shall be effective as to injuries occurring in the calendar year of 1985.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLES

Enforcement Service
Accident Prevention Clinic

Readoption: N.J.A.C. 13:20-12

Proposed: September 4, 1984 at 16 N.J.R. 2347(a).
Adopted: October 9, 1984 by Clifford W. Snedeker, Director, Division of Motor Vehicles.
Filed: October 16, 1984 as R.1984 d.492, **without change.**

Authority: N.J.S.A. 39:2-3, 39:3-10, 39:3-11 and 39:5-30.

Effective Date: October 16, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): October 15, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:20-12.

(c)

DIVISION OF MOTOR VEHICLES

Emergency Vehicle Equipment
Red Emergency Lights; Sirens

Readoption: N.J.A.C. 13:24-2

Proposed: September 4, 1984 at 16 N.J.R. 2347(b).
Adopted: October 9, 1984 by Clifford W. Snedeker, Director, Division of Motor Vehicles.
Filed: October 16, 1984 as R.1984 d.491, **without change.**

Authority: N.J.S.A. 39:3-43, 39:3-50 and 39:3-69.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:24-2.

(d)

BOARD OF NURSING

Nurse Anesthetists

Adopted New Rule: N.J.A.C. 13:37-13.1 and 13.2

Proposed: August 6, 1984 at 16 N.J.R. 2067(a).
Adopted: September 21, 1984 by New Jersey State Board of Nursing, Dr. Kathleen M. Dirschel, President.
Filed: October 16, 1984 as R.1984 d.493, **without change.**

Authority: N.J.S.A. 45:11-23; and 45:11-24(d)(9)(12)(17)(18)(19).

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): November 5, 1989.

Summary of Public Comments and Agency Responses:

On September 21, 1984 the New Jersey State Board of Nursing pursuant to authority of N.J.S.A. 45:11-23 and 11-24(d)(9) and in accordance with the applicable provisions of the Administrative Procedure Act, considered adoption of a

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new rule to be cited as N.J.A.C. 13:37-13.1 and 13:37-13.2 concerning Nurse Anesthetists as proposed in the Notice published August 6, 1984 at 16 N.J.R. 2067. The Board received two comments. There was one comment received from Marvin Fish, Esq., Blairstown, New Jersey, regarding the proposed rule. He stated that "although [the rule] gives me no problem as proposed, my concern deals with a clear definition of the scope of practice which is allowed without running the risk of being charged with the illegal practice of medicine." The Board of Nursing responded that N.J.A.C. 13:37-13.1 and 13:37-13.2 does not attempt to set forth the scope of practice of nurse anesthetists. It intended only to set specific criteria for the qualifications of nurse anesthetists practicing in the State. There was a comment received from the New Jersey State Board of Medical Examiners, Trenton, New Jersey. The Board of Medical Examiners was "pleased that eligibility standards are proposed for the nurse anesthetists" but "observed that the rule does not seem to draw any distinction between responsibilities that may be exercised by a fully certified nurse anesthetist and one who has not even been able to pass the certifying examination." The Board of Medical Examiners was also troubled by the total omission of any reference to practice under medical supervision. The Board of Nursing responded that the regulation allows practice of nurse anesthesia by an uncertified nurse anesthetist only when very limited circumstances, namely pending the results of the first certifying examination. The regulation clearly states that a nurse anesthetist who fails to apply for or fails to pass the first examination cannot practice at all. The regulation sets specific criteria for the qualifications of nurses to practice nurse anesthesia. It does not attempt to establish the scope of practice. The Board of Nursing therefore adopts the rule concerning nurse anesthetists as proposed in the Notice published in the New Jersey Register on August 6, 1984 at 16 N.J.R. 2067 without change.

Full text of the adoption follows.

SUBCHAPTER 13. NURSE ANESTHETISTS

13:37-13.1 Qualifications to practice as a nurse anesthetist
(a) The qualifications to practice as a nurse anesthetist in this State shall be as follows:
1. Current licensure as a registered professional nurse in the State of New Jersey;
2. Graduation from a program in nurse anesthesia accredited by the nationally recognized accrediting body approved by the Board;
3. Passing of a certifying examination administered by the nationally recognized accrediting body approved by the Board;
4. Maintenance of the recertification requirements by the nationally recognized accrediting body approved by the Board.

13:37-13.2 Practice pending the results of the examination
(a) A nurse anesthetist who meets the requirements of N.J.A.C. 13:37-13.1(a) 1 and 2 may practice as a nurse anesthetist pending the results of the first scheduled certifying examination following completion of an approved program in nurse anesthesia.
(b) A nurse anesthetist who fails to apply and sit for or fails to pass the first scheduled certifying examination following completion of an approved program in nurse anesthesia shall not continue to practice after the date of said examination.

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Misconduct
Enumeration of Prohibited Acts

Adopted Amendment: N.J.A.C. 13:40-3.1

Proposed: June 4, 1984, at 16 N.J.R. 1321(a).
Adopted: September 6, 1984, by Marcia Forman, President.
Filed: October 5, 1984, as R.1984 d.486, **without change.**

Authority: N.J.S.A. 45:8-27 et seq.

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order 66(1978): February 7, 1978.

Summary of Public Comments and Agency Responses:

Only one comment was received. The New Jersey Society of Professional Land Surveyors expressed full support for the proposed amendment.

Full text of the adoption follows.

