

# NEW JERSEY



# REGISTER

## REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS\*, PAGE 223.

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

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# RULE PROPOSALS

**Interested persons** may submit, in writing, information or arguments concerning any of the following proposals until **February 20, 1985**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice.

## BANKING

### (a)

#### DIVISION OF SAVINGS AND LOAN ASSOCIATIONS

##### Reserve Requirements

##### Proposed Repeal: N.J.A.C. 3:30-2.1

Authorized By: Mary Little Parell, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:12B-48(17).

Proposal Number: PRN 1985-46.

Address comments and inquiries to:

William B. Lewis, Deputy Commissioner  
 Department of Banking  
 Division Savings and Loan Associations  
 CN 040  
 Trenton, New Jersey 08625

The agency proposal follows:

##### Summary

The Savings and Loan Act, specifically N.J.S.A. 17:12B-48(17), requires associations to maintain reserves against deposit accounts as prescribed in regulations issued by the Commissioner of Banking, and that these reserves shall be equal in

nature and amount to the reserves required of savings banks against similar accounts.

State regulations regarding reserves against deposit accounts for savings banks were repealed because the Federal Depository Institutions Deregulation and Monetary Control Act of 1980 established reserve requirements. Savings banks now follow the reserve requirements of the Federal Reserve Board. Accordingly, associations should also follow the same requirements and State regulation of reserves against deposit accounts for associations is unnecessary.

##### Social Impact

State associations will no longer be required to follow the State reserve requirements for demand deposits and will now follow the same requirements as the savings banks, that is, Federal Reserve Board requirements.

##### Economic Impact

The overall change in costs or savings associated with this repeal should not have a significant effect on the associations, the public, or the Department of Banking.

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

#### SUBCHAPTER 2. [RESERVE REQUIREMENTS] (RESERVED)

##### [3:30-2.1 Reserve required

(a) Associations issuing accounts under the provisions of N.J.S.A. 17:12B-48(17) shall maintain cash balances against such accounts equal to three percent of the total amount of such accounts. The cash balances may consist of any of the following:

## NEW JERSEY REGISTER

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1. Lawful currency of the United States;
2. Demand deposits made:
  - i. In a reserve depository as defined in N.J.S.A. 17:9A-49;
 or
  - ii. In a Federal Home Loan Bank of which the savings association is a member; or
  - iii. Subject to the approval of the commissioner, in any bank or trust company incorporated under the laws of any state of the United States or the District of Columbia, whether or not such bank or trust company is a member of the Federal Reserve System.
- (b) The required cash balances in (a) above, to the extent of not more than one percent of aggregate deposits other than capital deposits, may be made up to obligations of the United States maturing within one year.]

## EDUCATION

### STATE BOARD OF EDUCATION

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

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

#### (a)

### School Districts; General Provisions Board of School Estimate

#### Proposed Amendments: N.J.A.C. 6:3-1.2

Authority: N.J.S.A. 18A:4-15, 18A:22-7 and 18A:22-10.

Proposal Number: PRN 1985-54.

The agency proposal follows:

#### Summary

The proposed amendment deletes the requirement that a mayor acting as the presiding officer of a board of school estimate call a meeting of the board of school estimate, for the purpose of considering a district board of education's budget, within five days after each member of the board of school estimate receives a copy of the budget of the district board of education. The Department has been advised that this requirement is inconsistent with N.J.S.A. 18A:22-7 and 18A:22-10 which require delivery of a budget to the members of a board of school estimate on or before the first Tuesday in March and a public hearing to be held between the first Tuesday in March and March 18.

#### Social Impact

The proposed amendment eliminates the problem of a mayor having to call two public meetings when only one is

required by statute in order to satisfy the requirements of the statute. It is inappropriate to allow this inconsistency between statute and code to continue.

#### Economic Impact

The proposed amendment eliminates the costs associated with a second public meeting on the budget of a district board of education. It eliminates the inconsistency between the code and the statute.

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

#### 6:3-1.2 Board of school estimate

(a) In any district **board of education** operating under N.J.S.A. 18A:9-2, the mayor of the municipality comprising the school district shall be the presiding officer of the board of school estimate, and in the event of the absence of the mayor at any meeting of the board of school estimate, the members thereof present at such meeting shall proceed to elect a presiding officer pro tem.

[(b) It shall be the duty of the mayor to call a meeting of the board of school estimate, for the purpose of considering the request of the board of education for an appropriation, within five days after there shall have been delivered to each member of the board of school estimate an itemized statement of the amount of money estimated to be necessary for the current expenses of and for repairing and furnishing the public schools of the district for the ensuing school year, and the amount of money estimated to be necessary for the purchase of any land or for the erection of any new building or an addition to a building and the equipment for any buildings.]

#### (b)

### Thorough and Efficient System of Free Public Schools Evaluation and Certification

#### Proposed Amendment: N.J.A.C. 6:8-6.2

Authority: N.J.S.A. 18A:4-15 and 18A:7A-1 et seq.

Proposal Number: PRN 1985-53.

The agency proposal follows:

#### Summary

The existing rules on a Thorough and Efficient System of Free Public Schools, N.J.A.C. 6:8, are due to expire January 1, 1987.

Internal review of the requirement of N.J.A.C. 6:8-6.2(a) to monitor each school district within a county between January, 1984 and December 31, 1985 has shown the terminal date for monitoring all districts to be unrealistic in terms of the continued need to monitor districts which are not certified, as well as to provide regulatory services and program assistance. Therefore, it is proposed that subsection (a) of N.J.A.C. 6:8-6.2 be amended to extend the terminal monitoring date by one year to December 31, 1986. The purpose of this amendment is to provide for more effective utilization of county staff and to permit sufficient time to perform other required regulatory and assistance duties.

**Social Impact**

The Department of Education's commitment to monitor all of the school districts in the State by December, 1985 has resulted in excessive time demands upon the county superintendents and their staffs. Staffing levels in the county offices were reduced as a result of the department's reorganization. The revised monitoring process is a rigorous, time consuming procedure that was not fully anticipated prior to the two-year monitoring commitment. The time constraints placed upon the county staffs by the monitoring process have seriously impeded them in follow-up monitoring activities. The local planning process also has resulted in further demands upon the time of county staff members. As a result, it is becoming increasingly difficult to maintain a high level of performance in the county units, or to devote sufficient time to the other responsibilities of the county offices.

**Economic Impact**

The extension of the monitoring process by one year to December, 1986 will have no economic impact except that of a more effective and efficient utilization of county staff. The proposed change will permit the State to direct more of its resources and skills to solving the major issues as defined by local districts. The State will be freed from the heavy time constraints of a two-year monitoring schedule and will be able to address the needs of districts by providing products and services to those districts requiring assistance.

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

## 6:8-6.2 Evaluation and certification

(a) Each school district within a county shall be monitored between January, 1984 and December 31, [1985] **1986**, and if certified, every five years thereafter by a team of persons from the county office under the supervision of the county superintendent of schools.

- 1.-5. (No change.)  
 (b)-(g) (No change.)

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**(a)**

**Business Services****Tuition Public Schools****Proposed Readoption with Amendments:****N.J.A.C. 6:20-3**

Authority: N.J.S.A. 18A:4-15 and 18A:38-19.  
 Proposal Number: PRN 1985-51.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 6:20-3 expires on April 1, 1985. The readoption of the existing rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their readoption. The amendments to the existing rules become effective upon publication in the Register of a notice of their adoption.

**Summary**

Under the provisions of Executive Order No. 66, 1978 (which provides for the expiration of amended or new rules

within five years), N.J.A.C. 6:20-3, Tuition Public Schools, will expire April 1, 1985, unless readopted.

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15 and 18A:38-19, proposes to readopt this Subchapter with amendments. This Subchapter was originally adopted in June, 1955. It was subsequently amended in December, 1970, September, 1974, April and May, 1980, July, 1982 and May, 1984. A review of the existing rules and the proposed amendments follows.

N.J.A.C. 6:20-3.1 Method of determining tuition rates. This rule defines the "actual cost per pupil" for determining tuition rates as the cost per pupil in average daily enrollment. It also establishes that whenever possible, the actual amounts expended for each program should be used in determining tuition rates. It further defines the method for determining tuition rates when it is impracticable to determine the actual amounts expended and establishes a requirement that written contractual agreements between district boards of education must be entered into; provides a date by which the contractual agreements must be signed; establishes the payment schedule for the contractual agreements, and provides the time period in which adjustment shall be made.

It requires the sending district board of education to provide the receiving district board of education with an estimate of the number of pupils expected to be sent and requires the receiving district board of education to provide the sending district board of education with an estimated tuition rate calculated on a form prepared by the commissioner and establishes the adjustments which are necessary in the event the tentative tuition charge is greater or less than the actual cost.

The Commissioner is required to prepare forms to certify the "actual cost per pupil"; prepare the contract forms and the forms to be used when estimating tuition rates, and may approve an additional charge for the use of school facilities.

Changes are proposed for subsections (a), (b), (c), (d) and (f). No changes are proposed to subsection (e) which was amended in May, 1984.

The changes in subsection (a) are proposed to clearly establish that the "actual cost per pupil" is based upon audited expenditures and does not include Federal and State special project expenditures. In addition this subsection has been changed to include tuition rates for special education classes. Relatively minor changes are also being proposed in some cases to correct technicalities of wording.

The change in subsection (b) is a minor change proposed for clarification.

The changes in subsection (c) include minor changes being proposed to correct technicalities of wording and to provide clarification; and some changes to the ratios used to determine the "actual cost per pupil." The ratio changes proposed are the ratios used to distribute the cost of principals' salaries, supervisors of instruction, textbooks, school library and audio-visual materials, teaching supplies and other instructional expenses, transportation curricular activities and student body activities. In all cases the proposed ratios are the most appropriate ratios to distribute these cost items.

The changes in subsection (d) are proposed to exempt contractual agreements for pupils enrolled in special classes from the requirements to enter into a contract by a specified date and to only make adjustments in the third school year following the contract. The Department recently became aware that these two requirements, which were adopted in May, 1984,

when applied to contracts for special education, could have a significant harmful effect on special education pupils as well as a substantial negative fiscal impact on district boards of education. An emergency adoption and concurrent proposal may be found in the January 7, 1985 issue of the New Jersey Register.

The changes in subsection (f) are minor changes to correct technicalities of wording.

N.J.A.C. 6:20-3.2 Method of determining junior high school tuition rates. This section indicates that the cost per pupil for tuition purposes in junior high schools is to be determined in the same manner as in high schools. It is being deleted in this proposal as unnecessary language since junior high schools are already included in N.J.A.C. 6:20-3.1.

N.J.A.C. 6:20-3.3 Method of determining tuition rate in a new district board of education. This section is substantially revised in this proposal and recodified as N.J.A.C. 6:20-3.2. This section previously defined the method of determining a tuition rate in a new school. Tuition rates are no longer determined for individual schools. Tuition rates are determined for each program in a district board of education. Tuition rates are determined, for example, for the four year high school program in a district board of education rather than for each four year high school building. The school concept is obsolete. This section has been changed to meet the current need to establish a method of determining a tuition rate during the first year of operation of a district board of education which is to receive pupils. The changes in addition to meeting current needs are proposed in a manner which is consistent with the May, 1984 amendments to N.J.A.C. 6:20-3.1.

N.J.A.C. 6:20-3.4 Method of determining tuition rates for educable mentally retarded children. This section describes a method which is identical to the method described in N.J.A.C. 6:20-3.1. This section is being deleted in this proposal as unnecessary language since N.J.A.C. 6:20-3.1 is changed in this proposal to include tuition rates for special education classes.

N.J.A.C. 6:20-3.5 Method of determining tuition rates for trainable mentally retarded children. This section indicates that the cost per pupil for tuition purposes in trainable mentally retarded classes is to be determined in the same manner as for educable mentally retarded classes. Since the rule for educable mentally retarded classes is being deleted in this proposal, this rule is no longer needed and is being deleted.

N.J.A.C. 6:20-3.6 Method of determining tuition rates for physically handicapped children. This section indicates that the cost per pupil for tuition purposes in each special education category is to be determined in the same manner as for educable mentally retarded classes. Since the rule for educable mentally retarded classes is being deleted in this proposal, this rule is no longer needed and is being deleted.

The Department of Education has submitted this proposal to the senior staff of the Department and to the Department's Administrative Code Review Committee, which includes representatives from the following individuals and associations for review and evaluation:

1. County Superintendents of Schools
2. New Jersey Association of School Administrators
3. New Jersey Association of School Business Officials
4. New Jersey Education Association
5. New Jersey Principals and Supervisors Association
6. New Jersey School Boards Association

It is necessary to retain this Subchapter in order to give full force and effect to the existing statutes concerning tuition in public schools. If this Subchapter is not readopted, the Department could not implement the tuition statutes successfully. District boards of education would not use a uniform method for determining tuition rates or for administering tuition contracts. In many instances this would result in open conflict between district boards of education. Recent improvements to these rules would be eliminated and sending and receiving relationships between district boards of education would suffer. In addition, severe budgetary problems would occur. Readoption of this Subchapter with the amendments is essential to maintain the integrity of the current tuition system for public schools. Experience has led the Department to conclude that this Subchapter is effective and fair to both sending and receiving district boards of education.

#### Social Impact

Readoption of this subchapter, and adoption of the amendments will impact almost all district boards of education in this State, since almost every district board of education is involved in some form with a sending or receiving relationship.

The social impact of this subchapter will be intense if these rules are not readopted. The entire tuition system for public schools would become inconsistent and chaos would result, since the district boards of education would have a definition of the "actual cost per pupil" for tuition purposes and there would be no uniform process for administering tuition contracts. This subchapter has a profound impact on district board of education budgets. While the social conditions which existed at the time this subchapter was adopted in June, 1955 have changed, the need to regulate the tuition rate system has not. On the contrary, there is an even greater need to regulate this system to insure fiscal equity for all district boards of education.

Historically the reaction to this subchapter has been very positive and there is almost universal agreement that rules governing the tuition rate system are absolutely essential to insure proper financial planning by local school districts.

The readoption of this Subchapter with amendments will not have any new significant social impact on district boards of education or pupils, with one major exception. The changes in this proposal in N.J.A.C. 6:20-3.1(d) to exempt contractual agreements for pupils enrolled in special education classes from certain requirements will have a positive impact on special education pupils by eliminating the potentially harmful aspects which exist in the current rule. N.J.A.C. 6:20-3.1(d) was published January 7, 1984, as an adopted emergency amendment and concurrent proposal.

The rules maintain or improve the current tuition system for public schools.

#### Economic Impact

Readoption of this Subchapter with amendments will permit the current tuition system for public schools to remain in effect. These rules have a definite overall positive fiscal impact on district boards of education, which spend in excess of \$100 million annually for tuition contracts under this Subchapter.

There will be no additional costs to district boards of education resulting from the readoption of this Subchapter, since they maintain an existing system. The changes in this proposal in N.J.A.C. 6:20-3.1(d) to exempt contractual agreements for pupils enrolled in special classes from certain requirements

will reduce costs for district boards of education by eliminating the harmful aspects which exist in the current Subchapter.

Readoption of this Subchapter does not have any direct economic impact that would increase State aid expenditures.

From an economic standpoint, the real impact of this proposal would be the budgetary confusion that would result from an unregulated tuition rate system and the potential harmful effect on district boards of education programs which would result from the budgetary problems caused if district boards of education do not anticipate tuition revenues or expenditures properly. In many cases, programs would be eliminated or reduced and pupils deprived of services.

The current Subchapter, for example, requires contracts to be administered exactly as negotiated to assure the fiscal viability of both sending and receiving districts. In the past, if estimated rates were too low when actual rates were certified, the receiving district enjoyed a surplus. Unfortunately, the sending districts suffered a deficit. If the estimated numbers of pupils to be sent by the sending districts were less than the estimate, the sending district enjoyed a surplus and vice versa.

The Subchapter as presently written would force the administration of the agreement. Because of the difficulty of classifying pupils rapidly and the need to continually classify them throughout the year, if the amendment is not adopted and a classification changed, a district could be placed in the peculiar position of paying on the original contract of the reclassified child as well as the need to contract for the new classification. Unless a new contract were signed, the receiving district could refuse to accept the child, which would mean a loss of a full year in a child's proper classification.

This Subchapter promotes sound administrative procedures and insures that tuition rates charged are appropriate for the programs provided.

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

### SUBCHAPTER 3. TUITION PUBLIC SCHOOLS

#### 6:20-3.1 Method of determining tuition rates

(a) The term "actual cost per pupil" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:38-19 shall mean the cost per pupil in average daily enrollment, based upon [total operating] **audited** expenditures for that year for the purpose [or purposes] for which the tuition rate is being determined that is, four year high school, senior high school, junior high school, elementary **school**, [educable,] and [so forth] **special education classes**.

1. All expenditures for [high school] **each purpose[s] except Federal and State special project expenditures** shall be included, regardless of the sources of revenue;

2. "Average daily enrollment" for the purpose of determining the "actual cost per pupil," shall be the sum of the days present and absent of all pupils enrolled in the [high school] register or registers of the program [or programs] for which the rate is being determined during the year divided by the number of days school was actually in session.

(b) Whenever practicable, the actual amounts expended for each applicable item in the program [or programs] for which the tuition rate is required, according to the prescribed book-keeping and accounting system, shall be recorded and used in determining the "actual cost per pupil."

(c) Whenever it shall be impracticable to charge the actual amount expended for a particular item in the program [or programs] for which the tuition rate is being determined then

the share of such expenditure for each program shall be determined on a pro rata basis in accordance with the following ratios:

1. Administration: Ratio of number of teachers in each [such] program to total number of teachers of the system[;].

2. Instruction:

i. Principals' salaries: Ratio of [the] number of [pupils in average daily enrollment] **teachers in each program to total number of teachers of the system**.

ii. Supervisors[, teachers; other instructional staff and other salaries] of instruction: Ratio of [time devoted to] **number of teachers in each program to total number of teachers of the system**.

iii. **Teachers' salaries shall be on an actual basis.**

[iii.] iv. **Other instructional staff**, [S]ecretarial and clerical assistants, and other salaries **for instruction**: Ratio of [the number of pupils in] average daily enrollment in each program[;].

[iv.] v. Textbooks, school library and audio-visual materials, [and] teaching supplies, **and other expenses**: [Weighted ratio of average daily enrollment of pupils in each program to average daily enrollment of all pupils in the system; in weighing, 4/10 shall be allowed for elementary and 6/10 for high school grades;

v. Other expenses:] Ratio of [the] average daily enrollment [of pupils to average daily enrollment of all pupils of the system] **in each program**.

3. Attendance and health services: Ratio of [the number of pupils in] average daily enrollment in each program. Attendance officer salary and expenses shall be excluded[;].

4. Transportation [expenditures shall be excluded] **curricular activities: Ratio of average daily enrollment in each program. Transportation salaries and other expenses shall be excluded**.

5. Operation; salaries and all other costs: Ratio of square feet of floor space used by each program. Such floor space shall not include: offices, boiler rooms, corridors, or other rooms not used by pupils. Whenever a room shall be used for two or more programs, such square footage shall be prorated as to time devoted to each program[;].

6. Maintenance; salaries and all other costs: Ratio of square feet of floor space used by each program.

7. Fixed charges: Ratio of average daily enrollment in each program[;].

8. Tuition shall be excluded[;].

9. Food services; salaries and expenses: Ratio of average daily enrollment in each program[;].

10. Student body activities; salaries and expenses [; Ratio of average daily enrollment in each program;] **shall be on an actual basis**.

11. Community services shall be excluded.

12. Building use charge: Ratio of square feet of floor space used by each program multiplied by the amount which remains after the following calculation:

i. Divide the amount of debt service State support received by the debt service paid for the school year to determine the ratio of State support;

ii. Multiply the debt service interest charges paid by the ratio of State support obtained in (c)12i. above;

iii. Subtract the amount obtained in (c)12ii. above from the debt service interest charges paid.