SUBCHAPTER 3. MISCONDUCT

13:40-3.1 Enumeration of prohibited acts
(a) Misconduct in the practice of professional engineering or land surveying shall include, without limitation:
(a)-(g) Renumbered as **1.-7.** (No change in text).
3. Advertising his work or merit using claims of superiority which cannot be substantiated.
4.-7. (No change in text.)

TRANSPORTATION
(b)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Route 35 in Ocean Township, Monmouth County

Adopted Amendment: N.J.A.C. 16:28A-1.25

Proposed: August 6, 1984, 16 N.J.R. 2070(a).
Adopted: September 12, 1984 by Jarrett R. Hunt, Assistant Chief Engineer, Traffic and Local Road Design.
Filed: October 3, 1984 as R.1984 d.482, **without change.**

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

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Effective Date: November 5, 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 adoption follows.

16:28A-1.25 Route 35
(a) (No change.)
(b) The certain parts of State Highway Route 35 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is hereby granted to erect appropriate signs at the following established bus stops:
1.-9. (No change.)
10. Along the northbound (easterly) side in Ocean Township, Monmouth County:
i. Far side bus stop:
(1) Deal Road — Beginning at the northerly curb line of Deal Road and extending 100 feet northerly thereform.
ii. Near side bus stop:
(1) West Park Avenue — Beginning at the southerly curb line of West Park Avenue and extending 130 feet southerly therefrom.
11. Along the southbound (westerly) side in Ocean Township, Monmouth County:
i. Far side bus stop:
(1) West Park Avenue — Beginning at the southerly curb line of West Park Avenue and extending 100 feet southerly therefrom.
ii. Near side bus stop:
(1) Deal Road — Beginning at the northerly curb line of Deal Road and extending 105 feet northerly therefrom.
(c) (No change.)

(a)

TRANSPORTATION OPERATIONS

Miscellaneous Traffic Rules
Yield Intersection
Route U.S. 130 in North Brunswick

Adopted New Rule: N.J.A.C. 16:30-2.9

Proposed: August 6, 1984 at 16 N.J.R. 2070(b).
Adopted: September 12, 1984 by Jarrett R. Hunt, Assistant Chief Engineer, Traffic and Local Road Design.
Filed: October 3, 1984 as R.1984 d.483, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-140.

Effective Date: November 5, 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 adoption follows.

16:30-2.9 Route U.S. 130
(a) Under the provisions of N.J.S.A. 39:4-140 the certain part of Route U.S. 130 situated in the Township of North Brunswick, Middlesex County and described in this section shall be designated as a Yield Intersection.
1. Center median at Franklin Road:
i. YIELD signs shall be installed in the center median facing east and west movements at Franklin Road.,
2. Route U.S. 130 and Huff Road:
i. YIELD signs shall be installed in the center median facing northbound traffic at Huff Road.

(b)

TRANSPORTATION OPERATIONS

Turns
Route U.S. 130 in North Brunswick

Adopted New Rule: N.J.A.C. 16:31-1.22

Proposed: August 6, 1984 at 16 N.J.R. 2071(a).
Adopted: September 12, 1984 by Jarrett R. Hunt, Assistant Chief Engineer, Traffic and Local Road Design.
Filed: October 3, 1984 as R.1984 d.484, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-183.6.

Effective Date: November 5, 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 adoption follows.

16:31-1.22 Route U.S. 130
(a) Under the provisions of N.J.S.A. 39:4-183.6 turning movements of traffic on certain parts of Route U.S. 130 described in this section are regulated as follows:
1. No U Turn in North Brunswick Township, Middlesex County at the following locations:
i. 160 feet north of mile post 80.0 both directions
ii. 840 feet north of mile post 80.0 northbound
iii. 3,380 feet north of mile post 80.0 both directions
iv. 3,900 feet north of mile post 80.0 both directions
v. 3,750 feet north of mile post 81.0 (Washington Pl.) northbound
vi. 4.070 feet north of mile post 81.0 northbound
vii. 610 feet north of mile post 82.0 (Old Georges Rd.—No. End) northbound
viii. 1,030 feet north of mile post 82.0 (Victory Rd.) northbound

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ix. 2,190 feet north of mile post 82.0 northbound
x. 2,770 feet north of mile post 82.0 both directions
xi. 3,460 feet north of mile post 82.0 (Huff Rd.) southbound
xii. 4,780 feet north of mile post 82.0 (Farrington Blvd.) northbound
xiii. 5,100 feet north of mile post 82.0 (Otis Rd.) southbound
xiv. 1,320 feet north of mile post 83.0 southbound
2. Right turn only in North Brunswick Township, Middlesex County:
i. From westbound on Victory Road to northbound on Route U.S. 130.

TREASURY—TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax
Urban Enterprise Zones; Qualified Business; Exemption; Credits

Adopted New Rules: N.J.A.C. 18:7-3.17, 4.17 and 15.1 through 15.5

Proposed: June 4, 1984 at 16 N.J.R. 1325(a).
Adopted: October 17, 1984 by John R. Baldwin, Director, Division of Taxation.
Filed: October 18, 1984 as R.1984 d.496, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: P.L. 1983, c.303, section 22 (N.J.S.A. 52:27H-81) and N.J.S.A. 54:10A-27.

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order No. 66(1978) March 19, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

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

18:7-3.17 Enterprise zone employees tax credits
See N.J.A.C. 18:7-15 for credits against the total tax applicable for "qualified businesses" located within "urban enterprise zones."

18:7-4.17 Urban enterprise zones
See N.J.A.C. 18:7-15 for possible changes in the net worth tax for qualified businesses located in an urban enterprise zone.

SUBCHAPTER 15. URBAN ENTERPRISE ZONES ACT

18:7-15.1 General
(a) The New Jersey Urban Enterprise Zones Act, Chapter 303, Laws of 1983, N.J.S.A. 52:27H-60, et seq., approved August 15, 1983, provides for the establishment of up to ten urban enterprise zones in urban areas suffering from high unemployment and economic distress. Zones are designated by an Urban Enterprise Zone Authority. The Authority may grant certain corporation tax and other tax benefits to businesses existing in, or formed in, enterprise zones, which have met the definition of a qualified business. This subchapter of the corporation tax rules sets forth the possible benefits, the necessary definitions, and the procedures for qualifying for any or all of these corporation tax benefits.
(b) No business can obtain tax benefits under this subchapter unless it meets the definition of a "qualified business" in N.J.A.C. 18:7-15.2.

18:7-15.2 Definitions
The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.
A "qualified business" means either:
1. An entity authorized to do business in New Jersey which, at the time of designation as an enterprise zone, is engaged in the active conduct of a trade or business in that zone; or
2. An entity which, after that designation but during the designation period of 20 years, becomes newly engaged in the active conduct of a trade or business in that zone, and has at least 25 percent of its full-time employees employed at a business location in the zone, who meet at least one of the following criteria:
i. Resident within the zone or within the municipality within which the zone is located;
ii. Either unemployed, while residing in New Jersey, for at least one year prior to being hired, or recipients of New Jersey public assistance programs, for at least one year prior to being hired;
iii. Determined to be economically disadvantaged pursuant to the Jobs Training Partnership Act, P.L. 97-300 (29 United States Code 1501, et seq.). Section 1503(8) of that Act defines this term as follows:
"The term 'economically disadvantaged' means an individual who (A) receives, or is a member of a family which receives, cash welfare payments under a Federal, State, or local welfare program; (B) has, or is a member of a family which has received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or (ii) 70 percent of the lower living standard income level; (C) is receiving food stamps pursuant to the Food Stamp Act of 1977; (D) is a foster child on behalf of whom State or local government payments are made; or (E) in cases permitted by regulations of the Secretary (U.S. Secretary of Labor), is an adult handicapped individual whose own income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements."
"Enterprise zone" or "zone" means an urban enterprise zone designated by the Urban Enterprise Zone Authority under N.J.S.A. 52:27H-60, et seq.

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"Qualifying municipality" means any municipality in which there was, in the last full calendar year immediately preceding the year in which the municipality makes application for enterprise zone designation, an annual average of at least 2,000 unemployed persons, and in which the municipal average annual unemployment rate for that year, exceeded the State average annual unemployment rate; except that any municipality which qualifies for State aid pursuant to P.L. 1978, c.14 (C. 52:27D-178, et seq.) shall qualify if its municipal average unemployment rate for that year exceeded the State average annual unemployment rate. The annual average of unemployed persons and the average annual unemployment rates shall be estimated for the relevant calendar year by the Office of Labor Statistics, Division of Planning and Research of the State Department of Labor.

18:7-15.3 Net worth tax benefits

(a) Section 17 of the Urban Enterprise Zones Act is applicable to a qualified business in an enterprise zone, only if the Urban Enterprise Zone Authority specifically made section 17 applicable when the enterprise zone was designated. Section 17 provides that any qualified business (as defined in N.J.A.C. 18:7-15.2) employing a larger number of persons at a place of business within a designated enterprise zone than at all other places of business of the taxpayer within New Jersey, shall be exempt from the net worth tax under N.J.S.A. 54:10A-5(a) and from the tax imposed by N.J.S.A. 54:10A-5(f) for a period of 20 tax years from the date of designation of the enterprise zone, or for a period of 20 tax years from the date upon which taxpayer first became subject to the Corporation Business Tax Act (N.J.S.A. 54:10A-1, et seq.), whichever date is later. The 20 year benefit period, once properly granted, is not affected by the termination of the enterprise zone after 20 years. The net worth tax exemption applies to any tax year during the 20 year period during which the qualified business is carried on in an enterprise zone for at least one day. The provisions for this section are subject to the phase-out of the net worth tax under N.J.S.A. 54:10A-5(a).

(b) For domestic corporations the minimum tax is $25.00 and for foreign corporations the minimum tax is $50.00 (N.J.S.A. 54:10A-5(e)), $250.00 for real estate investment trusts and investment companies.

18:7-15.4 Credits against total tax for new employees in Urban Enterprise Zones

(a) Section 19 of the Urban Enterprise Zone Act is applicable to a qualified business in an enterprise zone, only if the Urban Enterprise Zone Authority specifically made section 19 applicable when the enterprise zone was designated. Under section 19, any qualified business (as defined in N.J.A.C. 18:7-15.2) which is actively engaged in the conduct of a business from a location within an enterprise zone (as defined in N.J.A.C. 18:7-15.2), which business in that location consists primarily of manufacturing or other business which is not primarily considered as a retail sales business, or as a warehousing business, shall receive an enterprise zone employees tax credit against the amount of tax imposed under N.J.S.A. 54:10A-5 ***(N.J.S.A. 54:10A-1, et seq., the Corporation Business Tax Act)***. The credit shall only be available for new employees hired on or after the date of designation of the enterprise zone, or the date of commencement of business in the enterprise zone, whichever is later.

(b) A credit against the tax of $1,500.00 shall be allowed for each new employee employed at that location who is a resident of the qualifying municipality (as defined in N.J.A.C. 18:7-15.2) in which the designated enterprise zone is located, who was, immediately before employment by the taxpayer, unemployed for at least 90 days, or dependent upon public assistance as the primary source of income. Further qualifications for this benefit are in (d) below.