(d) A tentative tuition charge shall be established for budgetary purposes by written contractual agreement between the receiving district board of education and the sending district board of education, and such tentative charge shall equal an

## PROPOSALS

## Interested Persons see Inside Front Cover

## EDUCATION

amount not in excess of the receiving district's estimated cost per pupil for the ensuing school year for the purpose or purposes for which tuition is being charged, multiplied by the estimated average daily enrollment of pupils expected to be received during the ensuing school year. Such written contract shall be on a form prepared by the Commissioner.

1. The sending district board of education and the receiving district board of education shall enter into a written contractual agreement for tuition for the ensuing school year, **except for a contractual agreement for a pupil enrolled in a special education class**, no later than seven days prior to the date on which the proposed budget for the ensuing school year is required to be submitted to the county superintendent. Such contractual agreement shall require the sending district board of education to pay ten percent of the tentative tuition charge no later than an agreed upon date each month from September through June of the contract year. The contractual agreement, **except for a contractual agreement for a pupil enrolled in a special education class**, shall require that all adjustments which shall be made because of a difference in cost or in the number of pupils sent shall only be made during the third school year following the contract year. [The] **All** contractual agreements shall contain a payment schedule for all adjustments which may be necessary.

2. The sending district board of education shall notify in writing the receiving district board of education of the estimated average daily enrollment of pupils in each tuition category expected to be sent during the ensuing school year no later than December 15 preceding the beginning of the ensuing school year. The receiving district board of education shall notify in writing the sending district board of education of the estimated cost per pupil in each tuition category for the ensuing school year and the tentative tuition charge no later than January 1 preceding the beginning of the ensuing school year. The receiving district board of education shall submit to the sending district board of education a copy of its calculations to determine the estimated cost per pupil in each tuition category for the ensuing school year no later than January 1 preceding the beginning of the ensuing school year. Such calculations shall be on a form prepared by the commissioner.

3. If the commissioner later determines that the tentative tuition charge **established by written contractual agreement, except for a contractual agreement for a pupil enrolled in a special education class**, was greater than the actual cost per pupil during the school year multiplied by the actual average daily enrollment received, the receiving district board of education shall return to the sending district board of education in the third school year, following the contract year the amount by which the tentative charge exceeded the actual charge as determined above, or, at the option of the receiving district board of education shall credit the sending district board of education with the excess amount. **Such adjustment for a contractual agreement for a pupil enrolled in a special education class shall be made no later than the end of the third school year, following the contract year.**

4. If the commissioner later determines that the tentative charge **established by written contractual agreement, except for a contractual agreement for a pupil enrolled in a special education class**, was less than the actual cost per pupil during the school year multiplied by the actual average daily enrollment received, the receiving district board of education may charge the sending district board of education all or part of the amount owed by the sending district board of education, to be paid during the third school year following the school year for which the tentative charge was paid. **Such adjustment**

**for a contractual agreement for a pupil enrolled in a special education class shall be made no later than the end of the third school year, following the contract year.** The county superintendent of schools of the county in which the sending district board of education is located may approve the payment of the additional charge over another period, if the sending district board of education can demonstrate that payment during the third school year following the school year for which the tentative charge was paid would cause a hardship.

(e) The commissioner shall prepare the necessary forms to certify the "actual cost per pupil" for each tuition category according to these rules. The [C]commissioner shall also prepare the contract forms and the forms to be used by the receiving district board of education to establish the estimated cost per pupil for each tuition category for the ensuing school year.

(f) In any year in which the receiving district **board of education** can prove to the satisfaction of the [C]commissioner that the maintenance charge for the use of the school facilities is not adequate, the [C]commissioner may approve an additional charge for the use of such school facilities.

[6:20-3.2 Method of determining junior high school tuition rates

The cost per pupil for tuition purposes in junior high schools shall be determined in the same manner as in high schools.]

[6:20-3.3] **6:20-3.2** Method of determining tuition rate in a new [school] **district board of education**

(a) During the first year of operation of a [school] **district board of education** which is to [accept] receive pupils [from sending districts], the [tentative tuition rate] **estimated cost per pupil in each program for which the tuition rate is required** shall be set by the receiving district **board of education** and shall be based on [the estimated] **budgeted** costs; the [tentative tuition rate] **estimated cost or costs per pupil** so established shall be submitted to the [C]commissioner for [his] approval or disapproval **no later than January 1 preceding the beginning of the first year of operation.**

(b) If the [C]commissioner approves the [tentative tuition rate, the board of education of] **estimated cost or costs per pupil** each sending district **board of education** shall pay [this rate, pursuant to statute,] **tentative tuition charges based upon these estimated costs per pupil** during the first year of operation.

(c) If, after the first year of operation, the [C]commissioner determines that [this] **the tentative tuition [rate] charge** was greater than the actual cost [per pupil], the receiving district **board of education** shall return in the **third school year following the first year of operation** to each sending district **board of education** the amount by which the tentative [rate] **charge** exceeded the actual cost [per pupil], or, at the option of the receiving district **board of education**, shall credit each sending district **board of education** with the amount by which the tentative tuition [rate] **charge** exceeded the actual cost [per pupil].

(d) **If, after the first year of operation, the Commissioner determines that the tentative tuition charge was less than the actual cost, the receiving district board of education may charge the sending district board of education all or part of the amount owed by the sending district board of education, to be paid during the third school year following the first year of operation.**

6:20-3.4 [Method of determining tuition rates for educable mentally retarded children] **(Reserved)**

(a) The term "actual cost per pupil" for determining the tuition rate of educable mentally retarded children for a given year, referred to in N.J.S.A. 18A:46-21 as mentally retarded children, shall mean the cost per pupil in average daily enrollment based on the total operating expenditures for the year for which tuition is charged for all pupils so classified.

1. All expenditures for educable mentally retarded children shall be included regardless of the sources of revenue.

i. "Average daily enrollment" for the purpose of determining the "actual cost per pupil" shall be the sum of the days present and absent of all pupils enrolled in the school register for educable mentally retarded classes during the year divided by the number of days school was actually in session.

(b) Whenever practicable, the actual amounts expended for educable class purposes for each item, according to the prescribed bookkeeping and accounting system, shall be recorded and used in determining the "actual cost per pupil."

(c) Whenever it shall be impracticable to charge the actual amount expended for educable class purposes for a particular item, the share to be charged to educable classes shall be determined on a pro rata basis in accordance with the following ratios:

1. Administration: Ratio of the number of teachers in educable classes to the total number of teachers of the system;

2. Instruction:

i. Teachers, supervisors and principals. Ratio of time devoted to educable classes to time devoted to all duties;

ii. Textbooks and supplies. Ratio of average daily enrollment of educable mentally retarded pupils to average daily enrollment of all pupils in the system;

iii. Other expenses. Ratio of the average daily enrollment of educable mentally retarded pupils to the average daily enrollment of all pupils of the system;

3. Operation:

i. Janitors', engineers' and firemen's salaries. Ratio of square feet of floor space of areas used for educable mentally retarded classes to square feet of floor space used for all schools. Such floor space shall not include offices, boiler rooms, corridors or other rooms not used by pupils. Whenever a room shall be used by both educables and other pupils, such square footage shall be determined by the relative time use of such room by the educables and other school pupils;

ii. Janitorial supplies—fuel, light, power and water: Ratio of square footage as set forth in subparagraph i of this paragraph. Whenever costs are not kept separately for a building which is a combination school, such costs shall be prorated according to the ratio of square footage used for educables to the total square footage of the building.

4. Maintenance:

i. Salaries and contracted services. Ratio of square feet of floor space used for educable mentally retarded classes to square feet of floor space used for all schools;

ii. Replacement of equipment and other expenses. Ratio of square feet of floor space used for educable mentally retarded classes to square feet of floor space used for all schools.

5. Other school services:

i. Coordinate activities: Ratio of average daily enrollment of educable pupils to average daily enrollment of all pupils in the school system;

ii. Auxiliary agencies: Ratio of average daily enrollment of educable pupils to average daily enrollment of all pupils in the school system;

6. Fixed charges: Ratio of average daily enrollment of educable pupils to average daily enrollment of all pupils of the school system. Tuition shall be excluded.

(d) The Commissioner shall prepare the detailed directions and the necessary forms to be used by school officials in determining the actual cost per pupil for tuition purposes according to these rules.

(e) In any year in which the receiving district can prove to the satisfaction of the Commissioner that the maintenance charge for the use of the school facilities is not adequate, the Commissioner may approve an additional charge for the use of such school facilities.]

6:20-3.5 [Method of determining tuition rates for trainable mentally retarded children] **(Reserved)**

[The cost per pupil for tuition purposes in trainable mentally retarded classes shall be determined in the same manner as in educable mentally retarded classes.]

6:20-3.6 [Method of determining tuition rates for physically handicapped children] **(Reserved)**

[The cost per pupil for tuition purposes in each category listed in N.J.S.A. 18A:46-1 shall be determined in the same manner as in educable mentally retarded classes.]

(a)

## Business Services

### Purchase and Loan of Textbooks

#### Proposed Readoption with Amendments:

##### N.J.A.C. 6:20-6

Authority: N.J.S.A. 18A:4-15 and 18A:58-37.1 et seq.  
Proposal Number: PRN 1985-55.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 6:20-6 expires on April 1, 1985. The readoption of the existing rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their readoption. The amendments to the existing rules become effective upon publication in the Register of a notice of their adoption.

The agency proposal follows:

#### Summary

Under the provisions of Executive Order No. 66, 1978 (which provides for the expiration of amended or new rules within five years) N.J.A.C. 6:20-6, Purchase and Loan of Textbooks, will expire April 1, 1985, unless readopted.

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15 and 18A:58-37.1 et seq. proposes to adopt this Subchapter with amendments.

This subchapter was originally adopted pursuant to N.J.S.A. 18A:58-37.1 et seq. and was filed and became effective on August 29, 1974. With the enactment of N.J.S.A. 18A:58-37.1 et seq. in August, 1974 district boards of education were required to loan textbooks to children in nonpublic

schools subject to such rules as might be adopted by the State Board of Education. This Subchapter was adopted immediately after the enactment of N.J.S.A. 18A:58-37.1 et seq. and was amended in April, 1980 following amendments to N.J.S.A. 18A:58-37.1 et seq.

In August, 1984, N.J.S.A. 18A:58-37.1 et seq. was amended by Chapter 121, Laws of 1984. As a result of those statutory amendments, major changes are being proposed consistent with the changes to the statute. The new statute requires the district board of education in which a non-public school is located to purchase and loan text books to non-public school pupils. Previously, this was the responsibility of the district board of education in which the pupil resided. Some minor changes are also being proposed to correct technicalities of wording.

It is absolutely necessary to amend and retain these rules in order to give full force and effect to the statute requiring district boards of education to loan textbooks to children in nonpublic schools. If the rules are not readopted, the Department could not implement this statute successfully. If the rules are not amended, they would not be in compliance with the requirements in the law, as a result of the recent amendments in Chapter 121, Laws of 1984.

A review of the existing rules and the proposed amendments follows:

**N.J.A.C. 6:20-6.1 Eligibility.** The rule requires all district boards of education in which a nonpublic school is located, to purchase and to loan textbooks without charge, upon individual requests to pupils in the nonpublic schools located within the district. Children whose parents or legal guardians do not maintain a residence in this State and whose tuition is paid by a district board of education are not eligible to receive such textbooks. The text is being changed to cite the statute, to comply with the requirements in Chapter 121, Laws of 1984 and to clarify which children are eligible to receive textbooks. References to subjects covered already in the statute have been deleted.

**N.J.A.C. 6:20-6.2 Responsibility of the district board of education.** The rule requires district boards of education to distribute textbooks among both public and nonpublic pupils on an equitable basis without discrimination against pupils in either public or nonpublic schools. Reference to a subject already covered in the statute has been deleted. Minor wording changes are being proposed to correct technicalities of wording.

**N.J.A.C. 6:20-6.3 Individual requests.** The rule requires that individual requests for the loan of textbooks be addressed to the district board of education in which the nonpublic school is located. All textbooks are to be ordered in accordance with district board of education policies and purchasing practices. The text is being changed to comply with the requirements in Chapter 121, Laws of 1984 and to correct technicalities of wording.

**N.J.A.C. 6:20-6.4 Ownership and storage of textbooks.** The rule provides that all textbooks shall remain the property of the district board of education, that the district board of education is responsible for the collection and inventory of textbooks and that the district board of education may require that textbooks be returned at the end of the school year. In addition, a district board of education may enter into an agreement with the nonpublic school to store textbooks. The text is being changed to cite the statute and to correct technicalities of wording.

**N.J.A.C. 6:20-6.5 Accounting entries.** The rule allows expenditures for the purchase of textbooks to include the cost of

freight or postage for transporting the books. The rule also identifies the accounts to which the cost of public and non-public textbooks shall be charged. District boards of education will receive State aid as regular current expense State aid. Minor wording changes are being proposed to correct technicalities of wording and to make the rule more readable.

**N.J.A.C. 6:20-6.6 Textbook selection.** The rule defines the textbooks which may be loaned, a subject which is already covered in the statute. Deletion of the section is being proposed to avoid repetition.

**N.J.A.C. 6:20-6.7 Charge for textbook loss or damage.** The rule requires district boards of education to make reasonable rules and regulations governing the loan of textbooks. Such rules and regulations are required to be applicable to both public and nonpublic school pupils. This section is being proposed as 6:20-6.6 with minor changes which correct technicalities of wording.

**N.J.A.C. 6:20-6.8 State aid.** The rule concerning the administration of State aid is being deleted since this subject is already covered in the statute. It is unnecessary to repeat this information.

The Department of Education has submitted this proposal to the senior staff of the Department and to the Department's Administrative Code Review Committee which includes representatives from the following individuals and associations for review and evaluation.

1. County Superintendents of Schools
2. New Jersey Association of School Administrators
3. New Jersey Association of School Business Officials
4. New Jersey Education Association
5. New Jersey Principals and Supervisors Association
6. New Jersey School Boards Association

#### **Social Impact**

Readoption of this subchapter will impact all of the district boards of education in which a nonpublic school is located and the approximately 189,000 pupils receiving textbooks in accordance with N.J.S.A. 18A:58-37.1 et seq. In the past, this subchapter has allowed district boards of education to loan non-secular textbooks to non-public school pupils, and to govern the loan of such textbooks. Chapter 121, Laws of 1984 amended N.J.S.A. 18A:58-37.1 et seq. to require the district in which a nonpublic school is located to purchase and loan textbooks to nonpublic schools. Previously purchasing and loaning of textbooks to nonpublic school pupils was the responsibility of the district board of education in which a pupil resided. This is a significant change which is reflected in the subchapter. In the future, district boards of education will continue to loan and govern the loan of textbooks to nonpublic school pupils as in the past, but because of the new law, fewer district boards of education will participate in the loan process. The new law will allow nonpublic schools to deal directly with the district board of education in which the nonpublic school is located, rather than with many different boards.

#### **Economic Impact**

Chapter 121, Laws of 1984 has a significant economic impact on district boards of education. This law changed the district board of education responsible for the purchasing and loaning of textbooks from the district board of education in which a pupil resided to the district board of education in which a nonpublic school is located. District boards of education receive State aid to cover the cost of textbooks loaned to nonpublic school pupils. The proposal reflects the change in the statute which will shift the State aid received from the

resident board of education to the district board of education where the nonpublic school is located. Other than the changes required by the statute, the proposal has no direct economic impact on district boards of education since the proposal merely implements a change which was made by the statute. The statute shifted the economic responsibility from the resident district board of education to the district board of education where the nonpublic school is located.

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

#### SUBCHAPTER 6. PURCHASE AND LOAN OF TEXTBOOKS

##### 6:20-6.1 Eligibility

(a) [Chapter 79, Laws of 1974], **N.J.S.A. 18A:58-37.1 et seq.** requires all [local] **district** boards of education **in which a nonpublic school is located**, to purchase and to loan, without charge, upon individual requests, textbooks to pupils **in the nonpublic school or schools located within the district when such pupils are residents of [their respective school district or sent to another school district of] the State.**

(b) Children who are enrolled [as full-time pupils in grades kindergarten through 12, or any combination of them,] in [any New Jersey pupil or] a nonpublic school [are] **whose parents or legal guardians do not maintain a residence in this State shall not be eligible to receive such textbooks.**

(c) [A nonpublic school is an elementary or secondary school other than a public school, offering an educational program wherein any pupil may legally fulfill compulsory school attendance requirements.] **Children who are enrolled in a nonpublic school whose tuition is paid by a district board of education shall not be eligible to receive such textbooks.**

##### 6:20-6.2 Responsibility of the **district board of education**

[(a) Local boards of education, in accordance with section 1 of this subchapter, are required to purchase text books in the amount resulting from the total number of resident pupils in grades kindergarten through 12 as of the last day of September of the preceding school year multiplied by the State average budgeted textbook expense per public school pupil for the prebudget year.]

[(b)](a) Existing book stocks and newly purchased textbooks purchased pursuant to this statute [must] **shall** be distributed among all pupils on an equitable basis.

[(c)](b) A [local] **district** board of education shall not discriminate against pupils in either public or nonpublic schools.

##### 6:20-6.3 Individual requests

(a) Individual written requests for the loan of textbooks [must] **shall** be addressed to the [local] **district** board of education [on forms prescribed by the Commissioner of Education] **in which the nonpublic school is located.**

(b) Individual requests [may] **shall** be submitted directly to the [local] **district** board of education [of the district of residence or to] **in which the nonpublic school [attended] is located or to the nonpublic school.** In the latter case, the nonpublic school official shall forward such requests collectively to the [local] **district** board[s] of education.

(c) [For the school year 1974-75, individual requests shall be submitted on or before September 30, 1974. For each subsequent school year, the] [i]Individual requests shall be submitted on or before March 1 [of the] preceding **the school** year.

(d) Textbooks purchased shall be ordered in accordance with [local] **district board of education** policy and purchasing practices.

(e) Pupils attending [the] public schools [of the district of residence] are not required to submit such requests because **public** school officials know what textbooks are to be used.

##### 6:20-6.4 Ownership and storage of textbooks

(a) All textbooks purchased under the provisions of [this Act,] **N.J.S.A. 18A:58-37.1 et seq.**, shall remain the property of the [local] **district** board of education. Such ownership shall be indicated in each book by a label.

(b) The [local] **district** board of education shall be responsible for the collection and inventory of such textbooks.

(c) The [local] **district** board of education may require that [these] **the** textbooks be returned to the [local] **district** board of education at the end of the school year, or may[, if it wishes,] enter into [an] agreements with the nonpublic schools to store such books. In [these cases,] **the event of such an agreement** the [local] **district** board of education shall not pay storage charges of any kind to [the] a nonpublic school for this service.

##### 6:20-6.5 Accounting entries

(a) Expenditures for the purchase of textbooks may include the cost of freight or postage for transporting such books from the vendor to the **public** school district.

(b) [Purchase] **The cost** of textbooks for pupils enrolled in the public schools shall be entered in [A]account 220.

(c) The [Federal Chart of Accounts authorized the 1160 account] **cost of textbooks** for nonpublic school pupils **shall be entered in account 1161 Textbooks for Nonpublic School Pupils.**

[(d) Purchase of textbooks for nonpublic school pupils shall be recorded in 1161-Textbooks for Nonpublic School Pupils.]

[(e)](d) State aid received by the [local school] **district board of education** pursuant to [this Act] **N.J.S.A. 18A:58-37.1 et seq.** shall be recorded as regular current expense State aid.

##### [6:20-6.6 Textbook selection

(a) Textbook, as defined in the statute, means books, workbooks or manuals, whether bound or in looseleaf form, intended as a principal source of study material for a given class or group of students, a copy of which is available for the individual use of each pupil in such class or group.

(b) Any textbooks which are used in any public elementary or secondary school of the State, or are approved by any local board of education are allowed pursuant to the provisions of this act.]