(c) A credit against the tax of $500.00 shall be allowed for each employee employed at that location who is a resident of any qualifying municipality in which a designated enterprise zone is located, who does not meet the requirements of N.J.A.C. 18:7-15.4(b), and who was not, immediately before employment by the taxpayer, employed at a location within the qualifying municipality in which the qualified business is located. Further qualifications for this credit are in (d) below.

(d) The enterprise zone employee tax credits provided in (b) and (c) above, shall be allowed in the tax year immediately following the tax year in which the new employee was first employed by the taxpayer, but shall only be allowed if the employee for whom credit is claimed was employed by the taxpayer for at least six continuous months during the tax year for which the credit is claimed. The credit shall be permitted in any tax year of a 20 year period from the date of designation of the enterprise zone, or in any tax year of a period of 20 tax years from the date within that designation period upon which the taxpayer is first subject to the corporation business tax under N.J.S.A. 54:10A-1, et seq., whichever is later. The termination of designation as an enterprise zone at the end of the 20 year designation period shall not terminate the eligibility period under this section.

(e) Enterprise zone employee tax credits under this section shall not reduce the taxpayer's tax liability under N.J.S.A. 54:10A-1, et seq. in any tax year by more than 50 percent of the amount otherwise due, but any unused credits may be carried forward by the taxpayer to the next succeeding tax year and be applied against 50 percent of that year's tax, but not beyond the 20 year totals set forth in (d) above.

(f) For minimum tax, see N.J.A.C. 18:7-15.3(b).

18:7-15.5 Qualification for benefits

(a) There is no formal procedure for registration as a qualified business for the purpose of obtaining the corporation tax benefits. However, each annual CBT-100 Corporation Business Tax Return which claims any urban enterprise zone corporation tax benefits must include proof that it is a qualified business. This proof may consist of a certificate or other proof of status as a qualified business for sales tax purposes under N.J.A.C. 18:7-31. If a sales tax certificate or some other form of proof has not been obtained, the taxpayer should attach a statement setting forth how it qualifies as a "qualified business" as defined in N.J.A.C. 18:7-15.2, with sufficient detail to permit verification by the Division of Taxation.

(b) For the purpose of the exemption from all net worth tax described in N.J.A.C. 18:7-15.3, the qualified business must have more employees at the place or places of business in an enterprise zone than the total number of employees at all other places of business in New Jersey on the last day of its accounting period. If this qualification is met, the qualified business is exempt from the net worth tax.

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(a)

DIVISION OF TAXATION

Sales and Use Tax
Urban Enterprise Zones; Qualified Businesses; Exemptions; Special Tax Rates

Adopted New Rules: N.J.A.C. 18:24-31.1 through 31.9

Proposed: June 4, 1984 at 16 N.J.R. 1332(a).
Adopted: October 17, 1984 by John R. Baldwin, Director, Division of Taxation.
Filed: October 18, 1984 as R.1984 d.495, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: P.L. 1983, c.303, section 22 (N.J.S.A. 52:27H-81) and N.J.S.A. 54:32B-24.

Effective Date: November 5, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): August 12, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

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

18:24-31.5 No ***partial*** exemption for retail sales of taxable services by a qualifying business
(No change in text from proposal.)

18:24-31.6 Exemption for retail sales of building materials to or for a qualified business
(a) (No change from proposal.)
(b) Purchasers of materials, supplies or services to be used for construction, alteration and repair of structures and realty of qualified businesses within an enterprise zone shall furnish to their vendors or suppliers a properly completed *[ST-13]* ***UZ-4***, Contractor's Exempt Purchase Certificate *, **Urban Enterprise Zone***.
(c) For the purpose of this section, a qualified business performing construction or similar work with its own personnel shall be considered as its own contractor, and shall be entitled to deliver a properly completed *[ST-13]* ***UZ-4*** directly to the vendor.
(Delete the text of sections 31.7, 31.8 and 31.9 from the proposal and mark sections "Reserved".)

18:24-31.7 ***(Reserved)***

18:24-31.8 ***(Reserved)***

18:24-31.9 ***(Reserved)***

SUBCHAPTER 31. URBAN ENTERPRISE ZONES ACT

18:24-31.1 General
(a) The New Jersey Urban Enterprise Zones Act, Chapter 303, Laws of 1983, N.J.S.A. 52:27H-60, et seq., approved August 15, 1983, provides for the establishment of up to ten urban enterprise zones in urban areas suffering from high unemployment and economic distress. Each designation shall be for 20 years, and the right to establish enterprise zones shall expire ten years from August 15, 1983. Zones are designated by an Urban Enterprise Zone Authority. The authority may grant certain sales tax and other tax benefits to businesses existing in or formed in enterprise zones, which have met the definition of a qualified business. This subchapter of the sales tax rules sets forth the possible benefits, the necessary definitions, and the procedures for qualifying for any of these sales tax benefits.
(b) The possible sales tax benefits include an exemption for retail sales to a qualified business, a partial exemption for retail sales by a qualified business, and an exemption for sales of building materials and services used in constructing or maintaining buildings or realty of a qualified business.
(c) No business can obtain tax benefits under this subchapter unless it meets the definition of a qualified business under N.J.A.C. 18:24-31.2.