##### [6:20-6.7] **6:20-6.6** Charge for textbook loss or damage

[(a) Since the law provides that textbooks be "loaned free" to the pupils, no fees may be assessed in connection therewith.]

[(b)](a) [Local] **District** boards of education shall make reasonable rules and regulations governing the loan of textbooks, which may contain requirements for reimbursement by [the] pupils to the school district for damage, loss or destruction of the loaned textbooks.

[(c)](b) Such rules and regulations shall be made applicable to both public and nonpublic school pupils.

##### 6:20-6.8 [State aid] **(Reserved)**

[(a) State aid shall be an amount equal to, but not to exceed, the authorized ceiling. The ceiling amount is the State

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average budgeted textbook expense per public school pupil for the prebudget year.

(b) The calculation of aid will be as follows:

1. The number of resident pupils on the last school day of September of the previous year, enrolled as full-time pupils in grades kindergarten through 12 in a nonpublic school multiplied by the ceiling.

2. State aid shall be apportioned to the school district where the pupil resides.

3. The Commissioner shall upon request of the local board of education, distribute State aid on a quarterly basis October 1, December 1, February 1 and May 1.

4. State aid provided pursuant to the Public School Education Act of 1975 (N.J.S.A. 18A:7A-1 et seq.) may be expended for the purchase and loan of textbooks for public school pupils in an amount which shall not exceed the State average budgeted textbook expense for the prebudget year per pupil in resident enrollment.

(c) Nothing contained herein shall prohibit a board of education in any district from purchasing textbooks in excess of the amount provided pursuant to this act.]

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## **ENVIRONMENTAL PROTECTION**

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

**(a)**

### **DIVISION OF WATER RESOURCES**

#### **Flood Hazard Area Delineation Redelineation of the Delaware River in Harmony Township, Warren County**

#### **Proposed Amendment: N.J.A.C. 7:13-7.1(c)17 (Floodway and Flood Hazard Area Delineation Map, Sheet No. 33, and Corresponding Flood Profile Plates)**

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

DEP Docket No.: 077-84-12.

Proposal Number: PRN 1985-61.

A **public hearing** on the proposal will be held on February 7, 1985 at 1:00 P.M. at:

Larry Holmes Commador  
Main Ballroom  
Rt 22  
Phillipsburg, N.J.

Address comments and inquiries to:

Clark Gilman  
Bureau of Flood Plain Management  
Division of Water Resources  
CN 029  
Trenton, N.J. 08626

The agency proposal follows:

#### **Summary**

Pursuant to the authority granted in N.J.S.A. 58:16A-50 et seq. as amended, the Department proposes to redelineate the floodway and modify the flood profiles of the Delaware River, near Kiefer Island in Harmony Township, Warren County, in the Delaware River Basin. The proposed redelineation is related to the construction of a pumping station and other diversion facilities along the Delaware River, as part of the Merrill Creek Pumped Storage Project.

The proposed redelineation is the result of the development of detailed flood calculations by the applicant for the stream encroachment permit associated with the Merrill Creek Project. The Department is obliged to delineate the floodway and the flood hazard area according to specific standards. When these standards are applied to the data submitted by the applicant, the floodway line falls at slightly different points along the Delaware River. This redelineation established a new floodway line, based upon the more accurate data. The Department therefore, proposes to redelineate the Delaware River in Harmony Township, Warren County and amended delineation map sheet number 33 and corresponding flood profile plates.

#### **Social Impact**

The act of setting the amended floodway delineation line will result in a more accurate location. A potential impact may result from construction projects, the approval of which could depend upon which side of the floodway line the project is located. The propriety of such projects is not the subject matter of this notice.

#### **Economic Impact**

As discussed above under Social Impact, the setting of the floodway delineation line at its more accurate location does not carry with it impact of any kind, including economic impact. In the case at hand, the redelineation does allow for construction of facilities associated with the Merrill Creek Project which were within the previously designated floodway.

#### **Environmental Impact**

The proposed amendment will allow construction of an intake structure, as proposed by the applicant.

**OFFICE OF ADMINISTRATIVE LAW NOTE:** The Floodway and Flood Hazard Area Delineation Map and corresponding flood profile plates, which depict the proposed redelineation for the Delaware River Basin (see N.J.A.C. 7:13-7.1(c)17), are available for review at the Office of Administrative Law at Quakerbridge Plaza, Building Number 9, Quakerbridge Road, and at the Bureau of Flood Plain Management at 1911 Princeton Avenue, Lawrenceville, New Jersey.

(a)

## DIVISION OF WASTE MANAGEMENT

### Tank Storage Containment Requirements

#### Proposed Amendment: N.J.A.C. 7:26-10.5

Authority: N.J.S.A. 13:1E-6, 58:10A-4.

DEP Docket No. 076-84-12.

Proposal Number: PRN 1985-60.

Address comments and inquiries to:

J. Mark McQuerrey  
Office of Regulatory Services  
Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Department proposes to adopt rules to set minimum standards for containment systems at hazardous waste tank storage facilities. These rules are essentially identical to the standards which presently govern hazardous waste container (drums, etc.) storage areas. Requirements for tank storage containment were not adopted in 1981, along with other waste storage facility requirements, because the (United States Environmental Protection Agency) (USEPA) had not then included them as part of the national hazardous waste control program. With these rules, New Jersey proposes to establish such standards.

This rule proposal requires, among other things, that hazardous waste storage tanks have a strong, impervious base; that a containment area be provided, capable of holding the amount of waste stored in the largest tank or 10 percent of the total storage quantity, whichever is more; and that all liquids must be removed from containment areas daily. The Department believes that effective environmental protection, as well as good business practice, justify the proposed rules. The environmental and health damage that could result from spillage or leakage at tank storage areas is substantial and requires no specialized expertise to perceive. All of the reasons which exist for having containment systems at other hazardous waste storage facilities are present for tank storage facilities. Additionally, the potential quantity of discharge from a tank is obviously much greater than what is potential from a container. Accordingly, the Department believes that all hazardous waste storage should be governed by minimum containment standards and proposes by these rules to accomplish that end.

#### Social Impact

New Jersey citizens and their environment will be protected from damage resulting from discharge of hazardous wastes from tanks. Under present industrial practices, it has been the practice among storers of hazardous substances to provide protection from the hazards of uncontrolled discharge from tanks. Therefore, this proposal will provide a uniform acceptable level of control. Permit review by the Department will be somewhat simplified by the existence of specific minimum criteria for tank storage containment.

#### Economic Impact

The majority of tank storage facilities in New Jersey were designed with some form of containment system. Additionally, storage areas for hazardous substances with more than 400,000 gallons storage capacity are governed by the containment and control requirements, under the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11. Those hazardous waste tank storage facilities which have not installed adequate containment systems will have to do so. Those systems which are too small or which have not been designed to meet these minimum requirements will have to be retrofitted. Some of the costs of installation and retrofitting should be offset by decreased liability insurance premiums and decreased clean-up costs when discharges occur.

#### Environmental Impact

New Jersey's environment will be protected from the uncontrolled discharge of hazardous wastes from tanks.

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

7:26-10.5 Tanks

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

(d) [(Reserved)] **Rules on containment in tank storage areas include the following:**

**1. Above-ground tank storage areas must have a containment system that is capable of collecting and holding spills, leaks and precipitation. The containment system shall:**

**i. Have a base underlying the tank(s) which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills and accumulated rainfall until the collected material is detected and removed. The base shall have a permeability rating of no greater than 10<sup>-7</sup> centimeters per second, in addition to adequate structural integrity to withstand the maximum anticipated stress applied to the base due to activities or structures placed in the containment area. The thickness of the base shall be specified in the permit;**

**ii. Consist of material compatible with the wastes being stored;**

**iii. Be sloped or otherwise designed and operated to efficiently drain and remove liquids resulting from leaks, spills and precipitation. Tanks shall be protected from contact with accumulated liquids; and**

**iv. Have sufficient capacity to contain ten percent of the volume of all of the tanks or the volume of the largest tank, whichever is greater. Additional capacity shall be provided to compensate for any anticipated normal accumulation of rain-water.**

**2. Run-on into the containment system shall be prevented unless the Department waives this requirement in the permit after determining that the collection system has sufficient excess capacity in addition to that required in (d)1 iv above to accommodate any run-on which might enter the system;**

**3. Accumulated precipitation shall be removed from the sump or collection area in a timely manner, to prevent blockage or overflow of the collection system; and**

**4. All liquid shall be removed from the sump or collection area daily.**

**i. If the collected material is a hazardous waste under N.J.A.C. 7:26-8, it shall be managed as a hazardous waste in accordance with all applicable requirements of this Chapter.**

**ii. If the collected material is discharged through a point source to waters of the State, it is subject to the requirements of N.J.A.C. 7:14A, regulations concerning the New Jersey Pollutant Discharge Elimination System.**

(e)-(g) (No change.)

(h) Rules for closure of tanks include the following:

1. At closure, all hazardous waste and hazardous waste residues shall be removed from tanks, discharge control equipment, [and] discharge confinement structures **and the containment system; and**

2. At closure, as throughout the operating period, unless the owner or operator can demonstrate in accordance with N.J.A.C. 7:26-8 that the solid waste removed from tank and containment system is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of [Title 7, Chapter 26, of the New Jersey Administrative Code (Bureau of Solid Waste Management) **this Chapter.**

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

## HEALTH

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

### (a)

#### HOSPITAL REIMBURSEMENT

##### Procedural and Methodological Regulations Economic Factor

##### Proposed Amendment: N.J.A.C. 8:31B-3.26 Appendix II

Authority: N.J.S.A. 26:2H-1, et seq., specifically 26:2H-5b., and 26:2H-18d.

Proposal Number: PRN 1985-42.

Address comments and inquiries to:

Faith Goldschmidt, Director Designate  
Systems Analysis and Development  
New Jersey Department of Health  
CN 360  
Trenton, NJ 08625

The agency proposal follows:

##### Summary

The proposed amendments are required to update and correct inequities in the method used for fringe benefit calculation and to make substitutions for proxy values that are no longer available. The new proxies and values have been determined to be fair and equitable, after study, and the Department believes that the average rate of inflation will continue to be reflected in the economic factors for hospital rate setting.

##### Social Impact

The proposed amendments have proxy value changes, and calculation methodology updating will effect an increase in hospital revenue in some cost component categories and a revenue decrease in others, and a neutralizing effect is expected to occur. There should be minimal impact on the hospital and consumer.

##### Economic Impact

The process of updating and utilizing another method of calculation would lower the proxy value by 4.45 percent in 1985 for the fringe benefits of the Federal Insurance Contribution Act (FICA), and 5.22 percent in 1985 for unemployment and disability; however, the impact should be minimal for the hospitals.

The proposed new proxy value for "Drugs" is approximately 1.5 percent to 2.25 percent higher than the one currently used, which is now considered to be inappropriate. This proposed proxy value will provide additional monies to the hospital and more accurately reflect their actual experience.

One of the indices for Office Supplies and one for Other Dietary Supplies have been discontinued by the Producer Price Index (PPI) and the remaining proxies have been weighted proportionately in the absence of a suitable substitution. The financial impact for the hospital is expected to be minimal.

The U.S. Department of Energy has discontinued publication of the index used as a proxy for fuel oil. The Department is proposing a new index created in 1983 and published in The Petroleum Marketing Monthly. Considering the unstable nature of the oil market and the fact that the proposed proxy is a new index, it is not possible to predict how the change will impact the hospital.

The consumer and the hospital should experience minimal economic impact due to the neutralizing effect that will occur in the economic factor calculation.

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

8:31B-3.26 Economic factor

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

#### APPENDIX II COST COMPONENTS AND PROXIES FOR THE ECONOMIC FACTOR

LABOR 1.-2. (No change.)

LABOR 3.

COST COMPONENT: Fringe Benefits

SHARE COST CENTER: Other Expense reported in PFB, LFB, and PEN Cost Centers

CATEGORY 1: FICA

PROXY: Percentage change in Social Security Tax Rate compounded by [Rate Base and salary percentage] changes in **salaries (95%)**. **Percentage change in Social Security Tax Rate compounded by change in Rate Base (5%)**.

SOURCE: U.S. Department of Health, Education and Welfare, Social Security Bulletin and BLS, [Employment Cost Index] **Average Hourly Wages—Hospital Workers (U.S.)**.

CATEGORY 2: (No change.)

CATEGORY 3. Unemployment Insurance

PROXY: Percentage change in Unemployment Insurance Rate compounded by Rate Base [and salary percentage changes] **(90%) Percentage change in Unemployment Insurance Tax Rate compounded by Rate Base and salary changes (10%)**

SOURCE: New Jersey Department of Labor and Industry and BLS, [Employment Cost Index] **Average Hourly Wages—Hospital Workers (U.S.)**

CATEGORY 4: Disability Insurance

PROXY: Percentage change in Disability Insurance Rate compounded by Rate Base [and salary percentage changes]

**HEALTH**

**PROPOSALS**

**(90%) Percentage change in Disability Insurance Rate Compounded by Rate Base and salary changes (10%).**

SOURCE: New Jersey Department of Labor and Industry and BLS, [Employment Cost Index] **Average Hourly Wages—Hospital Workers (U.S.)**

CATEGORY 5.-8. (No change.)  
SUPPLIES 1.

COST COMPONENT: Office Supplies

SHARE COST CENTER: Supply costs reported in PHY, RSD, A & G, FIS, PCC, EDR, and MRD Cost Centers

PROXIES: Producer Price Index: (PPI): 0915-06 Office Supplies and Accessories [(20%)] **(33%)**

PPI: 0913-0131.09 Paper, Unwatermarked Bond, No. 4 [(40%)] **(67%)** [PPI: 0913-0133.01 Paper, Form Bond 12 lb. (40%)]

SOURCE: BLS, Producer Price Index

SUPPLIES 2. (No change.)

SUPPLIES 3.

COST COMPONENT: Other Dietary Supplies

SHARE COST CENTER: Proportion of Supply costs reported in DTY Cost Center

PROXIES: [PPI:0915-0109.05 Paper Goods, Household Napkins (15%)]

PPI: 0915-0333.03 Paper Goods, Hot Cups [(15%)] **(24.07%)**

PPI: 0722 Unsupported Plastic Film and Sheeting [(7.5%)] **(12.03%)**

PPI: 1261 Dinnerware [(22.5%)] **(35.98%)**

[PPI: 1264-0113.02 Household Flatware, Stainless Steel (22.5%)]

PPI: 0671 Soap and Synthetic Detergent [(17.5%)] **(27.92%)**

SOURCE: BLS, Producer Price Index

SUPPLIES 4.-5. (No change.)

SUPPLIES 6.

COST COMPONENT: Drugs

SHARE COST CENTER: Supply costs reported in PHM and DRU Cost Centers.

PROXIES: PPI: [063 less 0636 Drugs and Pharmaceuticals less pharmaceutical Preparations, Proprietary] **0635 Ethical (Prescription) Drugs (70%)**

**0636 Proprietary (over the counter) Drugs (30%)**

SOURCE: BLS, Producer Price Index

SUPPLIES 7.-10. (No change.)

OTHER 1.-3. (No change.)

Other 4.

COST COMPONENT: Utilities

COST CENTER: Proportion of other expense reported in UTC Cost Center

Category 1.-2. (No change.)

CATEGORY 3: Oil

PROXY: Percentage change in [Residential Heating Oil price in Mid-Atlantic region] **price of Fuel Oil No. 2 to Commercial/Institutional users For New Jersey (50%) Percentage change in price of Fuel Oil No. 4 to End Users for Petroleum Administration for Defense (PAD) District 1 (East Coast) (50%)**

SOURCE: U.S. Department of Energy, [Monthly Energy Review] **Petroleum Marketing Monthly**

CATEGORY 4. (No change.)

OTHER 5.

COST COMPONENT: Major Moveable Equipment

CATEGORY 1. (No change.)

CATEGORY 2: General Services Equipment

COST CENTER: Equipment costs reported in DTY, HKP, L&L, and PLT Cost Centers

PROXY: PPI: 1161 Food Products Machinery [(35%)] **(41.18%)**

PPI: 1241.01 Laundry Equipment [(20%)] **(23.53%)**

[PPI: 1243.0111 Vacuum Cleaners (15%)]

PPI: 113 less 113.4 and less 113.6 Metal Working Machinery and Equipment less Industrial Process Furnaces and less Abrasive Products. [(30%)] **(35.29%)**

SOURCE: BLS, Producer Price Index

CATEGORY 3.-4. (No change.)

Other 6. (No change.)

**(a)**

**DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT**

**Surgical Facilities Standards and General Criteria for the Planning and Certification of Need**

**Proposed New Rule: N.J.A.C. 8:33A-2.1 through 2.7**

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

Proposal Number: PRN 1985-43.

Address comments and inquiries to:

John A. Calabria  
Health Planning Services, Room 604  
New Jersey Department of Health  
CN 360  
Trenton, New Jersey 08625

The agency proposal follows.

**Summary**

The Department of Health is responsible for establishing rules governing the planning and certification of need for hospital and related health care facility services. Currently there are no New Jersey State Department of Health standards appropriate to the planning and Certificate of Need review of surgical facilities. In developing these proposed rules, the Commissioner obtained the recommendations of the Surgical Facilities Advisory Committee as well as the Statewide Health Coordination Council (SHCC).

The purpose of the proposed rules is to identify policies, standards and criteria which shall be used by the Department of Health and the Health Systems Agencies to guide the planning and review of all Certificate of Need applications for new and expanded surgical facilities in the State.

**Social Impact**

N.J.S.A. 26:2H-1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the

protection and the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospitals and health care services, and health facility cost containment program . . . ."

The need to identify standards which shall form the basis for the planning of and review of Certificate of Need applications is evident for the following reasons:

1. There have been no New Jersey State Department of Health standards or criteria by which to assess the need for hospital or non-hospital surgical capacity. The addition or deletion of hospital operating rooms, or a change in the surgical suite configuration, is usually proposed as part of a major modernization or renovation project, and the change to the operating room complement is often only one component part of the overall project. Thus, the review has been of the need for the project as a whole, with no discrete assessment of the need for change in surgical resources.

2. There have been increases in the number of certificate of need applications submitted for increased surgical resources because ambulatory surgery has been considered desirable to the provision of outpatient services and has been promoted by health care researchers, providers and planners. This has led to increasing numbers of applications for freestanding ambulatory surgery facilities sometimes independent of hospitals, sometimes joint ventures between physicians and hospitals, sometimes hospital owned (directly or indirectly).

#### **Economic Impact**

Several economic forces have been influential in increasing provider demand for surgical resources, and each of these must be recognized:

1. The advent of ambulatory surgery has resulted in the potential for the increased availability of beds in hospitals. This freeing of beds reduces occupancy and places pressure on the hospital to fill beds with other admissions. The recognition of this shift toward ambulatory surgery has led to an increased awareness that ambulatory surgery must be viewed as an alternative mode of health care service delivery. In addition to expanding health care options, ambulatory surgery should also bring about lower health care systemic costs as well as lower surgical costs.

2. Studies have shown that ambulatory surgical procedures in free-standing facilities tend to be somewhat less costly than in hospitals. Free-standing facilities have no dietary costs, bear no portion of the costs of 24-hour hospital maintenance, and provide little, if any, free care.

However, narrowly focused studies of the cost-effectiveness of a procedure in an alternative setting ignore the fact that hospital costs not borne by ambulatory surgery patients may remain in the hospital to be borne by inpatients. Fixed indirect costs, such as the principal and interest on the hospital's previous capital projects, and certain overhead costs, must be pro-rated among the hospital's remaining patients. They do not drop out of the equation when ambulatory surgery patients are diverted to another setting.

Ambulatory surgery must function as an alternative delivery mode which acts as a competitive force thereby promoting the accessibility and availability of less costly surgical services.

3. Tax laws, the availability of capital for free standing surgical services, and reimbursement incentives which appear attractive to large corporate ventures—both physicians and non-physicians—may offer strong incentives to enter into this market.

4. The significant increase in the number of surgeons may lead to greater demands for increased surgical facilities.

These systemic forces are expected to lead to even more increased demands for surgical facilities. Rules are needed to guide the placement of these expensive resources throughout the State and to insure that services are of high quality, efficiently delivered at reasonable costs, and accessible to all who need them.

Full text of the proposed new rule follows.

#### **SUBCHAPTER 2. CERTIFICATE OF NEED: SURGICAL FACILITIES**

##### **8:33A-2.1 Scope**

The rules contained in this subchapter encompass both hospital based and free standing surgical facilities and identifies standards and criteria for the planning and certificate of need review for surgical facilities. These rules do not apply to the provision of cardiac surgical services or any other specialized surgical service which is the subject of a separate Department of Health Planning regulation under this chapter. The emphasis in these rules is that the provision of ambulatory surgical services should be viewed and reviewed as an alternative to inpatient surgery and not as an add-on to health care costs.

##### **8:33A-2.2 Definitions**

The following terms, when used in this subchapter, shall have the following meanings:

"Surgical facility" means a structure, office or suite of rooms which has the following characteristics:

1. Two or more operating rooms ("operating room" is defined below); and
2. One or more recovery rooms ("recovery rooms" is defined below)

The term "surgical facility" includes not only the operating and recovery rooms, but related contiguous areas, consultation and other treatment rooms. A surgical facility may be either a surgical area within a facility licensed as a hospital or be licensed independently as a "Free standing ambulatory surgical facility", defined below.

Entities which do not meet the above criteria are not herein considered facilities, and the surgical procedures performed in those entities are not subject to this subchapter.

"Operating room" means a room specifically dedicated to the performance of surgical procedures. It must meet the minimum square footage, air changes, and air pressure relationship requirements established by the U.S. Department of Health and Human Services as cited in the Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities U.S. Department of Health, Education and Welfare 1979, Sections 15:4C and D, and 15.13D. These Minimum Requirements are hereby incorporated by reference.

"Recovery room" means a room used for post-anesthesia recovery of patients. It must meet the minimum requirements established by the U.S. Department of Health and Human Services as cited in the Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities U.S. Department of Health, Education and Welfare 1979, Sections 15:4C and D, and 15.3D. These Minimum Standards are hereby incorporated by reference.

"Free standing ambulatory surgery facility" means a surgical facility that is licensed as an ambulatory surgery facility, separate and apart from any other facility license. It may be physically connected to another licensed facility, such as a hospital, but must be corporately and administratively distinct.

“Ambulatory surgical procedures” and “same-day surgical procedures” are synonymous terms for surgical procedures performed on patients who:

1. Have these procedures performed in a licensed health care facility, but do not stay overnight.
2. Require a licensed health care facility as a setting for these procedures and generally require some form of anesthesia and a facility based post surgery recovery period of at least one hour.

“Outpatient surgery” means a very minor surgery appropriately performed in private practice settings, or in hospital outpatient departments, on patients who do not require a licensed free standing ambulatory surgery facility or same-day surgery (SDS) status in a hospital. In a hospital setting, outpatient surgery is counted as an outpatient visit.

**8:33A-2.3 Dates of submission of certificate of need applications**

(a) A Certificate of Need shall be required for any new surgical facility as well as for additional operating rooms to be added to an existing surgical facility. A Certificate of Need shall also be required for the deletion of one or more operating rooms from an existing facility.

(b) Applications for additions, deletions, or alterations of surgical facilities will be processed in the same batching cycles as hospital bed need, modernization and renovation applications and in accordance to policies and procedures set forth in N.J.A.C. 8:33.

**8:33A-2.4 Information to be submitted in the certificate of need application**

(a) Information that must be provided by all applicants includes but is not limited to the following:

1. Information to indicate that licensure standards will be met;
2. The proposed capital and/or lease cost;
3. The proposed number of operating rooms;
4. The potential need or demand for the proposed surgical facility, or proposed change in the number of operating rooms, based on the surgical need methodology specified in Appendix A. All of the data used in applying the formula must be supplied in the Certificate of Need application.

(b) Information to be provided by applicants for surgical facilities includes:

1. The expected number of recovery beds and/or recliners;
2. The expected number of surgical procedures, by each of the categories given in Appendix C;
3. The expected payor percentages;
4. The procedures performed and charge per procedure, where applicable;
5. Physician fee, where applicable;
6. Documentation as to whether the physician accepts Medicare assignment;
7. The proposed service area, indicated by both a circled area on a map and list of municipalities. This area should encompass a geographic area between five and 35 miles in radius. The Department of Health shall determine the reasonableness of the defined service area.

**8:33A-2.5 Minimum size for free standing facilities**

The minimum number of operating rooms in a free-standing surgical facility shall be two.

**8:33A-2.6 Criteria for review and approval**

(a) No application for a new surgical facility, or increase in the number of operating rooms in an existing surgical facility, will be approved unless all of the following conditions are met:

1. The number of operating rooms proposed is needed when assessed according to the Surgical Need Methodology identified in Appendix A;

2. The utilization of the existing operating rooms available in the applicant’s service area is expected to be in excess of 90 percent of their capacity according to the Surgical Need Methodology in Appendix B;

3. The applicant provides sufficient assurance that both licensure standards and Medicare certification standards will be met;

4. The applicant provides assurance that at least 10 percent of their clientele will be either Medicaid eligible persons or medically indigent persons who are provided free care or charged on a sliding scale according to income based upon the Community Services Administration poverty guideline as contained in Category B of the Hill-Burton Act. This provision may be superseded by applicable indigent care requirements as contained in Amendments to the Hospital Policy Manual N.J.A.C. 8:43E-1.1 et seq. and Chapter 33 Guidelines and Criteria for Submission of Applications for Certificate of Need N.J.A.C. 8:33-1.1 et seq. If these provide higher guidelines than the above mentioned Community Services Administration poverty guidelines;

5. The applicant indicates a willingness to seek contracts with health maintenance organizations;

6. The proposed costs and charges are deemed appropriate by the Department of Health;

7. The proposal minimizes increases in systemic health care costs;

8. The applicant indicates and documents that contacts with community organizations which serve low income populations have been initiated.

**8:33A-2.7 Statistical data to be maintained and reported**

(a) The following information shall be reported by the applicant on an annual basis to the Department of Health:

1. Characteristics of patients: age, sex, residence (county/municipality), insurance coverage, and surgical procedure category. The applicant shall also request information regarding race and ethnicity which shall also be reported to the Department of Health. This information however is voluntary on the part of the patient;

2. Whether anesthesia was used, if so, what type, that is, general or local;

3. Duration (in minutes) per procedure in which the operating room was in use;

4. Number of procedures performed per operating room using the following categorization:

- i. Dedicated inpatient operating room;
- ii. Mixed same day surgery and inpatient operating room;
- iii. Dedicated same day surgery operating room.

**APPENDIX A**

**Formula for Assessing Need/Potential Demand For Additional Surgical Capacity**

**Gross Need/Potential Demand**

Service area is defined as a set of towns within a five to 35 mile radius of the proposed site.

The projected 1980-1990 population percentage change for the county is applied to the 1980 population in the service area towns for that county, to yield the service area’s expected 1990 population.

The most recent surgical rate for the service area is applied to the service area’s expected 1990 population, to yield to the number of surgical procedures expected in 1990.

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**HEALTH**

**Resources Available**

Hospitals physically located within the service area and hospitals receiving 15 percent or more of the inpatients from one or more of the towns in the service area are included in the assessment of surgical capacity available to the area. Also included in the assessment is the surgical capacity in free-standing facilities available to the area.

The total number of patients from all of the towns in the service area admitted to each of the hospitals included in the assessment are added. This figure is then divided by the hospital's total patients, to find the service area's portion of the hospital. This percentage is then applied to the number of operating rooms in the hospital, (or approved and not yet open) to determine the number of operating rooms available to this service area.

Data collection required as a result of this regulation will provide information on the number of operating rooms of three types; these types and the surgical capacity assumed for each are as follows:

- operating rooms dedicated to inpatient procedures = 1000 procedures capacity
- operating rooms being used for both inpatient and ambulatory surgery procedures = 1090 procedure capacity
- operating rooms dedicated to ambulatory surgery = 1500 procedure capacity

Until this data is received, the resource capacity of the area's operating rooms will be assessed as follows:

- Hospital operating rooms = 1090 procedure capacity
- Free-standing ambulatory surgery facility operating rooms = 1500 procedure capacity

**Net Need/Potential Demand**

The included hospitals' percentage of the service area's patient population is applied to the service area's number of surgical procedures expected in 1990. This shall determine the proportion of the area's procedures that is expected to result in demand on the area's surgical resources. This surgical procedures demand expected in 1990 is subtracted from the surgical capacity expected to be available in 1990, to determine whether additional surgical capacity is required.

**APPENDIX B**  
**Formula for Assessing Surgical Capacity**  
**Given Utilization**

**Projected Utilization**

1. Hospitals located in the service area or drawing more than half of their caseload from the service area are selected. The number of surgical procedures performed in each of those hospitals is taken from the most recent SHARE form.

2. Using population projection percentages for these counties whose patients comprise more than 20 percent of each hospital's caseload, the surgical procedures are projected to 1990.

3. Surgical procedures in ambulatory surgery facilities serving the area are also projected to 1990.

4. The 1990 surgical procedures are totaled.

**Expected Capacity**

5. The capacity of existing operating rooms in these hospitals is assessed at:

- 1 dedicated inpatient operating room 1000
- 1 mixed (inpatient and same day surgery) operating room 1090
- 1 dedicated same day surgery operating room 1500

The capacity of approved but not yet built operating rooms for these hospitals is assessed at 1090 procedures.

6. The projected 1990 surgical procedures from Step 4 above are divided by the expected capacity in Step 5; the result is the anticipated utilization of capacity. If below 90 percent, existing surgical capacity is considered to be available.

**APPENDIX C**

Procedures and group categories approved for Medicare reimbursement in ambulatory surgery centers, August 1982.

	Group			
	1	2	3	4
<b>Integumentary System</b>	Benign lesion, excision (lipoma) Fingernail, toenail removal Malignant lesion, excision (Basal cell Melanoma)		Breast biopsy (incision, excision uni- or-bilateral) Mandible cyst excision simple Philodontal cyst excision, simple, extensive Skin graft	Gynecomastia excision uni- and bilateral
<b>Musculoskeletal System</b>	Closed Reduction of Nasal Fracture Tenotomy, hands, fingers, ankle, feet and toes Trigger Finger Release (tendon sheath incision for)	Phalangectomy (amputation, fingers and toes) Sequestrectomy Tendon Sheath Release (De Quervains) Zygoma (Zygomatic arch) Reduction	Bursectomy Capsulectomy/capsulotomy (metacarpophalangeal and interphalangeal) Ganglionectomy (wrist) Neuroma excision (Morton's and cutaneous and digital nerves) Osteotomy metatarsal (metatarsal head excision) Tendon repair without graft, implant or transfer	Hammertoe Repair Boutonniere Repair Bunionectomy Ligament Repair Neurectomy Osteotomy Synovectomy Arthroscopy Fasciectomy Fasciectomy Arthrodesis Arthroplasty Tendon Repair with graft, implant or transfer
<b>Respiratory System</b>	Bronchoscopy Excision turbinate Laryngoscopy	Naval Polypectomy Antral Window (puncture) (Sinusotomy)	Ethmoidectomy	Septal Reconstruction Submucous Resection (turbinate and nasal septum)
<b>Cardiovascular System</b>	Temporal Artery, Ligation or biopsy			Varicose Vein Ligation
<b>Hemic and Lymphatic System</b>		Cervical Node (lymph node) biopsy		
<b>Digestive System</b>	Esophagoscopy Gastrosocopy Rectal Dilation Tongue Biopsy	Branchial Arch Appendage Excision Liver Biopsy, percutaneous Vermilionectomy (Lig peel) Fistulectomy	Colostomy Revision (simple) Wedge Resection of Lip Hemorrhoidectomy	Peritonoscopy (minilaparotomy) Herniorraphy
<b>Urinary System</b>	Cystourethroscopy Urethral Dilation		Transurethral Resection of Bladder Tumor (Cystourethroscopy w/operative procedure)	
<b>Male Genital System</b>	Prostate Biopsy	Orchiectomy	Hydrocele excision Spermatocoele excision	Varicocele repair
<b>Female Genital System</b>	Vulva (labia) biopsy Examination under Anesthesia (pelvic) Vaginal Stenosis Release (Dilation of Vagina under Anesthesia) Culdoscopy (Culdocentesis)	Hysterosalpingogram Perineoplasty Vaginal tumor (cyst) excision	Colpotomy, with exploration Dilation and curettage, diagnostic and/or therapeutic (non-obstetric)	Laparoscopy
<b>Endocrine System</b>			Thyroglossal Duct Cyst Removal	
<b>Nervous System</b>			Neurolysis (including carpal tunnel decompression)	Ulnar Nerve Repair Ulnar Nerve Transfer

Eye and Ocular Adnexa System	Chalazion excision Discission lens (needling of lens) Foreign Body Removal Pterygium (excision or transposition) Lacrimal duct probing or reconstruction	Canthoplasty Tarsorrhaphy	Ectropion/Entropion repair	Cataract extraction Enucleation, with and without implant Iridectomy Eye Muscle Operation extraocular muscles, strabismus procedure)
Auditory System	Myringotomy (including aspiration and/or eustachian tube inflation)			Mastoidectomy, simple (transmastoid antrotomy) Myringoplasty Stapedectomy Tympanoplasty (without mastoidectomy)

Any procedure not listed above is to be categorized as follows:

**Category**

- A Procedures involving no anesthesia.
- B Procedures involving local or regional anesthesia.
- C Procedures involving general anesthesia.

If a form of anesthesia is used that cannot be described as "local", "regional", or "general", categorize the procedure according to the duration of operating room use:

- A 30 minutes or less of OR time.
- B More than 30 minutes, but less than one hour of OR time.
- C An hour or more of OR time.

**(a)**

**DRUG UTILIZATION REVIEW COUNCIL**

**Interchangeable Drug Products**

**Proposed Amendments: N.J.A.C. 8:71**

Authority: N.J.S.A. 24:6E-6b.  
Proposal Number: PRN 1985-52.

A public hearing concerning this proposal will be held on February 11, 1985, at 11:00 A.M. at:

Hall Conference Room  
Eighth Floor, Health-Agriculture Building  
John Fitch Plaza, CN 364  
Trenton, NJ 08625

Address comments and inquiries to:

Thomas T. Culkin, Pharm D, MPH  
Executive Director, Drug Utilization Review Council  
New Jersey Department of Health  
CN 364  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant saving to consumers.

For example, the proposed Methyldopa tablets could then be used as a less expensive substitute for Aldomet, a branded prescription medicine. Similarly, the proposed Diethylpropion tablets could be substituted for the more expensive branded product, Tenuate.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency", any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including the negative comments of the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as the branded prescription medicines.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found in compliance with the U.S. Food and Drug Administration's regulations.

Of the 74 proposed medicines, only 29 (indicated by asterisks) are not currently listed in the List of Interchangeable Drug Products. The remaining 45 proposed products would only add additional manufacturers to the List.

**Social Impact**

The social impact of these proposed changes would primarily affect pharmacists, who would need to either place in their stock, or be prepared to order, those products ultimately found acceptable.

Those additional manufacturers proposed for medications already listed in the formulary simply expand the pharmacist's choice of options.

Physicians and patients are not adversely affected by the additions to the list because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the physician or patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

**Economic Impact**

The proposed amendment will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be quantitated because pharmacies vary in their prices.

Some of the economies occasioned by this proposal accrue to the State of New Jersey through its Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. These savings also cannot be totalled accurately.

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**HEALTH**

Full text of the proposed additions follows.

Allopurinol tabs 100, 300 mg	Chelsea, Danbury
Amitriptyline HCL tabs 10, 25, 50, 75, 100, 150 mg	Sidmak
Amitriptyline HCL tabs 10, 25, 50, 75, 100 mg	Superpharm
Aspirin, Caffeine, Propoxyphene HCL caps	Phoenix
*Betamethasone Dipropionate cream, oint. 0.05%	Pharmaderm/BYK-Gulden
*Betamethasone Dipropionate cream, oint. 0.05%	Fougera/BYK-Gulden
*Betamethasone Dipropionate cream, oint. 0.05%	Savage/BYK-Gulden
*Bromodiphenhydramine HCL 12.5 mg/5 ml with Codeine PO <sub>4</sub> 10 mg/5 ml syrup	Bay
*Brompheniramine HCL 4 mg/5 ml with Phenylpropanolamine HCL 25 mg/5 ml syrup	Bay
Chloral Hydrate caps 250 mg	Pharmacaps
Chlordiazepoxide HCL caps 5, 10, 25 mg	Superpharm
Chlorpropamide tabs 100, 250 mg	Danbury, Chelsea, Pharm.
	Baescis, Superpharm, Cord,
	Lemmon
Chlorpropamide tabs 250 mg	Drummer/Phoenix
Chlorpropamide tabs 100 mg	Zenith
Chlorthalidone tabs 50 mg	Drummer/Phoenix
Chlorthalidone tabs 25, 50 mg	Superpharm
*Codeine PO <sub>4</sub> , Pseudoephedrine HCL, Triprolidine HCL syrup	Bay
Cyclandelate caps 200, 400 mg	Sidmak
*Deserpidine 0.5 mg with Methyclothiazide 5 mg tabs	Bolar
*Deserpidine 0.25 mg with Methyclothiazide 5 mg tabs	Bolar
*Dexchlorpheniramine Maleate syrup 2 mg/5 ml	Bay
Dicyclomine HCL 10, 20 mg	Drummer/Phoenix
Diphenhydramine HCL caps 25, 50 mg	Superpharm
Diphenoxylate HCL/Atropine tabs	Superpharm
*Diethylpropion HCL tabs 25 mg	Drummer/Phoenix
Dipyridamole tabs 25, 50, 75 mg	PAR, Sidmak, Superpharm
*Disulfiram tabs 250, 500 mg	Sidmak
Doxycycline Hyclate caps 50 mg	PAR
Doxycycline Hyclate caps 50, 100 mg	Superpharm
Doxycycline Hyclate tabs 100 mg	Superpharm
*Ethaverine HCL extended release caps, 100 mg	Sidmak
*Fluoxymesterone tabs 10 mg	Pharm. Basics
Furosemide tabs 20 mg	Superpharm
*Furosemide tabs 80 mg	Cord
Hydralazine HCL tabs 10, 25, 50 mg	Superpharm
Hydrochlorothiazide tabs 25 mg	Drummer/Phoenix
Hydrochlorothiazide tabs 25, 50, 100 mg	Superpharm
*Hydrochlorothiazide 50 mg with Reserpine 0.125 mg tabs	Cord
Hydroflumethiazide tabs 50 mg	Chelsea
*Hydroflumethiazide 50 mg with reserpine 0.125 mg	Pharm. Basics
Hydroxyzine HCL tabs 10, 25, 50 mg	Sidmak, Superpharm
Hydroxyzine Pamoate caps 25, 50, 100 mg	Superpharm
Indomethacin caps 25, 50 mg	Chelsea, Lederle
Isoxsuprine HCL tabs 10, 20 mg	Superpharm
*Labetolol HCL tabs 200, 300 mg	Schering
Lindane shampoo 1%, lotion 1%	Bay, NPC
Meclizine HCL tabs 12.5, 25 mg	Sidmak
*Medroxyprogesterone Acetate tabs 10 mg	Pharm. Basics
Methyclothiazide tabs 2.5, 5 mg	Chelsea
*Methyldopa tabs 125, 250, 500 mg	Chelsea
*Methyldopa tabs 250, 500 mg	Cord, Mylan
Metronidazole tabs 500 mg	Drummer/Phoenix
Metronidazole tabs 250, 500 mg	Sidmak, Superpharm
*Nitroglycerin sustained release caps 9 mg	Cord
*Nitroglycerin sustained release caps 2.5, 6.5, 9 mg	Sidmak
Nylidrin HCL tabs 6, 12 mg	Sidmak
Nystatin oral susp. 100,000 u./ml.	Bay Savage/BYK-Gulden
Nystatin oral susp. 100,000 u./ml.	Pharmaderm/BYK-Gulden
Nystatin oral susp. 100,000 u./ml.	Fougera/BYK-Gulden
*Papaverine HCL extended release caps 150 mg	Sidmak
Phenylbutazone tabs 100 mg	Cord

- \*Prednisolone tabs 5 mg
- \*Prednisone tabs 5, 10, 20 mg
- Prenatal vitamins (Stuarnatal 1 + 1 formula)
- \*Prochlorperazine edisylate concentrate 10 mg/ml
- \*Sodium Polystyrene Sulfonate susp.
- \*Sodium Polystyrene Sulfonate powder
- Spironolactone tabs 25 mg
- Spironolactone 25 mg with Hydrochlorothiazide 25 mg tabs
- Sulfamethoxazole/Trimethoprim tabs 400/80, 800/160
- Tetracycline HCL caps 250, 500 mg
- Thioridazine HCL oral solution 30 mg/ml, 100 mg/ml
- Tolbutamide tabs 0.5 g
- \*Vitamin B complex/mineral tabs (Berocca Plus formula)

- Superpharm
- Superpharm
- Par
- Bay
- Bay
- Bay
- Cord
- Cord
- Chelsea, Heather, Superpharm
- Superpharm
- Cord
- Superpharm
- Kapital

## HIGHER EDUCATION

### (a)

#### State Colleges Policies and Procedures

#### Proposed Amendments: N.J.A.C. 9:6-1.2, 3.1, 3.4, 3.5, 3.6, 3.11, 4.4, 4.7, 5.2 and 5.13

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

Proposal Number: PRN 1985-47.