18:24-31.2 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:
A "qualified business" means:
1. An entity authorized to do business in New Jersey which, at the time of designation as an enterprise zone, is engaged in the active conduct of a trade or business in that zone; or
2. An entity which, after that designation but during the designation period of 20 years, becomes newly engaged in the active conduct of a trade or business in that zone, and has at least 25 percent of its full-time employees employed at a business location in the zone, who meet at least one of the following criteria:
i. Resident within the zone or within the municipality within which the zone is located; or
ii. Either unemployed while residing in New Jersey for at least one year prior to being hired, or recipients of New Jersey public assistance programs, for at least one year prior to being hired; or
iii. Found to be economically disadvantaged, pursuant to the Jobs Training Partnership Act, P.L. 97-300 (29 U.S.C. 1501, et seq.). Section 1503(8) of that Act defines this term as follows:
"The term 'economically disadvantaged' means an individual who (A) receives, or is a member of a family which receives, cash welfare payments under a Federal, state, or local welfare program; (B) has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or (ii) 70 percent of the

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lower living standard income level; (C) is receiving food stamps pursuant to the Food Stamp Act of 1977; (D) is a foster child on behalf of whom state or local government payments are made; or (E) in cases permitted by regulations of the Secretary (U.S. Secretary of Labor), is an adult handicapped individual whose own income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements."

"Enterprise zone" or "zone" means an urban enterprise zone designated by the Urban Enterprise Zone Authority under N.J.S.A. 52:27H-60, et seq.

18:24-31.3 Exemption for retail sales to a qualified business

(a) Retail sales of tangible personal property (except motor vehicles) to a qualified business and sales of services to a qualified business for the exclusive use or consumption of such business within an enterprise zone are exempt from the sales and use taxes imposed by N.J.S.A. 54:32B-1, et seq., provided that the designation of the enterprise zone by the Urban Enterprise Zone Authority specifically makes this exemption available to the qualified business.

(b) Tangible personal property includes items such as office supplies, office or business equipment, office and store furnishings, trade fixtures, cash registers, etc. Services include items such as installing, maintaining or repairing tangible personal property used in business (other than a motor vehicle); maintaining, servicing or repairing real property used in business, and advertising services.

18:24-31.4 Partial exemption for retail sales of tangible personal property by a certified vendor

(a) Sales tax is imposed at 50 percent of the regular rate, on receipts from retail sales, (except retail sales of motor vehicles, and of manufacturing machinery, equipment or apparatus, not otherwise exempt,) made by a certified vendor which is a qualified business from a place of business owned or leased, and regularly operated by the vendor for the purpose of making retail sales, and located in a designated enterprise zone.

(b) This partial exemption does not extend to sales of motor vehicles.

(c) The provisions of this partial exemption do not apply to retail sales of manufacturing machinery, equipment or apparatus. Such sales may, however, be exempt from sales tax under the provisions of N.J.S.A. 54:32B-8.13, as further defined in N.J.A.C. 18:24-4.1 through 18:24-4.8.

(d) In addition to being a qualified business, a certified vendor must regularly operate a place of business for the purpose of making retail sales. Items of tangible personal property must be regularly exhibited and offered for retail sale at this location, and the place of business may not be utilized primarily for the purpose of catalog or mail order sales.

18:24-31.5 No exemption for retail sales of taxable services by a qualifying business

The Urban Enterprise Zones Act in Section 21 provides for an exemption to the extent of 50 percent of the regular rate of sales and use tax on retail sales, other than motor vehicles, manufacturing machinery, equipment or apparatus, by a certified vendor which is a qualified business. The statute does not provide for any full or partial exemption on the sale or furnishing of taxable services.

18:24-31.6 Exemption for retail sales of building materials to or for a qualified business

(a) Section 31 of the Act provides an exemption from sales and use tax on sales of materials, supplies or services to contractors or repairmen for exclusive use in erecting structures, or building on, or improving, altering or repairing real property of a qualified business within an enterprise zone.

(b) Purchasers of materials, supplies or services to be used for construction, alteration and repair of structures and realty of qualified businesses within an enterprise zone shall furnish to their vendors or suppliers a properly completed ST-13, Contractor's Exempt Purchase Certificate.

(c) For the purpose of this section, a qualified business performing construction or similar work with its own personnel shall be considered as its own contractor, and shall be entitled to deliver a properly completed ST-13 directly to the vendor.

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MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Ambient Air Quality Standards Proposed Amendments to State Implementation Plan (SIP) for Attainment and Maintenance of Ozone and Carbon Monoxide National Ambient Air Quality Standards

Public Notice and Hearings

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 13:1D-5, and 9, and N.J.S.A. 26:2C-1 et seq.

Take notice that public hearings concerning the proposed amendments to the SIP for ozone and carbon monoxide and the proposed amendments to N.J.A.C. 7:27-14 and 15, and the proposed new rule N.J.A.C. 7:27B-4 (see separate notices in this Register) will be held at the following times and locations:

December 5, 1984
10:00 A.M.
Sheraton Inn
195 route 18 (½ mile east of N.J. Turnpike, exit 9)
East Brunswick, New Jersey

December 6, 1984
10:00 A.M.
N.J. Casino Control Commission
Public Meeting Room (Second Floor)
Tennessee Avenue and Boardwalk (use Boardwalk entrance)
Atlantic City, New Jersey

The Department is seeking testimony from the public on the revised SIP for ozone and carbon monoxide and on the proposed amendments to N.J.A.C. 7:27-14 and 15, and the proposed new rule N.J.A.C. 7:27B-4.

Interested persons may submit, in writing, data, views, or arguments relevant to the proposed amendments to the SIP on or before December 7, 1984. Submissions by interested parties, and any inquiries about submissions and responses should be addressed to:

Herbert Wortreich, Assistant Director
Division of Environmental Quality
New Jersey Department of Environmental Protection
CN 027
Trenton, New Jersey 08625

Copies of this notice, are being deposited and will be available for inspection during normal office hours until December 7, 1984 at:

Atlantic County Health Department
1200 Harding Highway
Mays Landing, New Jersey 08330

N.J. Bureau of Air Pollution Control
Room 1108, Labor and Industry Building
John Fitch Plaza
Trenton, New Jersey 08625

N.J. Bureau of Air Pollution Control
Northern Field Office
1259 Route 46
Parsippany, New Jersey 07054

N.J. Bureau of Air Pollution Control
Southern Field Office
100A Larwin Road
Cherry Hill, New Jersey 08034

N.J. Bureau of Air Pollution Control
Metropolitan Field Office
1110 Raymond Boulevard—Fifth Floor
Newark, New Jersey 07102

Warren County Health Department
151 West Washington Avenue
Washington, New Jersey 07882

COUNTY LIBRARIES

County	Municipalities
Burlington	Mount Holly
Camden	Echelon Urban Complex, Voorhees
Cape May	Cape May Court House
Cumberland	Bridgeton
Monmouth	Freehold
Morris	Whippany
Ocean	Toms River
Somerset	Somerville
Sussex	Newton

PUBLIC LIBRARIES

Bloomfield, Cherry Hill, East Brunswick, East Orange, Elizabeth, Hackensack, Jersey City, Linden, New Brunswick, Newark, Paterson, Phillipsburg, Plainfield, Ridgewood, Trenton, Wayne, Woodbridge, and Woodbury.

The State may adopt the proposed amendments to the SIP for ozone and carbon monoxide without further notice. The amended SIP becomes effective and enforceable under the Federal Clean Air Act, 42 U.S.C. 7401 et seq., upon approval by the Administrator of the USEPA.

Summary

The Clean Air Act, as amended August 1977, 42 U.S. Code 7401 et seq. requires states that requested and received an extension beyond December 31, 1982 for the attainment of National Ambient Air Quality Standards (NAAQS) for ozone (O_3) and carbon monoxide (CO), to submit a revision to the 1979 State Implementation Plan (SIP). New Jersey received such an extension, and proposed revisions to the 1979 SIP on September 7, 1982 (14 N.J.R. 985).

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On October 14, 1982, in Atlantic City, October 19, 1982, in East Rutherford, and October 20, 1982 in Trenton, the New Jersey Department of Environmental Protection (NJDEP) held public hearings on the proposed 1982 State Implementation Plan revision (hereafter called the proposed 1982 SIP). Testimony was presented at each of these hearings and written testimony subsequently received. Oral and written comments were received from 28 organizations and individuals. A summary of the comments and New Jersey's response was compiled as Appendix 47 of the proposed 1982 SIP. Changes resulting from these comments were incorporated in December 1982 and circulated to those who testified. Concurrently, the United States Environmental Protection Agency (EPA) conducted a review of the proposed 1982 SIP and the public hearing comments.

On February 3, 1983, EPA proposed approval of the New Jersey 1982 SIP (volume 48, number 24, pages 5144-5149). As a condition of the proposed approval the State was required to submit further information concerning: 1) schedules to commit to specific so-called "extraordinary measures" for the control of volatile organic substances (VOS) including new controls for industrial, commercial, and motor vehicle sources and commercial products; 2) specific program elements of the motor vehicle Inspection/Maintenance (I/M) program; and 3) conformity procedures for federally funded transportation projects consistent with EPA requirements.

Public hearings to receive testimony regarding the motor vehicle program elements of the SIP were held by the Department on August 8 and 9, 1983. The proposed SIP was subsequently revised, dated September 1983, and approved by EPA on November 9, 1983. The approved SIP provides for expansion of New Jersey's vehicle emission inspection/maintenance program. This expansion requires amendments to N.J.A.C. 7:27-15. While drafting these amendments, the Department decided to establish its motor vehicle testing procedures as the proposed new rule, N.J.A.C. 7:27B-4. In order to be consistent with the minimum statutory requirements for adoption and implementation of proposed amendments to N.J.A.C. 7:27-15 and the proposed new rule, N.J.A.C. 7:27B-4, the Department is proposing the following amendments to the SIP.

The Department proposes to amend the adoption and implementation dates of three mobile source control strategies for volatile organic substances and carbon monoxide identified, discussed, and committed to in the SIP for ozone and carbon monoxide. These strategies are: (a) more stringent emission standards for post-1980 model year vehicles (pages 58 and 59 of the SIP), (b) I/M procedures and standards for heavy-duty gasoline vehicles (page 59 of the SIP), and (c) more comprehensive emission test procedures for light-duty vehicles (page 60 of the SIP).

Social Impact

Amending the dates for the three mobile source control strategies is consistent with the statutory requirements for adoption and implementation of proposed amendments to N.J.A.C. 7:27-15 and the proposed new rule, N.J.A.C. 7:27B-4. Although the amendment delays implementation by six months, this time is necessary to properly inform the public of the revised and new standards and to prepare for enforcement of these standards. Informational material regarding the new emission standards and the anti-tampering standards must be printed and distributed with vehicle registration renewal packages mailed by the Division of Motor Vehicles. In addition, the Department needs this time to modify the test equipment to accommodate the amended test standards. Consequently, the amended dates will allow for effective implementation of the program modifications.