Address comments and inquiries to:  
Grey J. Dimenna, Esq.  
Administrative Practice Officer  
Department of Higher Education  
225 West State Street  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Board of Higher Education is statutorily charged with establishing policies and procedures governing the operation of New Jersey's state college system. The current regulations expired on November 21, 1984 pursuant to the provisions of Executive Order No. 66(1978).

These regulations were previously noticed for comment at 16 N.J.R. 2209 with significant revisions. Also, that proposal called for a reorganization of the rules into a different area of the administrative code. As a result of the first proposal, the Department received several comments from county colleges, State colleges and the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO. This current proposal reflects amendments made to the original proposal (which has not yet been adopted) based upon the above mentioned comments. The proposed amendments should be read in conjunction with the original proposal.

#### Social Impact

The effect of the regulations as amended by this proposal is not substantially different from that set forth in the original

proposal at 16 N.J.R. 2209 (see original social impact statement). The only exception is in the area of reduction in force policies. Based upon a comment received by the Council of New Jersey State College Locals, the Department amended this area to delete the provision allowing a state college board of trustees to declare a fiscal exigency for the upcoming fiscal year subsequent to the Governor's annual budget message. The Department agreed with the Council that current negotiated contract provisions made this rule unnecessary.

#### Economic Impact

The current proposal is not substantially different from the original proposal set forth at 16 N.J.R. 2209 (see original economic impact statement). The only exception is in the area of reduction in force policies as set forth above.

**Full text** of the proposed new rules appears at 16 N.J.R. 2209(a).

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

#### 9:6-1.2 Standards

(a) The Board of Higher Education believes that one key to high standards in the state colleges is adherence to sound admission requirements. As such, the aforementioned policies apply without exception to all regularly admitted students. However, the board recognizes that admissions standards must be administered flexibly in order to meet the specific educational objectives of each institution and in order to provide equitable educational opportunity. Therefore, the state colleges are authorized to make exceptions to the requirements for high school graduation and course distribution, as stated in N.J.A.C. [9:6-2.1.1] **9:6-1.1(a)1**, for students admitted through a college's special admissions program. In accordance with Board of Higher Education policy, students admitted under the Educational Opportunity Fund program shall constitute a minimum of ten percent of the New Jersey residents in the entering freshman class, and students admitted through the colleges special admissions program shall not exceed ten percent of the entering freshman class or other proportion approved by the Board of Higher Education.

(b) (No change.)

#### 9:6-3.1 Academic freedom

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

(c) **Closely related to the matter of academic freedom is meaningful and systematic involvement of faculty in the gov-**

ernance of the college. Each board of trustees shall establish formal means to assure that faculty views are taken into account regarding such matters as academic policy, curriculum development, faculty and other academic personnel decisions.

#### 9:6-3.4. Period of appointment

(a) An initial appointment may be made for up to three years[,] and shall be made in conformance with one or all of the following criteria:

1. To secure the employment of a highly desirable prospective faculty person in a subject area of high demand/low availability of qualified faculty;

2. To attract highly qualified faculty to programs identified by the Board of Trustees as priority programs;

3. To insure employment of a highly qualified prospective faculty person for whom other institutions outside the state may be competing;

4. To attract faculty who may hold tenure or long-term appointments at other institutions;

5. In circumstances where the desired prospective faculty person must relocate across a substantial geographic distance in order to accept the position.

(b) Reappointments shall be for one year until the faculty member attains tenure.

#### 9:6-3.5 Qualifications for rank

(a) The academic attainment level and professional experience requirements for college faculty academic rank are set forth below. Conditions concerning promotion or appointment to such rank are defined in N.J.A.C. [9:6-3.8] **9:6-3.6** (Criteria for promotions):

1. (No change.)

2. Assistant Professor: An earned doctorate or other appropriate terminal degree or its equivalent from an accredited institution in an appropriate field of study or completion of all requirements for the doctorate in an accredited institution except for the dissertation. For persons **hired after January, 1985**, who do not hold the appropriate terminal degree or its equivalent, no reappointment shall be made to the fourth year **unless the board of trustees of the college determines that for rare and exceptional reasons reappointment is necessary to support the mission of the college.**

3.-5. (No change.)

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

#### 9:6-3.6 Criteria for promotions

(a) Criteria for granting academic rank are set forth in N.J.A.C. [9:6-3.7] **9:6-3.5** (Qualification for rank). These criteria are important indicators of academic achievement. Such achievement is usually accompanied by intellectual growth and maturity. Most important, the academic achievement record is a reasonable objective measure. While this objective measure should be given weight in promotion decisions, it should not necessarily be the dominant factor. Decisions about promotions shall be governed by at least three broad and interrelated factors:

1. Effective teaching;

2. Scholarly achievement; and

3. Contributions to college and community.

(b) (No change.)

#### 9:6-3.11 Adjunct faculty

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

(b) Adjunct faculty shall not teach more than the equivalent of half-time (12 teaching credit hours) during any academic year, **nor shall teach any more than two courses in any one semester.**

#### 9:6-3.13 Emeritus

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

#### 9:6-4.4 Evaluation of tenured faculty

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

(c) These evaluations, which [shall] **should** include student input, shall include such factors as continued teaching competence, professional preparation and attainments which are directly related to teaching or administrative assignments, contributions to campus life beyond formal, assigned instructional activity and significant research, scholarly or community activity.

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

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

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

#### 9:6-5.2 Declaration of fiscal exigency

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

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

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

# HUMAN SERVICES

The following proposals are authorized by George J. Albanese, Commissioner, Department of Human Services.

## (a)

### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

#### Prosthetic and Orthotic Services Shoes and Shoe Appliances

#### Proposed Amendment: N.J.A.C. 10:55-1.5, 1.8, 3.1

Authority: N.J.S.A. 30:4D-6b(6)(12), 7, 7a, 7b; 30:4D-12; 42 CFR 447.325.

Proposal Number: PRN 1985-50.

Address comments and inquiries to:

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

Comments may be reviewed by the public at the above address. A copy of the proposed changes are available for public review at the sixteen Medicaid District Offices.

The agency proposal follows:

#### Summary

This proposal is in response to a petition for rulemaking filed pursuant to the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-4(f)). The petition was filed by the law firm of Carella, Byrne, Bain & Gilfillan representing the New Jersey Pedorthic Society. The primary nature of the request is an upgrading of the fee schedule for shoes and shoe appliances.

In response to the petition, the Division is proposing to delete the current price listing, entitled "maximum pair price," which appears under the heading "Shoes and Shoe Appliances Schedule of Allowances" that is part of the Prosthetic and Orthotic Procedure Codes referenced at 10:55-3.1. The current procedure codes and narrative descriptions will be retained, because providers are still required to use both when submitting a claim to the Prudential Insurance Company. Providers are also required to list their customary charges in section 13F of the claim form (MC-15-C1).

Instead of using the current price listing, providers will attach a copy of the invoice to the claim form. The Prudential Insurance Company, acting as fiscal agent for the Division, will process the claim for payment, which will be computed by adding 50 percent to the invoice cost.

If the cost listed on the invoice is excessive, then Prudential may request additional information from the provider, and may make an adjustment for invoice costs that are deemed excessive. In addition, if the provider's customary charge is lower than the invoice cost plus 50 percent, then the provider will be reimbursed on the provider's customary charge. Both

limitations are based on the federal regulations (42 CFR 447.325) which allow the agency to pay the customary charges of the provider but **must** (emphasis added) not pay more than the prevailing charges in the locality for comparable services under comparable circumstances.

The proposal also permits certain procedures to be performed by providers other than certified prosthetists and orthotists, including pedorthists and shoe dealers. These procedures have been identified by an asterisk (\*) next to the procedure code which is referenced, but not reproduced, at N.J.A.C. 10:55-3.1, entitled Prosthetic and Orthotic Code lists.

An updated list of the Prosthetic and Orthotic Code lists is included with this proposal. The asterisked (\*) procedure codes and the deleted price listing for shoes and shoe appliances are identified. A copy of the list may be obtained from the Division's Administrative Practice Officer or may be reviewed at the Office of Administrative Law, Administrative Publications, Quakerbridge Plaza, Bldg. 9, Trenton, N.J. 08625.

#### Social Impact

Medicaid patients who need shoes and shoe appliances will continue to have this service available to them due to the revised reimbursement formula and the ability of providers, other than certified prosthetists and orthotists, to render certain services.

The rule impacts on providers of prosthetics and orthotics, and pedorthists and shoe dealers, who are participating in the Medicaid program. The modifications to the schedule of allowances for shoes and shoe appliances apply to all providers listed above. With respect to the asterisked (\*) procedures, this proposal will enable pedorthists and shoe dealers to dispense and be reimbursed for these items in the same manner as certified prosthetists and orthotists. Procedures that are not asterisked (\*) can be dispensed only by certified prosthetists and orthotists in accordance with existing policy.

#### Economic Impact

There is no cost for shoes and shoe appliances to the Medicaid patient.

The Division expended approximately \$183,000 (federal-state share combined) for shoes and shoe appliances in fiscal year 1984. It is estimated that this new reimbursement formula will cost the Division an additional \$200,000 (approximately) annually (federal-state share combined).

There is no change in the fee schedule associated with the listing under prosthetic and orthotic codes, descriptions and prices because this portion of the fee schedule was recently revised effective June 4, 1984 (R.1984 d.206). If a pedorthist or shoe dealer performs an asterisked (\*) procedure, they will be reimbursed at the existing Medicaid fee schedule.

The schedule of allowances for shoe and shoe appliances is being amended by deleting the existing fee schedules. Instead, the Division will reimburse providers based on their invoice cost plus 50 percent. This will provide a more accurate and current basis of reimbursement. The reimbursement methodology will be the same for all providers, including certified prosthetists, orthotists, pedorthists, and shoe dealers, when they dispense an item listed under shoes and shoe appliances.

**Full text** of the proposed amendments to N.J.A.C. 10:55-1.5 and 1.8 follows (additions indicated in boldface **thus**).

10:55-1.5 Policy on shoes  
(a)-(c) (No change.)

(d) Reimbursement for shoe and shoe appliances will be made in the following manner:

1. The provider will attach a copy of the invoice to the claim form (MC-15-C1) that is submitted to the Prudential Insurance Company;

i. If there is more than one line item on an invoice, the provider must clearly identify which item corresponds to the entry on item 13 of the claim form,

ii. The item identified on both the invoice and the claim form must correspond to the item that was dispensed to the Medicaid patient,

2. The provider will complete the claim form in the prescribed manner, insuring that there is an entry for each item in section 13;

i. Providers will continue to use the same procedure code number and narrative description contained in the listing for shoes and shoe appliances that is referenced at N.J.A.C. 10:55-3.1, entitled Prosthetic and Orthotic Code lists,

3. The Prudential Insurance Company will process the claim for payment by taking the invoice cost and adding 50 percent to this cost. The sum total of both figures (invoice cost plus 50 percent) will be the amount of reimbursement to the provider;

i. If the provider's customary charge is lower than the computed amount (invoice cost plus 50 percent) specified in 3. above, then the provider will be reimbursed on the basis of his/her customary charge (reference is made to N.J.A.C. 10:55-1.9(d)).

(e) The Prudential Insurance Company may request additional information from the provider where the invoice cost is excessive in comparison to invoice costs submitted by other providers. An adjustment may be made for invoice costs that are deemed excessive.

#### 10:55-1.8 Common procedures for providers of shoes and shoe appliances

(a) Certain procedures may be performed by providers other than certified prosthetists and orthotists, including pedorthists and shoe dealers. These procedures will be identified by an asterisk (\*) next to the procedure code which is referenced, but not reproduced, at N.J.A.C. 10:55-3.1, entitled Prosthetic and Orthotic Code lists.

(b) Providers submitting claims using the asterisked (\*) procedure codes must follow all applicable Medicaid policies and procedures, including those contained in subchapters 1 and 2 of this chapter (N.J.A.C. 10:55-1.2).

#### 10:5-3.1 Prosthetic and orthotic code lists

Certain procedure codes can be done by providers, other than certified prosthetists or orthotists, who have been approved for participation in the New Jersey Medicaid Program. The procedure codes have been identified by an asterisk (\*). Reference is made to N.J.A.C. 10:55-1.8.

The listing for shoes and shoe appliances has been amended. The procedure code and narrative description have been retained; the fee schedule, entitled maximum price per pair, has been deleted. The Division will reimburse for shoes and shoe appliances by using an invoice cost plus 50 percent. Reference is made to N.J.A.C. 10:55-1.5.

AGENCY NOTE: The full text of the amendments to the Prosthetic and Orthotic Code Lists (N.J.A.C. 10:55-3.1) is not printed in this proposal. Copies may be obtained from the Division's Administrative Practice Office or may be reviewed at the Office of Administrative Law, Administrative Publications, Quakerbridge Plaza, Bldg. #9, Trenton, New Jersey 08625.

## DIVISION OF PUBLIC WELFARE

For proposals number PRN 1985-66, 67, 68, 69 and 70, address comments and inquiries to:

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

(a)

### Public Assistance Manual Temporary Absence of Children from Home

#### Proposed Amendment: N.J.A.C. 10:81-3.34

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Proposal Number: PRN 1985-70.

The agency proposal follows:

#### Summary

At 15 N.J.R. 2134(a), the Department proposed text to amend N.J.A.C. 10:81-3.34. That amendment delegated to the county welfare agencies (CWAs) certain authority which had been retained by the Department's Division of Public Welfare with respect to temporary absence of children from their homes. Comments, especially those from client advocacy groups, objected, not to the delegation of authority, but to the injustice which may arise when the absence of a child is the result of an improper taking of the child, particularly an improper removal by a noncustodial parent. The validity of the objection was recognized. It was also recognized, however, that public assistance for the support of a child who does not live at home must be carefully controlled.

This amendment/reproposal continues to delegate to the CWAs the authority to handle certain cases. It does so, however, subject to the rebuttable presumption that the absence of the child was with the consent of the custodial parent. Inserted are provisions defining the rebuttal, establishing procedures for those cases in which successful rebuttal is made, and offering help to the victims of an improper taking of a child.

#### Social Impact

In addition to expedited decisions in cases of consensual transfer, the problem of non-consensual transfer is now addressed and guidance to sources of legal aid provided to the parent whose child is improperly taken.

#### Economic Impact

The change in the administrative level of certain eligibility decisions will have little or no economic impact because the criteria used in making the decisions would be the same regardless of the administrative level at which the decisions are made. The insertion of the rebuttable presumption and the related provisions can serve to continue assistance for a short time in some cases. While the continuation may be critical to the recipient, the incidence of cases in which it applies is not likely to be large enough to make a perceptible difference to the public treasury.

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

10:81-3.34 Absence for reasons other than institutional

(a) [The county welfare agency shall obtain approval from the State office to continue a child in the grant during any

visit, vacation or temporary absence from the home for reasons other than institutional placement which will continue for more than 30 days.] **Children: Temporary absence of a child which has not lasted more than 30 consecutive days does not affect eligibility or level or grant entitlement.**

1. It shall be presumed, subject to rebuttal, that a child who is absent from the home is absent with consent of the recipient parent or parent person or pursuant to legal process. In accordance with that presumption, if the child is known to be in the custody or control of a relative as specified in N.J.A.C. 10:81-3.11, the CWA shall delete the child from grant status, subject to adverse action notice requirements, after 30 days of absence from the home. Similarly, if the child is not known to be in the custody or control of such a relative, the CWA shall delete the child from grant status after 60 days of absence from the home.

2. When it comes to the attention of a case worker that a child or children have been taken from the recipient's custody without permission, or that a child or children have not been returned to the recipient's custody within the agreed time, the Agency shall inform the recipient that he or she may file a complaint for Interference with custody in the Municipal Court in the town in which he or she lives pursuant to the provisions of N.J.S.A. 2C:13-4, that the recipient may institute proceedings for custody in the Superior Court, Chancery Division, Family Part in the county in which the recipient resides, and that the recipient may seek legal assistance in recovering physical custody of the child through the Legal Aid or Legal Service Office in the county in which the recipient resides.

3. Upon successful rebuttal of the presumption of consensual or legal transfer in (a)1 above, the CWA shall not reduce or discontinue assistance because of the absence.

i. In such event, where absence will continue beyond 60 days, the CWA shall refer the matter to the State office for a determination of continued eligibility. The CWA shall not reduce or discontinue assistance by reason of the absence except upon the instruction of the State office.

4. The presumption of consensual transfer set forth in (a)1 above is successfully rebutted if all of the following exist:

i. There is satisfactory evidence that the transfer was without the consent, express or implied, of the recipient parent or parent person; and

ii. Legal action for the return of the child has been initiated; and

iii. There is a reasonable prospect for the return of the child in the near future.

(1) If within 90 days the child's whereabouts are unknown, it is to be understood that there is no reasonable prospect for the return of the child in the near future.

(2) However, for unusual situations which will continue for longer than 90 days, the CWA shall obtain approval from the State office to continue a child in the grant.

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

(a)

### **Public Assistance Manual Continuing IV-D Services for Families that Lose AFDC Eligibility**

#### **Proposed Amendment: N.J.A.C. 10:81-11.1, 11.4, and 11.12**

Authority: N.J.S.A. 44:7-87 and 44:10-3; 49 FR 36764, and the Federal Child Support Amendments of 1984 (P.L. 98-378).

Proposal Number: PRN 1985-68.

The agency proposal follows:

#### **Summary**

Federal regulations promulgated at 49 FR 36764 amend 45 CFR 302.33 to provide clarification that assistance in obtaining support must be available to all children, regardless of whether or not they receive benefits under the Aid to Families with Dependent Children (AFDC) program. Therefore, N.J.A.C. 10:81-11.1 is being amended to ensure that this requirement is clearly understood to apply to non-AFDC as well as AFDC cases.

At N.J.A.C. 10:81-11.4 and 11.12, provisions are included to comport with the Federal Child Support Enforcement Amendments of 1984 (P.L. 98-378) which mandate that states are required to continue to collect support payments for a period not to exceed five months from the month following the final AFDC payment received by the family under the Title IV-A program. All amounts collected that represent current support are to be paid to the family. During this period, the State may not recover costs from either parent.