Economic Impact

The proposed changes in dates for adoption and implementation of the revisions to N.J.A.C. 7:27-15 and the proposed new rule, N.J.A.C. 7:27B-4, will not have any significant economic impact, since a six month delay will not change costs in any significant way.

Environmental Impact

The proposed changes in dates will not have any effect on the attainment of the national ambient air quality standards for ozone and carbon monoxide by December 31, 1987.

The following are the proposed amendments to the SIP:

1. Under the heading "More Stringent Standards for Post-1980 Model Year Vehicles", the following revisions are proposed:

a. Page 59, first paragraph, last sentence—Change the date for beginning implementation from June 1, 1985 to July 1, 1985 and the date for completing implementation from December 31, 1985 to June 30, 1986.

b. Page 59, item b—Change the date for "Complete draft of revisions to Subchapter 15" from September 1, 1983 to October 4, 1984.

c. Page 59, item c—Change the date for "Propose revisions to Subchapter 15" from December 1, 1983 to November 5, 1984.

d. Page 59, item d—Change the date for "Adopt revisions to Subchapter 15" from July 1, 1984 to December 31, 1984.

e. Page 59, item e—Change the date for "Compliance with Subchapter 15 revised standards" from January 1, 1985 to July 1, 1985.

2. Under the heading "I/M Procedures and Standards for Heavy-Duty Gasoline Vehicles", the following revisions are proposed:

a. Page 59, last paragraph, first sentence—Change the date for starting implementation from January 1, 1985 to July 1, 1985 and the date for completing implementation from December 31, 1985 to June 30, 1986.

b. Page 59, last paragraph, last sentence—Change the date of adoption from July 1, 1984 to December 31, 1984.

3. Under the heading "More Comprehensive Emission Test Procedures for Light-Duty Vehicles", the following revision is proposed:

a. Page 60, third paragraph, last sentence—Change the date for beginning implementation from January 1, 1985 to July 1, 1985 and the date for completing implementation from December 31, 1985 to June 30, 1986.

(a)

OFFICE OF THE COMMISSIONER

County Environmental Health Act: Grant Application Guidelines

Public Notice

Take notice that the Office of Local Environmental Management has prepared guidelines to be used in applying for

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grants under the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq., State Aid Program. The guidelines have been mailed to all eligible county and local health agencies. Copies are available to the public at NJDEP, Office of Local Environmental Management, CN 402, Trenton, New Jersey 08625 (the Labor and Industry Building, 8th floor). The State Aid Program will assist county and local health agencies in developing environmental health programs in cooperation with the State.

HEALTH

(a)

NARCOTIC AND DRUG ABUSE CONTROL

Schedules of Controlled Dangerous Substances
Notice of Publication

Authorized By: J. Richard Goldstein, M.D.
State Commissioner of Health.
Authority: N.J.S.A. 24:21-3.

The Commissioner of Health pursuant to the authority of N.J.S.A. 24:21-3 to provide annually a list of substances subject to the New Jersey Controlled Dangerous Substances Act sets forth the list as found in the New Jersey Administrative Code at N.J.A.C. 8:65-10.1 through 8:65-10.8 inclusive and any supplements thereto and further acknowledges that list to be the controlled dangerous substances so controlled.

Copies may be obtained from the Office of Administrative Law, C.N. 049, Trenton, NJ 08625 or reviewed in the office of the Drug Control Program, New Jersey State Department of Health, C.N. 362, 129 E. Hanover St., Trenton, NJ 08625 administered by Lucius A. Bowser, RP, MPH, Chief, Drug Control Program (609-984-1308).

This notice in the New Jersey Register complies with the requirement of N.J.S.A. 24:21-3 mandating annual publication of the list of controlled dangerous substances.

(b)

HEALTH FACILITIES EVALUATION

Plan Review Schedule

N.J.A.C. 8:31-30.1

Public Notice

Take notice that the proposal which appeared in the August 6, 1984 New Jersey Register at 16 N.J.R. 2047(a) concerning Plan Review Fee Schedule should have been proposed as a new rule instead of as an amendment. N.J.A.C. 8:31-30.1 expired on December 13, 1983 pursuant to Executive Order No. 66(1978) and the Department of Health intended to propose the section as a new rule upon publication. Since, however, the text of the rule appeared as an amendment the catchline was inadvertently changed from a new rule to an amendment.

The technical error was corrected upon adoption of N.J.A.C. 8:31-30.1 at which time the rule was characterized as new. See this issue of the Register for the corresponding Notice of Adoption.

HUMAN SERVICES

(c)

DIVISION OF PUBLIC WELFARE

General Assistance Rate in Residential Health Care Facilities

Public Notice

Take notice that pursuant to N.J.A.C. 10:85-3.3(f)4(i) the Department of Human Services announces that the rate to be paid for General Assistance recipients in Residential Health Care Facilities has been increased from $461.97 to $464.05 monthly. This change is effective October 1, 1984 and is the same in both the amount and effective date as the change in the rate for the same service paid to recipients under the Federal program of Supplemental Security Income.

LAW AND PUBLIC SAFETY

(d)

DIVISION OF MOTOR VEHICLES

Bulk Commodities Application
Public Notice

Take notice that Clifford W. Snedeker, Director, Division of Motor Vehicles pursuant to the authority of N.J.S.A. 39:5E.11, hereby lists the name and address of the applicant who has filed an application for a common carrier's Certificate of Public Convenience and Necessity.