After the five-month collection period, the State IV-D agency may continue to collect current support payments from the absent parent if the payee authorizes collection to be continued.

The State IV-D agency is prohibited from requiring any formal application or imposing any application fee in those cases where the IV-D agency is authorized to continue to collect and distribute support payments after a family ceases to receive AFDC assistance. Notice to the family will be provided by the IV-D agency informing that collection services may continue to be provided.

#### **Social Impact**

The amendment at N.J.A.C. 10:81-11.1 should eliminate any possible confusion about the inclusion of non-AFDC cases in the IV-D program and will promote the immediate and complete availability of child support services to non-AFDC children, thereby reducing AFDC dependency.

The provisions at N.J.A.C. 10:81-11.4 and 11.12 should have a positive impact since an AFDC family will generally

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**HUMAN SERVICES**

benefit from the continuation of Title IV-D enforcement services after they cease to receive AFDC payments. Continuing enforcement by the State IV-D agency will help prevent collections from lapsing and the family from returning to the AFDC rolls.

**Economic Impact**

More efficient enforcement and collection in non-AFDC cases will reduce total arrearages, both individually and collectively. Decreased expenditures for AFDC should result which would benefit the tax paying public. With regard to the continuation of Title IV-D enforcement services after a family ceases to receive AFDC payments, the fiscal impact cannot be accurately estimated since this procedure is awaiting implementation within the State. However, its use should assist in preventing families from returning to the AFDC rolls.

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

10:81-11.1 Introduction

The regulations contained in this subchapter are applicable, **as appropriate** to the AFDC and non-AFDC program in New Jersey. P.L. 93-647 establishes Title IV-D of the Social Security Act, which mandates procedures for enforcing support obligations owed by absent parents to their children, locating absent parents and establishing paternity for children born out-of-wedlock. If any regulations herein contradict or conflict with any previously published portions of this manual, such material shall be superseded by this subchapter, except as stated in N.J.A.C. 10:81-11.16(a)2.

10:81-11.4 Assignment of support rights

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

(d) IM worker's responsibility: The IM worker shall advise the AFDC applicant/recipient that upon signing an application (PA-1J) for AFDC he or she assigns to the county welfare agency any rights to past due support and future support and subsequent to its completion, he or she shall be responsible for informing the county welfare agency of any payments which may be received either directly or through the probation department from an absent parent. Additionally, the AFDC applicant/recipient shall be informed of his or her cooperation responsibilities (see N.J.A.C. 10:81-11.5).

1. Referral to CSP Unit: The IM worker, at the time of application for AFDC-C, shall complete the appropriate parts of the CSP referral document and route this form to the CWA/CSP Unit within two working days of issuance of an assistance check.

i.-iv. (No change.)

v. **Continuing IV-D services for families that lose AFDC eligibility: the IV-D agency is required to collect support payments for a period of five months after the final AFDC payment the family receives under the Title IV-A program. The IV-D agency is required to pay all amounts collected representing support to the family. A IV-D agency may not recover costs from either parent during this period.**

vi. **After the five-month continued IV-D service of collections: If the IV-D agency is authorized by the individual to collect current support payments from the absent parent, the IV-D agency collects such support amounts and pays the net amount collected to the family after deducting (optional) any costs incurred in making the collection from the amount of any recovery made. The IV-D agency is permitted to recover costs from either the custodial or the absent parent.**

vii. **Application fee for continuation of services: The IV-D agency is prohibited from requiring any formal application or**

**imposing any application fee in cases where the IV-D agency is authorized to continue to collect and distribute support payments after a family ceases to receive AFDC payments. The IV-D agency is permitted to recover costs incurred in the collection of such support from either the absent parent or the custodial parent as specified in Section 457(C)(2) of the Social Security Act as modified by Section 7 of P.L. 98-378; amounts collected must be paid to the family on the same basis as they are paid in other non-AFDC IV-D cases.**

(1) **If collection services are terminated by the family after the five-month time period for continuation of IV-D collection services, the IV-D agency may require that a IV-D application be filed for services if the family requests these services to be reinstated.**

(2) **The application for non-AFDC services will require a fee on all cases where an application is filed on or after October 1, 1985.**

10:81-11.12 Notification of deletions, terminations, suspension or transfer of case/individual

(a) (No change.)

(b) **In the case of termination of AFDC assistance, the IV-D agency will notify the family that it will continue to collect and distribute current child support payments. The appropriate IV-D agency collecting support must be notified of the continuation of IV-D services for families that lose AFDC eligibility.**

(a)

**Public Assistance Manual  
Child Support and Paternity Program:  
Medical Support**

**Proposed Amendment: N.J.A.C. 10:81-11.7  
and 11.9**

Authority: N.J.S.A. 44:7-6 and 44:10-3; The Federal Child Support Amendments of 1984 (P.L. 98-378); 45 CFR 302.80(b); 45 CFR 304.20; 45 CFR 305.56; and 45 CFR 306.

Proposal Number: PRN 1985-66.

The agency proposal follows:

**Summary**

Existing Federal regulations mandate that information on child support orders about possible health benefit coverage for households receiving Aid to Families with Dependent Children (AFDC) be transmitted to the State Division of Medical Assistance and Health Services. The Federal Child Support Amendments of 1984 (P.L. 98-378) mandate that all child support orders include health benefit coverage if available at little or no cost to the obligor of the support order.

Under the proposed amendments, the State will seek health benefit coverage in all future support orders, obtain any information about health benefit coverage now available for existing support orders and transmit that information to the appropriate party which, for AFDC cases, will be the Division of Medical Assistance and Health Services.

**Social Impact**

These amendments will have no social impact on AFDC families since they already receive complete health benefits through the State's Medicaid Program but many non-AFDC families will benefit tremendously either through not having to bear the expense of carrying health benefit insurance or the catastrophic medical expenses of illnesses which could have been covered with little or no expense by the inclusion of health benefits in the support order.

**Economic Impact**

The economic impact of this new procedure should be substantial for most non-AFDC families who will either save on health benefit insurance premiums or the costs of health care. The economic impact on the State's Medical Assistance Program should be substantial, perhaps a savings of several million dollars a year, as the State will not have to pay Medicaid expenses for persons already covered under private medical benefit programs.

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

10:81-11.7 Child support collection and establishment of paternity under Title IV-D

(a) State agency responsibilities: The State Bureau of Child Support and Paternity Programs, located in the Division of Public Welfare, shall be the single organizational unit responsible for the supervision of the administration of the Child Support and Paternity Program. This unit shall be referred to as the Bureau of CSP Programs.

1. Responsibilities of the Bureau of CSP Programs include but are not limited to the following:

i.-viii. (No change.)

**ix. Transmittal of all health benefits information, both voluntary and/or on support orders for AFDC clients to the State's Division of Medical Assistance and Health Services.**

10:81-11.9 Responsibilities of the CWA/CSP Unit

(a) This unit shall be responsible for taking appropriate action to locate absent parents, to establish paternity and/or secure child support due AFDC recipients; **for securing and timely transmittal of all health benefits information, both voluntary and from new or modified court orders for support of AFDC clients to the State Child Support and Paternity Bureau and the State Division of Medical Assistance and Health Services;** for referral of cases, when the whereabouts of the absent parent is unknown, to the State Parent Locator Service; and for providing services for location, filiation and obtaining **and enforcing** support for non-public assistance persons.

(b)-(j) (No change.)

(a)

**Food Stamp Program  
Confidentiality and Disclosure of  
Information**

**Proposed Amendment: N.J.A.C. 10:87-1.14**

Authority: N.J.S.A. 30:4B-2 and Section 2651 of the Deficit Reduction Act of 1984 (P.L. 98-369).  
Proposal Number: PRN 1985-67.

The agency proposal follows:

**Summary**

Current regulations limit the circumstances under which food stamp case information may be released and to whom it can be released. Section 2651 of the Deficit Reduction Act of 1984 (P.L. 98-369) requires that state agencies administering the Food Stamp Program make case file information available to assist in the Child Support and Paternity (CSP) program under Title IV-D of the Social Security Act. Administrative Notice A-5-85, issued by the United States Department of Agriculture on November 5, 1984, directed states to proceed to implement this policy effective April 1, 1985.

In compliance with this directive and the aforementioned public law, N.J.A.C. 10:87-1.14 is being amended to provide that county welfare agencies shall make available food stamp case file information to the CSP Parent Locator Service in order to assist in the child support program under Title IV-D.

**Social Impact**

This proposed amendment will make available, to the CSP Parent Locator Service, information contained in the food stamp case record in order to assist in locating absent parents for the purpose of enforcing the payment of child support. Inasmuch as the food stamp case record contains significant demographic information, release of this information should prove to be useful in locating absent parents.

**Economic Impact**

To the extent that food stamp case file information assists in the locating of absent parents and results in the subsequent payment of child support, assistance to those families through programs such as Aid to Families with Dependent Children and Food Stamps could be reduced. Any reduction in such program expenditures are contingent upon individual case circumstances. It is, therefore, not possible to determine a fiscal estimate.

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

10:87-1.14 Confidentiality and disclosure of information

(a) **Confidentiality of information:** The county welfare agency shall restrict the use or disclosure of information ob-

tained from applicant households to persons directly connected with the administration or enforcement of the Food Stamp Program, AFDC, SSI, Medicaid, **Child Support and Paternity program**, or with any other federally aided, means-tested assistance programs.

(b) **Disclosure of information:** The county welfare agency may release information concerning an applicant household in the following situations only:

1.-7. (No change.)

**8. Parent Locator Service:** The CWA shall make available, to the Child Support and Paternity program's Parent Locator Service, food stamp case file information to assist in the Child Support and Paternity (CSP) program under Title IV-D of the Social Security Act.

(a)

### **Food Stamp Program Refusal to Cooperate with Quality Control Review; Availability of Fair Hearing Information**

#### **Proposed Amendment: N.J.A.C. 10:87-2.16, 2.17 and 8.2**

Authority: N.J.S.A. 30:4B-2; 7 CFR 272.5(b)(2); 49 FR 6292.

Proposal Number: PRN 1985-69.

The agency proposal follows:

#### **Summary**

Under current regulations, households which refuse to cooperate with a quality control review of their food stamp case are ineligible to participate in the program until they cooperate. Recently, Federal regulations were revised at 49 FR 6292 to allow such persons to be determined eligible for food stamp benefits 96 days from the end of the annual quality control review period. Under these provisions, such persons are required to provide verification of all eligibility requirements prior to being determined eligible.

In compliance with the aforementioned regulation, N.J.A.C. 10:87-2.16 and 2.17 are being amended to provide that those food stamp households which refuse to cooperate with a quality control review of their case are ineligible to participate in the Food Stamp Program until (1) they cooperate with the quality control reviewer, or (2) they reapply for assistance at least 96 days after the end of the annual review period. The annual review period corresponds with the Federal Fiscal Year (FFY), beginning October 1st and ending September 30th. Hence, in the latter case, a household may not be determined eligible for benefits until January 4th, following the end of the review period. The amendment further stipulates that upon reapplying for benefits, such households must provide verification of all eligibility requirements before an eligibility determination can be made. In addition, the amendment provides that any household which is determined ineligible for refusal to cooperate is to be notified via a ten-day adverse action notice (i.e., Form PA-15 or Form FSP-15). Enclosed with this notice shall be a separate statement indicating the penalty for refusal to cooperate.

Federal regulations at 7 CFR 272.5(b)(2) allow State agencies to inform food stamp applicant and participant households of their rights and responsibilities "through whatever means the State agencies deem appropriate." Existing regulations at N.J.A.C. 10:87-2.19 do provide that households are to be advised of their rights and responsibilities during the interview portion of the application process. Additionally, text at N.J.A.C. 10:87-8.2 requires county welfare agencies (CWAs) to inform a food stamp household of its right to a fair hearing via Form PA-196, "Information About Complaints and Fair Hearings", which is also used for recipients of Aid to Families with Dependent Children. This proposal updates the regulation at N.J.A.C. 10:87-8.2 to indicate that the Food Stamp Program has its own separate form (FSP-196, Fair Hearings in the Food Stamp Program) which is available to any interested party.

#### **Social Impact**

The purpose of the changes at N.J.A.C. 10:87-2.16 and 2.17 is to provide uniform penalties to households refusing to cooperate with a quality control review of their case. Heretofore, many households that were terminated for refusing to cooperate merely waited until the end of the review period to reapply; subsequently, they were determined eligible to participate. The addition of another 96 days to the end of the review period will negatively impact on those who refuse to cooperate, but should provide the impetus needed to cause many reluctant households to cooperate.

No adverse social impact is expected as a result of the change at N.J.A.C. 10:87-8.2. As was mentioned in the "Summary" above, CWAs are required to inform applicants of their rights and responsibilities during the interview process. Furthermore, on page two of Food Stamp Form FSP-15, "Notification Form", which is used by CWAs as an adverse action notice, reference is made to the fact that Form FSP-196 may be requested from the county food stamp office. Thus, the client population will not be deprived of the pamphlet.

#### **Economic Impact**

The amendments at N.J.A.C. 10:87-2.16 and 2.17 should reduce the number of households refusing to cooperate with a quality control review of their case. As such, this should result in a larger completion percentage of the quality control sample, thereby reducing the possibility of Federal fiscal sanctions against the State.

The change at N.J.A.C. 10:87-8.2 is concerned only with the dissemination of information to the client population and no increase in expenditures is expected.

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

10:87-2.16 Subsequent refusal to cooperate

The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility, including reviews generated by reported changes [, recertifications, or as part of a Quality Control review.] **and applications for recertification. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until it cooperates.**

10:87-2.17 [Subsequent application] **Refusal to cooperate with Quality Control reviews**

[Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until it cooperates.]

(a) The household shall also be determined ineligible if it refuses to cooperate in a Quality Control review of its case. If a household is terminated for refusal to cooperate with a quality control reviewer, the household may reapply but shall remain ineligible until one of the following conditions is met:

1. The household agrees to cooperate with the reviewer; or
2. If the household reapplies 96 days from the end of the annual quality control review period, the household may be determined eligible if it provides verification of all eligibility requirements. The annual review period corresponds with the Federal fiscal year, beginning October 1st and ending September 30th. Therefore, an ineligible household may not be determined eligible for food stamp benefits before January 4th of the following year.

(b) Any household which is determined ineligible for refusal to cooperate shall be notified by the CWA via Form PA-15 (for PA/FS cases) or Form FSP-15 (for NPA cases). The CWA shall also enclose a separate notice stating the following:

“Under Federal regulations, households who refuse to cooperate with a quality control review of their food stamp case will have their food stamp benefits terminated until the household cooperates with the reviewer, or until the 96th day after the end of the review period, whichever comes first. The annual review period begins October 1st and ends September 30th. Hence, in the latter case, households may not be determined eligible for benefits until January 4th of the next year, following the end of the review period. In addition, there is also the possibility that the case will be referred for investigation of willful misrepresentation.”

10:87-8.2 CWA responsibility [prior to hearing request] to provide fair hearing information

[Any household to which the CWA sends a notice of adverse action shall be informed of its right to a fair hearing by means of Form PA-196, entitled “Information About Complaints and Fair Hearings”. This form shall also be available to any interested party.] The CWA shall make Form FSP-196, “Fair Hearings in the Food Stamp Program”, available to any interested party upon request.

## INSURANCE

(a)

### DIVISION OF ADMINISTRATION

#### Actuarial Services Blindness; Partial Blindness or Other Physical or Mental Impairments; Unfair Discrimination

#### Proposed New Rule: N.J.A.C. 11:4-20

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

Authority: N.J.S.A. 17:1-8.1, 17:1c-6(e), 17:29B-1 et seq. and 17B:30-1 et seq.

Proposal Number: PRN 1985-57.

Address comments and inquiries to:

Jasper J. Jackson, Director  
Legislative and Regulatory Affairs  
Department of Insurance  
CN 325  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

N.J.A.C. 11:4-20 concerning discrimination in the underwriting, insuring or rating of persons who are blind, partially or have other physical or mental impairments but are otherwise normal insurance risks expired on December 6, 1984. After an administrative review the Department believes the rule is still necessary and proposes to readopt it as a new rule without change to the expired text.

The rule was promulgated in response to complaints of unfair discrimination against blind and other physically or mentally handicapped persons. N.J.A.C. 11:4-20 was based on a model rule adopted by the National Association of Insurance Commissioners.

The Department believes the rule is important and should be continued because it prohibits differences in the provision of insurance services between handicapped and non-handicapped individuals unless based on sound actuarial principles.

#### Social Impact

Past impact of this rule has been positive as it has served to safeguard the rights of the blind. The readoption will continue this protection. Specifically, the rule being readopted benefits the public by prohibiting unfair discrimination in the provision of insurance services to persons who are blind, partially blind or are otherwise physically or mentally impaired. Everyone in society benefits from a recognition that in many aspects of life, including certain insurance risks, the handicapped should not be treated differently than any other person. The rule provides insurers who may be tempted to discriminate unfairly in the underwriting, insuring and rating of the handicapped with a clear standard of actuarial soundness on which any refusal, limitation or rate differential must be based.

#### Economic Impact

In the past, the rule has safeguarded the rights of the blind to obtain and maintain coverage and to pay appropriate premiums based on their objective risks characteristics. Readoption will continue to provide this protection. In particular, the rule proposed for readoption prohibits handicapped individuals from paying higher premiums or being denied insurance coverage without a sound actuarial basis. Insurers should not incur any costs in connection with the readoption of N.J.A.C. 11:4-20 because it requires that rates for handicapped individuals be based on sound actuarial experience. The Department does not anticipate any incurring costs as a result of readopting the rule.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 11:4-20.

# LAW AND PUBLIC SAFETY

## (a)

### DIVISION OF MOTOR VEHICLES

#### Licensing Service

#### New Jersey Licensed Motor Vehicle Dealers

#### Proposed New Rule: N.J.A.C. 13:21-15.6

Authorized By: Clifford W. Snedeker, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:10-3, 39:10-4, 39:10-11, 39:10-19, 39:10-20.

Proposal Number: PRN 1985-65.

Address comments and inquiries to:

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

The agency proposed follows:

#### Summary

The proposed new rule would grant to the Director of the Division of Motor Vehicles the power to suspend a motor vehicle dealer's license if a dealer accepts a motor vehicle title or other document that has been altered in any way. The period of suspension would be less than the remaining term of the license.

The Director is granted authority pursuant to N.J.S.A. 39:10-4 to promulgate regulations to effectuate the purposes of the titling law, N.J.S.A. 39:10-3, which is to prevent the sale of motor vehicles with fraudulent titles.

#### Social Impact

There will be a benefit to persons who purchase motor vehicles since dealers will be held responsible for accepting altered titles. The proposed regulation will insure that dealers are vigilant in checking title documents. Failure to comply with the regulation may result in the suspension of the dealer's license.

#### Economic Impact

There will be no economic impact on the State nor on the general public, but suspension of the dealer's license would have a detrimental effect on his business.

Full text of the proposed new rule follows.

13:21-15.6 Acceptance of altered title documents; suspension; period of suspension; refusal to renew license.

(a) No motor vehicle dealer licensed pursuant to N.J.S.A. 39:10-19 shall accept, from any person, a motor vehicle title issued by this or any other state, or any other title document, which contains an erasure, obliteration, correction, or any other alteration where said alteration should have been detected by a person of ordinary intelligence.

(b) A motor vehicle dealer who violates (a) above may have his motor vehicle dealer's license suspended for the periods as set forth in (c) below, pursuant to the provisions set forth in N.J.S.A. 39:10-20.

(c) For the purpose of suspending a motor vehicle dealer's license pursuant to (b) above, each document accepted shall constitute a separate violation. For a first violation the dealer's license shall be suspended for a period less than the unexpired period of the license or 90 days, whichever period is lesser. For subsequent violations the dealer's license shall be suspended for a period less than the unexpired period of the license or not less than 90 days whichever is lesser.

(d) The Director may refuse to renew a dealer license where the applicant has had two or more violations of (a) above which resulted in a suspension pursuant to (b) above.

## (b)

### BOARD OF ARCHITECTS

#### Certified Landscape Architects

#### Proposed New Rules: N.J.A.C. 13:27-8.1 to 8.13

Authorized By: New Jersey Board of Architects, M. Lisbeth De Cotiis, President.

Authority: L. 1983, c. 337., N.J.S.A. 45:3A-1 et seq. and 45:3-3.

Proposal Number: PRN 1985-63.

Address comments and inquiries to:

Barbara S. Hall,  
Executive Secretary  
State Board of Architects and Certified Landscape Architects  
1100 Raymond Boulevard, Room 511  
Newark, New Jersey 07102

The agency proposal follows:

#### Summary

The proposed new rules will govern the operations of the Landscape Architect Examination and Evaluation Committee of the New Jersey State Board of Architects as well as the professional conduct of those individuals using the title "landscape architect" or "certified landscape architect" pursuant to L. 1983, c. 337.

Sections 1 through 3 include general definitions and rules for the organization of the committee and administration of its duties.

Sections 4 through 10 describe the procedures and criteria for obtaining certification as a landscape architect as well as the requisites for renewing certification.

Section 11 contains guidelines for the signing and sealing of work product by certified landscape architects.

Section 12 establishes a reporting requirement to assure that the continuing education mandates of L. 1983, c. 337, §18 are met.

Finally, section 13 establishes general rules of professional conduct for certified landscape architects to assure that the purposes of L. 1983, c. 337, "to safeguard life, health and property, and promote the public welfare," are met.

#### Social Impact

The proposed new rules will have no significant social impact other than such salutary effects the legislature deter-

mined might be associated with certifying landscape architects to establish a class of professionals who may represent themselves as having particular expertise in the field.

#### **Economic Impact**

The costs of administering the functions of the Landscape Architect Examination and Evaluation Committee are to be borne by those individuals seeking and maintaining certification as landscape architects. Thus, the Board of Architects is in the process of promulgating a fee schedule which should yield sufficient revenues to cover committee expenses. See: 16 N.J.R. 3176(b). To the extent that the fees associated with a newly-created certification or licensure privilege may be passed along to the client as a cost of doing business, the costs of professional services to the consumer are increased.

Full text of the proposed new rules follows.

### **SUBCHAPTER 8. CERTIFIED LANDSCAPE ARCHITECTS**

#### **13:27-8.1 Definitions**

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

“Certified landscape architect” means an individual who, by reason of his or her knowledge of natural, physical, and mathematical sciences, and the principles and methodology of landscape architecture and landscape architectural design acquired by professional education, practical experience, or both, is qualified to engage in the practice of landscape architecture and is certified by the board as a landscape architect.

“Practice of landscape architecture” means any service in which the principles and methodology of landscape architecture are applied in consultation, evaluation and planning, including the preparation and filing of sketches, drawings, plans and specifications, and responsible administration of contracts relative to projects principally directed at the functional and aesthetic use of land. Nothing contained in this section shall be construed to restrict or otherwise affect the right of any person or corporation to engage in the practice of landscape architecture, but no person shall hold himself or herself out as, or use the title “landscape architect”, unless he or she has been certified by the board as a landscape architect.

“Board” means the New Jersey State Board of Architects.

“Committee” means the Landscape Architect Examination and Evaluation Committee of the New Jersey State Board of Architects.

#### **13:27-8.2 Office of the committee**

The office of the committee shall be that which is maintained by the board pursuant to N.J.A.C. 13:27-8.1 (Administration), under the supervision of the person selected by the board to serve as secretary-director.

#### **13:27-8.3 Committee organization**

(a) The committee shall, at all annual meetings, to be held in July of each year, elect from its membership a chairperson and vice-chairperson and shall appoint a secretary, who need not be a member, and such other assistants as it deems necessary.

(b) The committee shall adopt annually a schedule of regular meetings, and special meetings may be held at the call of the chair, or at the action of a quorum of the membership.

(c) A quorum of the committee shall consist of three members. No action of a meeting shall be taken without at least three votes in accord.

(d) The committee shall keep a record of its proceedings and a record of all applicants for certification, showing for each the date of application, name, age, education, and other qualifications, place of practice and place of residence, whether or not an examination was required, and whether the applicant was rejected or a certificate granted, and the date of that action.

#### **13:27-8.4 Approval of landscape architecture curricula and credentials**

(a) The committee may approve courses of study in landscape architecture offered by colleges and universities and maintain a register of such approved programs.

(b) For purposes of this section, any educational program accredited by the Landscape Architectural Accreditation Board of the American Society of Landscape Architects shall be deemed an approved program.

(c) In the event that an applicant for certification as a landscape architect is a graduate of a school or program not accredited by the Landscape Architectural Accreditation Board, such applicant shall provide to the committee, in addition to a certified transcript of his or her courses, a true and accurate course description for each of the landscape architecture courses for which the candidate is seeking credit toward certification. Thereafter, the committee may, in its discretion, require the candidate to appear before the committee for a personal interview and to present such representative samples of his or her landscape architecture work as are deemed acceptable by the committee.

#### **13:27-8.5 Application for certification: general requirements**

(a) Each person applying for certification as a landscape architect shall make application therefor to the board on the form and in the manner prescribed by the committee. The board shall immediately refer each completed application to the committee for appropriate action. Each application shall furnish evidence satisfactory to the committee that he or she:

1. Is of good moral character;
2. Meets the educational and/or experience qualifications prescribed by L.1983, c.337 for certification as a landscape architect; and
3. Has passed the landscape architecture examination as provided by N.J.A.C. 13:27-8.7, unless such applicant is otherwise exempt from examination pursuant to L.1983, c.337.

#### **13:27-8.6 Education and/or experience requirements for certification**

(a) Each applicant for examination or certification as a landscape architect shall provide the committee with evidence satisfactory to it that:

1. The applicant is the holder of a bachelor's or higher degree in landscape architecture from a college or university having a landscape architecture curriculum approved by the committee; and

2. The applicant has engaged in landscape architectural work satisfactory to the committee to an extent that his or her combined college study and practical experience total at least six years, four years of which must be college study with three years in a landscape architecture curriculum and two years of which must be practical landscape architecture experience approved by the committee.

(b) In lieu of the degree and practice experience requirements specified in (a) above, evidence of 10 or more years of

practical experience in landscape architecture of a grade and character satisfactory to the committee may be accepted by the committee for admission to that portion of the examination related to landscape architecture.

(c) Effective September 4, 1989, an applicant shall be eligible for certification as a landscape architect only if he or she meets the requirements of (a) above.

#### 13:27-8.7 Examination

(a) The committee shall arrange for the annual administration of an examination to be given to all persons, not otherwise exempt from examination, who have applied for examination and certification as landscape architects.

(b) Unless a quorum of the committee shall determine otherwise, the examination as provided herein shall consist of the current Uniform National Examination as prepared by the Council of Landscape Architectural Registration Board and the committee may utilize the examination scoring services provided therewith.

#### 13:27-8.8 Certification of persons holding certificate from another state or authority

(a) The committee may, in its discretion, exempt from examination an applicant who holds a license or certificate in good standing in landscape architecture from a legally constituted agency in any other state, district or territory of the United States, provided that the requirements for licensure or certification of the issuing agency are comparable to those of the committee and board.

(b) The committee may, in its discretion, exempt from examination an applicant who holds a current Council of Landscape Architectural Registration Board (CLARB) certification. Any person applying under this subsection shall be responsible for the transmittal of his or her current CLARB certification records to the committee for review. When, in the opinion of the committee, such applicant has obtained CLARB certification based upon qualifications not comparable to those required by the State of New Jersey, the committee may require such applicant to take the pertinent portion or portions of the Uniform National Examination that test(s) the areas of landscape architecture education or experience in which the applicant is deficient.

#### 13:27-8.9 Initial and renewal of certification

(a) The initial two-year fee for certification as provided by N.J.A.C. 13:27-3.13(b) shall be prorated in accordance with the number of months remaining prior to the expiration of the landscape architecture certificate in accordance with (b) below.

(b) Certificates for landscape architects shall expire on May 30 in the second year following the year of issuance, renewal or reinstatement, and shall become invalid on that day unless renewed. Certified landscape architects shall apply before May 30 in the year of expiration of a certificate. On or before May 1, in the year of expiration of a certificate, the secretary of the board shall notify all persons certified under L.1983, c.337 of the date of the expiration of their certificates and the amount of the renewal fee as specified in N.J.A.C. 13:27-3.13(b)6. Notice shall be mailed to each holder of a certificate at his or her last post office address known to the board.

(c) Failure on the part of the holder of a certificate to renew his or her certificate every two years in the month of May shall not deprive that person of the right of renewal during the ensuing two years, but a reinstatement fee as speci-

fied in N.J.A.C. 13:27-3.13(b)7, shall be added to the certificate fee; and if the certificate is not renewed within the two years following its expiration, the holder of the certificate shall pay a reinstatement fee for each two years or portion thereof in which the holder is in arrears. Continuing to use the title "Landscape Architect" after the expiration of the certificate shall be a violation of L.1983, c.337. It shall be the responsibility of the certificate holder to assure that his or her certification is current when using the title "landscape architect." The expiration date listed on the biennial renewal certificate shall be deemed adequate notice of expiration for purposes of this subsection.

#### 13:27-8.10 Duplicate certificates

(a) Except as hereinafter provided, no duplicate certificates shall be issued by the board.

(b) A duplicate certificate may be issued upon the presentation to the board of the requisite fee as provided in N.J.A.C. 13:27-3.13(b) with an affidavit or certified statement attesting that the original was either lost, destroyed, mutilated or is otherwise no longer in the custody of and cannot be recovered by the certified landscape architect.

#### 13:27-8.11 Seal and signature

(a) Every certified landscape architect shall have a seal of a type recommended by the committee and approved and issued by the board, which shall contain the name of the landscape architect, his or her certificate number, the legend "Certified Landscape Architect" and such other words or figures as the committee may hereinafter deem necessary.

(b) All working drawings and specifications prepared by the landscape architect or under his or her supervision shall be signed on the original with the personal signature of the landscape architect. Thereafter, all copies of such drawings and specifications shall be sealed prior to submission to the client or filing with a public agency.

#### 13:27-8.12 Continuing education

Commencing September 4, 1987, each person certified to practice landscape architecture shall certify to the board every four years, upon a form issued and distributed by the board, that he or she has attended or participated in not less than 20 hours of continuing education in landscape architecture including, but not limited to, post-graduate level courses, lectures, seminars or workshops.

#### 13:27-8.13 Rules of professional conduct

(a) A landscape architect shall at all times recognize the primary obligation to protect the safety, health and welfare of the public in the performance of professional duties. If the landscape architect's judgment is disregarded by the employer or client under circumstances where the safety, health and welfare of the public are endangered, the employer or client shall be informed of the possible consequences and the landscape architect shall notify such other proper public authority as may be appropriate, of the situation.

(b) A landscape architect may accept an assignment or employment requiring education or experience outside of his field of competence, but only to the extent that the services are restricted to those phases of the project in which he or she may, without undue cost or hardship to the client, reasonably become qualified. All other phases of such project shall be performed by qualified associates, consultants, or employees in conformance with the statutes and rules governing their respective professions.

(c) A landscape architect shall not affix a personal signature and/or seal to any plan or document dealing with subject matter in which there is a lack of competence by virtue of education or experience, nor to any such plan or document not prepared under his or her direct supervision and control.

(d) A landscape architect shall be completely objective and truthful in all professional reports, statements or testimony and shall include all relevant and pertinent information in such reports, statements or testimony.

(e) When issuing any statements, criticisms or arguments on matters connected with public policy which are inspired or paid for by an interested party, or parties, a landscape architect shall preface such comments by explicit personal identification, by disclosing the identity of the party or parties on whose behalf he or she is speaking, and by revealing the existence of any pecuniary interest he or she may have in the instant matters.

(f) If a landscape architect has any business association or direct or indirect financial interest which is substantial enough to influence his or her judgment in connection with performance of professional services, the landscape architect shall fully disclose in writing to the client or employer the nature of the business association or financial interest, and if the client or employer objects to such association or financial interest, the landscape architect shall either terminate such association or interest or refuse the commission or employment.

(g) A landscape architect shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.

(h) A landscape architect shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products unless such consideration is disclosed to the client.

(i) A landscape architect shall not solicit or accept gratuities or anything of value not related to work performed, directly or indirectly, from contractors, their agents, or other parties dealing with his or her client or employer in connection with work for which he or she is responsible.

(j) When in public service as a member, advisor or employee of a governmental body or department, a landscape architect shall not participate in considerations or actions with respect to services provided by the individual or the individual's professional organization in private practice.

(k) A landscape architect shall not solicit or accept a contract from a governmental body on which a principal or officer of his or her organization serves as a member.

(l) A landscape architect shall not offer to pay, either directly or indirectly, any commission, political contribution, gift or other consideration in order to secure or retain work, exclusive of securing positions through employment agencies.

(m) A landscape architect shall not falsify or permit misrepresentation of academic or professional qualifications. He or she shall not misrepresent or exaggerate degrees of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments with the intent and purpose of enhancing his or her qualifications and work.

(n) A landscape architect shall not knowingly associate with or permit the use of a personal name or firm name in a business venture by any person or firm which he or she knows, or has reason to believe, is engaging in business or

professional practices of a fraudulent or dishonest nature or is otherwise engaging in unlawful activities.

(o) If a landscape architect has knowledge or reason to believe that another person or firm may be in violation of any of these provisions, he or she shall present such information to the board in writing and shall cooperate with the board in furnishing such further information or assistance as may be required by the board.

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(a)

## BOARD OF BEAUTY CULTURE CONTROL

### Beauty Culture Schools

#### Proposed Readoption: N.J.A.C. 13:28-2

Authorized By: Board of Beauty Culture Control,  
Bridget Damiano, President.

Authority: N.J.S.A. 45:4A-13 and 16.

Proposal Number: PRN 1985-62.

Address comments and inquiries to:

Richard G. Griswold, Executive Secretary  
Board of Beauty Culture Control  
1100 Raymond Boulevard, Room 311  
Newark, New Jersey 07102

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 13:28-2 expires on February 25, 1985. The readoption becomes effective upon acceptance for filing by the Office of Administrative Law of a notice of adoption.

The agency proposed follows:

#### Summary

The Board of Beauty Culture Control proposes to readopt N.J.A.C. 13:28-2, concerning Beauty Culture Schools, having determined that the regulations contained in this Subchapter are "necessary, adequate, reasonable, efficient, understandable and responsive to the purposes for which they were promulgated" in accordance with Executive Order No. 66(1978).

Pursuant to N.J.S.A. 45:4A-5.1 the Board licenses schools of beauty culture in New Jersey. In order to be so licensed schools of beauty culture must comply with the rules and regulations of the Board. Subchapter 2 of the Board's regulations implements this provision. Before receiving an initial license the school owner must supply the Board with information concerning the proposed school and must be interviewed by the Board (N.J.A.C. 13:28-2.2). Preliminary inspection of the premises is made and after the school is fully equipped and ready for operation a final inspection is made by an inspector and the Board members (N.J.A.C. 13:28-2.3 and 2.4). No students may be registered until such final approval is received (N.J.A.C. 13:28-2.5).

N.J.A.C. 13:28-2.6 requires that the registered school name be used in advertisements and an appropriate sign be used to designate the premises. False and misleading advertisements are prohibited, as is the use of misleading names for the establishment, such as those that would falsely imply affiliation with other schools.

Beauty shops may not be operated on the same premises as a school unless separate entrances are provided, nor may any other trades be operated on the premises (N.J.A.C. 13:28-2.7, 2.8 and 2.19). The minimum requirements for adequate floor space, equipment and sanitary measures to accommodate the number of students enrolled are set out (N.J.A.C. 13:28-2.9 and 2.23). Smoking is prohibited in class rooms (N.J.A.C. 13:28-2.17).

New students are registered with the Board after application for such registration by the school in which they are enrolled (N.J.A.C. 13:28-2.10). Non-English speaking students may not be enrolled unless the school offers courses by qualified teachers in the language spoken by the student and unless the enrollment agreement is printed in that language (N.J.A.C. 13:28-2.11). Students must be fully informed that they must pass a State licensing examination in order to practice beauty culture and must be examined by a physician before enrollment and certified to be free of communicable diseases (N.J.A.C. 13:28-2.24). Other standards and requirements for students are also set out in N.J.A.C. 13:28-2.24, including a requirement for appropriate identification for junior and senior students, attendance at classes, notification to the Board when students are terminated or transfer to another school, and examination requirements.

Schools may commence new classes on the first working Monday of each month (N.J.A.C. 13:28-2.13) and schedules of proposed classes must be submitted to the Board for approval (N.J.A.C. 13:28-2.16). Full-time and part-time students are defined (N.J.A.C. 13:28-2.15). School record keeping requirements are set out, with attendance records to be sent to the Board each week (N.J.A.C. 13:28-2.18). When schools move to a different location all provisions relating to new schools apply, except that if the move is made within the same municipality, no additional fee is required (N.J.A.C. 13:28-2.20). Each branch school requires a separate license (N.J.A.C. 13:28-2.22).

The school must be supervised by a licensed teacher supervisor (N.J.A.C. 13:28-2.21) and staffed by full-time licensed teachers in a number adequate for the number of enrolled students with a teacher/pupil ratio of 1 to 25 (N.J.A.C. 13:28-2.27 and 2.28). The subjects to be included in the required 1200 hour curriculum are set out (N.J.A.C. 13:28-2.33). Requirements for brush-up courses and post-graduate courses are described (N.J.A.C. 13:28-2.29 and 2.30).

Clinical work by students may only be done by senior students. No fees may be accepted from subjects of the clinical work for purposes of demonstration, and schools may not advertise for clinical patrons (N.J.A.C. 13:28-2.32).

When students have completed the 1200 hour curriculum required for licensure, applications to take the Board examination must be submitted through the school (N.J.A.C. 13:28-2.25).

#### **Social Impact**

This Subchapter has promoted proper operation and staffing of schools of beauty culture in New Jersey.

Readoption of this Subchapter will ensure that licensed schools of beauty culture will continue to be adequately staffed and equipped to provide training to students who wish to become licensed practitioners of beauty culture. The record keeping and reporting requirements enable the Board to verify that applicants for its licensing examination have the statutorily required education and training to qualify for licensure. The burden of enforcement and the burden of compliance with this Subchapter is no greater than what is necessary to

implement the provisions of the Beauty Culture Act, N.J.S.A. 45A:4A-1 et seq, which is intended to safeguard the public welfare.

#### **Economic Impact**

Compliance with this Subchapter causes no economic impact on school owners other than the costs that would in any event be necessary to operate a school which adequately prepares students for the Board licensing examination, such as expenses for equipment and salaries for the required minimum number of teachers. Students of these schools are benefited economically in that they are assured that they will in fact receive adequate training in return for their financial investment in tuition and equipment. The administrative costs of enforcement, such as inspections and investigations are no more than what is necessary to effectuate the purposes of the Beauty Culture Act.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:28-2.1 to 2.33.

## **(a)**

### **NEW JERSEY RACING COMMISSION**

#### **Thoroughbred Rules: Horsemen's Bookkeeper Account**

#### **Proposed Amendment: N.J.A.C. 13:70-3.46**

Authorized By: New Jersey Racing Commission,  
Harold G. Handel, Executive Director.

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

Proposal Number: PRN 1985-64.