COMMON CARRIER (NON-GRANDFATHER)

G & G Transport Co., Inc.
1801 W. Indiana
Philadelphia, PA 19132

Protests in writing and verified under oath may be presented by interested parties to the Director of Motor Vehicles within 20 days following the publication date of this application.

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TRANSPORTATION

(a)

THE COMMISSIONER

Zone of Rate Freedom

N.J.A.C. 16:58D

Public Hearing

Take notice that a public hearing will be held on November 26, 1984, at 1:30 P.M. in the Hearing Room, Office of Administrative Law, 185 Washington Street, Newark, New Jersey, 07102, concerning N.J.A.C. 16:58D "Zone of Rate Freedom" as proposed in the May 7, 1984 New Jersey Register at 16 N.J.R. 1039(a) and became effective upon publication in the July 16, 1984 New Jersey Register at 16 N.J.R. 2009(a).

The public hearing will be conducted in a quasi-legislative rather than quasi-judical manner and is open to interested individuals, representatives of government bodies and companies and associations. This is the annual hearing as prescribed by law. See N.J.S.A. 48:4-2.21.

Interested persons are invited to participate through written comments or oral presentations. Comments will be restricted to the rules as adopted. Persons wishing to make oral presentation or submit written comments are requested to do so on or before November 21, 1984 by notifying:

Charles L. Meyers
Administrative Practice Officer
New Jersey Department of Transportation
CN 600
Trenton, New Jersey 08625
Telephone: (609) 292-0053

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Petition for Rulemaking Investment Policies and Priorities Pursuant to N.J.S.A. 5:12-144 and N.J.A.C. 19:54-2

Petitioner: The Public Advocate.

Authority: N.J.S.A. 5:12-69(c), N.J.S.A. 52:14-4(f) and N.J.A.C. 1:30-3.6.

Take notice that on October 4, 1984 the Public Advocate filed a petition with the Casino Control Commission requesting amendments to N.J.A.C. 19:54-2. Petitioner seeks to amend rules concerning policies and priorities relating to the nature and type of investments and contributions which would be favored as to eligibility and allowability under the casino reinvestment law, N.J.S.A. 5:12-144.

The Public Advocate's petition proposes the following regulations for Commission consideration:

POLICIES AND PRIORITIES FOR
INVESTMENTS AND CONTRIBUTIONS

SECTION 1. Definitions

As used in Section 2, the following words and terms shall have meanings herein ascribed to them:

"Blighted Area" means a portion of Atlantic City which contains one or more of the criteria for blighted areas set forth in L. 1949, c.306, Section 3, the Redevelopment Agencies Law, N.J.S.A. 40:55-3.

"Low Income" means a household with an income from 0 percent to no greater than 50 percent of the median income for the Standard Metropolitan Statistical Area (SMSA), with adjustments for household size.

"Moderate Income" means a household with an income no greater than 80 percent and no less than 50 percent of the median income for the Standard Metropolitan Statistical Area (SMSA), with adjustments for household size.

"Redevelopment" means those activities defined in L. 1980, c.121, Section 1, paragraph (1), the Redevelopment Agencies Law, N.J.S.A. 40:55C-5(1), except that such activities can be undertaken in accordance with any plans adopted by the Commission for the redevelopment of blighted areas in Atlantic City and incorporated into Section 2(b)1ii of these regulations.

SECTION 2. Policies and Priorities

(a) Policies For Investments And Contributions In Atlantic City

1. For investments and contributions required to be made by licensees in Atlantic City pursuant to N.J.S.A. 5:12-144(b) and (c), the Commission shall favor as to eligibility and allowability only those investments and contributions which:

i. Directly further the legislative intent that legalized gambling serve as a unique tool of urban redevelopment and facilitate the redevelopment of existing blighted areas in Atlantic City;

ii. Clearly serve the most pressing social and economic needs of the residents of Atlantic City; and

iii. Directly respond to the social and economic impacts of legalized gambling on Atlantic City.

(b) Priorities For Investments and Contributions In Atlantic City

1. For investments and contributions required to be made by licensees in Atlantic City pursuant to N.J.S.A. 5:12-144(b) and (c), the Commission shall favor the following investments and contributions in determining eligibility and allowability:

i. Projects or facilities for the rehabilitation, development, construction or operation of housing for persons or families of low and moderate incomes; and

ii. Projects or facilities which are undertaken in accordance with, and as a part of, a plan or plans for the comprehensive redevelopment of an existing blighted area of Atlantic City which has been adopted by the Commission pursuant to Section 3.

SECTION 3. Comprehensive Redevelopment Plans

The Commission may, at any time, adopt by resolution a comprehensive redevelopment plan or plans for existing

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blighted areas of Atlantic City upon a finding by the Commission that the plan or plans are designed for the redevelopment of blighted areas under these regulations. Adoption of a comprehensive redevelopment plan by the Commission shall render such plan a priority for investments and contributions under Section 2(b)ii.

SECTION 4. Review of Priorities For Atlantic City; Revision of Priorities

The Commission may, at any time, review the priorities for investments and contributions in Atlantic City established in Section 2(b). As part of this review, the Commission may make modifications or revisions in the priorities upon a finding by the Commission that such modifications or revisions reflect and directly further the policies for investments and contributions established by the Commission in Section 2(a).

After due notice, this petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 5:12-69(c).

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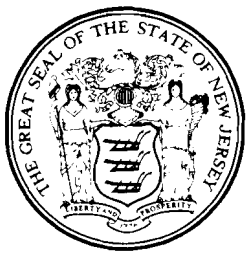

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