Address comments and inquiries to:

Bruce H. Garland, Deputy Director  
New Jersey Racing Commission  
CN 088 Justice Complex  
Trenton, New Jersey 08625

The agency proposal follows:

#### **Summary**

The proposed amendment seeks to eliminate the present requirement that interest money received from horsemen's bookkeeper accounts be used to purchase a blanket workmen's compensation policy for the benefit of owners, trainers and their employees. The Horsemen's Benevolent and Protective Association has been unsuccessful in their attempt to purchase such a policy and the accumulated interest is now approximately 1.2 million dollars. The amendment would allow this interest money to be used for other programs that would benefit the racing industry. As under the present rule the interest money would be applied first to reimburse the track association for one-half the cost of operating the horsemen's interest account. The programs and budget would have to be approved by the Racing Commission.

#### **Social Impact**

The proposed amendments would have a positive social impact upon the racing industry and the State. Right now the interest money is just accumulating and cannot be used since

no blanket workmen's compensation policy can be obtained. The amendment would authorize that money to be used for programs to benefit the racing industry which, in turn, would benefit the State.

**Economic Impact**

The economic impact of the proposed amendment is a positive one for the State, the public and the racing industry. Money that cannot now be utilized will be spent to benefit the racing industry. There will be no additional costs to the public, State, racing associations or racing participants. This amendment will not effect State revenue.

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

13:70-3.46 Horsemen's bookkeeper account

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

(c) The income realized from the invested funds shall be used firstly, to reimburse the track association for one-half of the cost and expense of operating the horsemen's bookkeeper's account, [with the remainder of the income being used to purchase a blanket workmen's compensation policy for the benefit of the owners of thoroughbred horses covering all owners, trainers and their employees. Should the income be inadequate to cover the complete cost of the policy, the remaining premium will be provided by the New Jersey Horsemen's Benevolent and Protective Association, an association comprised of owners and trainers of thoroughbred horses.] **with the remainder of the income being used for programs managed by the Horsemen's Benevolent and Protective Association, and designed to benefit the racing industry.**

**The specific programs and anticipated budget for the Horsemen's Benevolent and Protective Association for any calendar year shall be submitted to the New Jersey Racing Commission for its approval no later than December 1 of the preceding calendar year. The programs and budget may be amended during said calendar year with prior approval of the New Jersey Racing Commission.**

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**PUBLIC UTILITIES**

**(a)**

**BOARD OF PUBLIC UTILITIES**

**Suggested Formulae for Extension of Utility Service**

**Proposed Amendments: N.J.A.C. 14:3-8.1 and 8.2**

Authorized By: Board of Public Utilities, Barbara A. Curran, President.

Authority: N.J.S.A. 48:2-13 et seq.

Proposal Number: PRN 1985-39.

Address comments and inquiries to:  
 Jeanne M. Fox, Esquire  
 Regulatory Officer  
 Board of Public Utilities  
 1100 Raymond Boulevard  
 Newark, N.J. 07102

The agency proposal follows:

**Summary**

The Board of Public Utilities proposed amendments to N.J.A.C. 14:3-8.1 and 8.2 in the June 18, 1984 New Jersey Register the BPU has made several changes to the original proposal and repropose the amendments taking into consideration some of the comments received. A summary of the comments received follows.

14:3-8.1(b)

Garden State Water Company (Garden State) argued the proposal is inconsistent in that the extension cost does not include fire hydrant cost yet the deposit refund takes the revenue from fire protection charges into account. The Board of Public Utilities (BPU) rejects this argument. Municipalities, not developers, mandate installation of fire hydrants for the public's safety. Ultimately, the utility benefits from the revenues derived from the hydrant charge. The original proposal has therefore not been changed upon reproposal.

14:3-8.1(c)

The National Association of Water Companies, New Jersey Chapter (NAWC) and Garden State both suggest that interest also apply if the deposit provided by the developer is less than the actual cost of construction. The BPU disagrees due to the fact that the utility establishes the estimated cost for the deposit and typically installs the main extension itself.

NAWC submits that the interest provisions should only be effective when the deposit is greater than 10% of the actual cost. We disagree. Utilities usually have a 10% omission and contingency adjustment figured into its estimated cost.

NAWC, citing **A&A Construction Corp. v. West Keansburg Water Company (A-2753-80T2)** notes that the Board does not have the power to award interest. The Appellate Court affirmed a BPU Decision and Order Adopting Initial Decision (BPU Docket No. 7811-1542). The rationale stated in the Initial Decision for not allowing interest was that no statute, case law or agency rule speaks to the awarding of prejudgment interest by an agency. Neither the Board nor the Office of Administrative Law has adopted rules concerning payment of interest upon sums ordered to be paid. Initial Decision at 9, OAL Docket No. PUC 108-80.

The Board has amended N.J.A.C. 14:3-8.1(c) by deleting the nine percent interest rate as originally proposed and added that rate which is established by N.J.A.C. 14:3-7.5 for customer deposits.

14:3-8.2(a)

NAWC, Garden State and Atlantic City Electric Company (Atlantic Electric) recommended that the actual cost for construction be determined within 90 days of completion rather than one month. The BPU has amended the proposal to reflect the wording suggested by NAWC (with one minor clarification).

14:3-8.2(c)

NAWC states that the 2-1/2 times multiple is not sufficient to eliminate the requirement of rate increases of current cus-

**PROPOSALS****Interested Persons see Inside Front Cover****PUBLIC UTILITIES**

tomers to pay for the utility plant necessary for new developments. NAWC proposes that should the Board decide to use a specific number multiple as opposed to the NAWC formula, said number should be 1.5. The Board must balance the interests of all interested parties. As stated in the Summary of this original proposed amendment, the Board believes the 2-1/2 times multiple will result in the most equitable allocation of extension costs among a utility, its prospective customers and its current ratepayers (see 16 N.J.R. 1460).

**14:3-8.2(c)**

Garden State submits that a developer's investment is fixed at the time of signing the extension agreement and therefore, at that same time the return on investment (based on the annual revenue anticipated for each type of customer) should be fixed. Garden State argues that the computations required over a possible ten-year period provides for an administrative nightmare. The BPU notes that this specific provision regarding the ten year period remains unchanged in the current proposed rule change. There have not been any significant problems under the existing regulation in this regard. The Board prefers to base deposit refunds on actual revenues received by a utility rather than on projections. The Board reiterates that these formulae are suggested as a guide.

**14:3-8.2(c).**

Atlantic Electric objects to the exclusion of electric utilities from the amendments; electric utilities would continue to return deposits on a 5 times basis while, as originally proposed, water, sewer and gas utilities would be required to return deposits on a 2-1/2 times basis.

The Board has amended its original proposal; this revised proposal suggests a 2-1/2 times refund for only water and sewer companies. Water and sewer companies have a greater portion of their costs related to the distribution plant than do electric or gas companies. The average revenue generated by a water or sewer customer is lower than that generated by a gas or electric customer.

The proposed rule change was initiated by the water and sewer companies and Atlantic Electric was the only electric utility to submit any comments on the rulemaking. The Board views their rationale as not sufficient to warrant making any changes in the existing rule for electric utilities. That is, their argument that the suggested 2.5 times refund formula will reduce the need for higher rates is not supported in the record by any cost study. The present suggested five times refund formula is not causing any financial disruption for the electric or gas utilities or their customers.

In view of the above reasoning, the Board believes that at the present time there is not sufficient evidence to support a change in the suggested formulae from the five times revenue test for electric or gas utilities.

**Social and Economic Impact**

The proposed amendments would accrue economic benefits to ratepayers of gas, water and sewer utilities. Under the present five times formula, higher utility rates may be necessary to enable these capital intensive companies to construct extensions and still maintain their authorized rates of return. Because a utility's operating income is generally insufficient to pay a refund equal to five times annual revenues, it must borrow the money from outside sources. Refunds computed with a two and one-half times multiple may be supported by a utility's operating income; there are no carrying charges on borrowed funds to pass on to the ratepayers. While it is possible that the larger public utilities may have sufficient

operating income to finance refunds computed with the five times multiple, rate increases may still be necessary if the refunds cause the utility to realize an unreasonable rate of return. Adoption of the two and one-half times formula is therefore beneficial in that its adoption will serve to reduce the need for higher rates.

A two and one-half times formula for gas and water main extensions will not have a chilling effect on new housing construction. While refunds computed with the proposed formula will initially be less than under the current regulations, at the present time the majority of water and gas companies in New Jersey do not subscribe to the five times formula. In addition, municipal utility authorities, are permitted, in certain circumstances, to require deposits covering all of the costs of an extension, and no appreciable reduction in construction has resulted in those areas served by such authorities.

The purpose of requiring an extension deposit is to protect the utility's capital investment and financial integrity. The deposit requirement is grounded upon the developers' presumably stronger financial position, the speculative likelihood of bringing paying customers on line within a reasonable period of time, and the developer's ability to pass on the costs of these risks to prospective purchasers of the houses.

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

**14:3-8.1 General provisions**

(a) These formulae shall not be binding on the parties but are suggested as a guide to customers and utilities. Parties are still free to exercise their rights under N.J.S.A. 48:2-27. When an applicant for an extension is dissatisfied with [these suggested extension regulations] the utility's proposal he may petition the Board for a finding that the extension should be made without charge.

(b) An extension shall be construed to mean the extension of facilities located on streets, highways, and/or rights-of-way acquired by the utility for common distribution and shall not include the meter or transformer or any part of the house service connections, nor shall the cost of extension as referred to in these regulations include the cost of fire hydrants or their branches. The utility may require that the applicant furnish [a bond or other] security to insure the use of services which [bond or] security will be returned upon the commencement of service.

**(c) Extension deposits are not to carry interest; except when the amount of the deposit exceeds the actual cost of the extension, the rate established in N.J.A.C. 14:3-7.5 for customer deposits shall be paid on the excess amount. In the event that the actual cost of the extension is less than the amount deposited, interest shall be computed from the date of deposit, or if more than one deposit payment is made, from the date on which the excess amount is deposited if other than the initial date of deposit. This provision shall take effect one month after the effective date of this subchapter, and shall apply to excess extension deposits received by a utility after that date. Interest on excess extension deposits previously collected and held by a utility shall be apportioned so that interest shall be computed from one month after the effective date of this subsection.**

**14:3-8.2 Residential land developer; extension other than telephone**

(a) **Except as otherwise provided**, where applications for extensions into newly developed tracts of land are made by individuals, partnerships or corporations interested in the de-

velopment or sale of land, but not as ultimate residents, the utility may require a deposit from the applicant covering the estimated cost of the extension as defined in (b) above, necessary to serve the tract. The deposit shall be subject to adjustment when the actual cost of construction is determined. **The actual cost of construction shall be determined and presented to the developer within 30 days after actual costs are known, but not more than 90 days after the date construction is completed.**

[(b) Extension deposits are not to carry interest.]

[(c) (b) **Except as otherwise provided**, extension deposits are to be returned as provided in [subsection (d) of this Section] (c) below to the depositor when new houses abutting on the extended facilities are completed [the prospective customer's equipment such as wiring, piping, and so forth is installed,] and the house is occupied by a bonafide owner or responsible tenant who has entered into a contract for use of the utility's service and, in addition, in the case of water main extensions, when the municipality agrees to pay fire protection charges related directly to said extensions.

[(d) (c) **Except as otherwise provided**, the deposit shall be returned in amount equal to five times the estimated annual revenue from each such completion and occupancy. [and from fire protection charges on said extension.] **The deposit for a water or sewer main extension shall be returned in an amount equal to two and one-half times the estimated annual revenue from each such completion and occupancy and from fire protection charges on said extension.** If during [a] the ten-year period from the date of the original deposit, the actual annual revenue during any year of said ten-year period from premises abutting upon said extension and from amounts received from the municipality for fire protection service in the case of water main extensions shall exceed the annual revenue which was the basis for the previous deposit return, there shall be returned to the depositor an amount equal to five times such excess, **two and one-half times such excess in the case of a water or sewer main extension.** In no event shall more than the deposit be returned to the depositor nor shall any part of the deposit remaining after ten years from the date of the original deposit be returned.

Agency Note: **Delete** the current example found in the New Jersey Administrative Code and replace with the following example:

EXAMPLE		
Cost of Extension to Utility and Net Deposit Collected from Land Developer		\$1,000.00
Estimated Annual Revenue, First House Completed and Occupied		\$150.00
Factor	2-1/2	
Deposit Returned to Land Developer		\$ 375.00
Deposit Remaining with Utility		\$ 625.00
Estimated Annual Revenue, Second House Completed and Occupied		\$150.00
Factor	2-1/2	
Deposit Returned to Land Developer		\$ 375.00
Deposit Remaining with Utility		\$ 250.00
Actual Revenues in a Subsequent Year from Above House		\$400.00
Estimated Annual Revenue from Above Houses		\$300.00
Excess Annual Revenues		\$100.00
Factor	21/12	
Deposit Returned to Land Developer		\$ 250.00
Deposit Remaining with Utility		\$ 0

# TRANSPORTATION

The following proposals are authorized by John P. Sheridan, Jr., Commissioner, Department of Transportation.

Address comments and inquiries to:

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

(a)

## TRANSPORTATION OPERATIONS

### Speed Limits

#### Routes 23 in Passaic County and U.S. 206 in Somerset County

#### Proposed Amendments: N.J.A.C. 16:28-1.25 and 1.72

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Proposal Number: PRN 1985-44.

The agency proposal follows:

#### Summary

The proposed amendments will establish maximum rates of speed along Routes 23 in Wayne Township, Passaic County and U.S. 206 in Montgomery Township, Somerset County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon requests from the local officials the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of maximum speed limits were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.25 and 1.72 based upon the requests from local officials and the traffic investigations.

#### Social Impact

The proposed amendments will establish maximum speed limits along Routes 23 in Wayne Township, Passaic County and U.S. 206 in Montgomery Townships, Somerset County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

#### Economic Impact

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:28-1.25 Route 23

(a) The rate of speed designated for the certain parts of State highway Route 23 described [herein below] **in this section** shall be [and hereby is] established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:
  - i.-vi. (No change.)
  - vii. Zone seven: 40 mph in Little Falls Township, Passaic County [Wayne Township] [to] **between** the Route US 46—Route 23 and Route I-80 interchange (milepost 5.8); thence
  - viii. **Zone eight: 55 mph in Wayne Township, Passaic County between the Route U.S. 46 Route 23 and Route I-80 interchange (milepost 5.8); thence**
  - [viii.] ix. Zone eight: 45 mph in Wayne Township, Passaic County to a point 200 feet south of the center line of Van Ness Place (milepost 6.5); thence
  - [ix.] x. Zone nine: [40] **55 mph** to the intersection of Laguna Drive (milepost 7.4).
- 2.-4. (No change.)

16:28-1.72 Route U.S. 206 including US 206 and US 130

(a) The rate of speed designated for the certain part of State highway Route US 206 described in [(a) of] this section, shall be [and hereby is] established and adopted as the maximum legal rate of speed thereat for both directions of traffic:

- 1.-3. (No change.)
- (b) (No change.)
- (c) [In accordance with the provisions of N.J.S.A. 39:4-98] [t]The rate of speed designated for the certain part of State highway Route US 206 described [herein below] **in this section** shall be [and hereby is] established and adopted as the maximum legal rate of speed thereat for both directions of traffic:
  - 1.-10. (No change.)
  - (d) The rate of speed designated for the certain part of State highway Route US 206 described [herein below] **in this section** shall be [and hereby is] established and adopted as the maximum legal rate of speed thereat for both directions of traffic:
    1. (No change.)
    2. Zone two: 45 mph in Montgomery Township, Somerset County between 800 feet north of the Princeton Township line (Cherry Valley Road-Mount Rose Road) and [1,050] **1,850** feet north of Georgetown [and] Franklin Turnpike—Washington Street (Route 518, milepost 57.5 to [58.4] **58.55**);
    3. Zone three: 50 mph between [1,000] **1,850** feet north of Georgetown [and] Franklin Turnpike—Washington Street (Route 518) in Montgomery Township [and Township line 1,000 feet south of Amwell Road (Route 514) in] **and Hillsborough Township Line** (milepost [58.4] **58.55** to [65.35] **63.2**);
    - 4.-8. (No change.)
  - (e) The rate of speed designated for the certain part of State highway Route U.S. 206 described in this section shall be [and hereby is] established and adopted as the maximum legal rate of speed thereat:
    1. (No change.)

(a)

**Restricted Parking and Stopping  
Routes U.S. 9 in Ocean County and U.S.  
130 in Salem County**

**Proposed Amendments: N.J.A.C.  
16:28A-1.7 and 1.46**

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

Proposal Number: PRN 1985-45.

The agency proposal follows:

**Summary**

The proposed amendments will establish “no parking” bus stop zones along Routes U.S. 9 in Stafford Township, Ocean County and U.S. 130 in Carney’s Point Township, Salem County for the safe and efficient flow of traffic and the safe on/off loading of passengers at established bus stops.

Based upon requests from the local officials the Department’s Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of “no parking” bus stop zones were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.7 and 1.49 based upon the requests from local officials and the traffic investigations.

**Social Impact**

The proposed amendments will establish “no parking” bus stop zones along Routes U.S. 9 in Stafford Township, Ocean County and U.S. 130 in Carney’s Point Township, Salem County for the safe and efficient flow of traffic and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The local officials will bear the costs for the installation of signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:28A-1.7 Route U.S. 9

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

## TREASURY-TAXATION

## PROPOSALS

23. Along the easterly (northbound) side in Stafford Township, Ocean County:

i. (No change.)

ii. **Near side bus stop:**

(1) **Beach Avenue—Beginning at the southerly curb line of Beach Avenue and extending 105 feet southerly therefrom.**

24.-31. (No change.)

16:28A-1.46 Route U.S. 130

(a) (No change.)

(b) The certain parts of State highway **Route [US] U.S. 130** described in [(b) of] this section shall be [and hereby are] established and designated 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 [thereby] granted to erect signs at the following established bus stops:

1. (No change.)

2. **Along the easterly (northbound) side in Carneys Point Township, Salem County:**

i. **Mid-block bus stop:**

(1) **Beginning 318 feet from the southerly curb line of Cleveland Avenue and extending 135 feet southerly therefrom.**

ii. **Near side bus stops:**

(1) **Beginning at the northerly curb line of Georgetown Road and extending 100 feet northerly therefrom.**

3. **Along the westerly (southbound) side in Carneys Point Township, Salem County:**

i. **Near side bus stops:**

(1) **Beginning at the northerly curb line of Walker Avenue and extending 105 feet northerly therefrom.**

(2) **Beginning at the northerly curb line of Cleveland Avenue and extending 105 feet northerly therefrom.**

The agency proposal follows:

### Summary

The proposed repeal and new rules will clarify the application of the New Jersey Sales and Use Tax Act, N.J.S.A. 54:32B-1, et seq., to the sales of food and non-alcoholic drink in or by restaurants, taverns, snack bars, lunch counters, a mobile sale facility, other establishments and facilities and caterers. The proposal will also more clearly establish those transactions which are exempt from the sales tax. Definitions are set forth for “premises,” “for consumption on the premises,” “for consumption off the premises” and “food stores.” Sales tax is imposed on receipts, including cover, minimum or other charge and the value of a coupon, from every sale of food and non-alcoholic drink of any nature. Sandwiches sold in an unheated state and in the same form and condition used in food stores not principally engaged in selling foods prepared and ready to be eaten are exempt. The following establishments are among those required to collect the tax: automats, cafes, cafeterias, carry-out restaurants, fast food operators, hamburger and hot dog stands, caterers, chili parlors, dairy bars, delicatessens, diners, drive-in restaurants, ice cream stands, lunch bars, lunch counters, lunch rooms, luncheonettes, mobile vending operators, oyster bars, clam bars, pizzerias, restaurants, sandwich bars, sandwich shops, snack bars, soda fountains, taverns, grills, bars and wiener restaurants. Sales of food and drink through vending machines are subject to sales tax. Receipts exempt from sales tax are explained at N.J.A.C. 18:24-12.5. Explained below is the treatment of food or drink provided by an employer to an employee as a convenience to the employer as well as food or drink provided as all or part of a food service project funded by government or by private nonprofit organizations to certain elderly or disabled persons. N.J.A.C. 18:24-12.6 deals with subsidized employee cafeterias and food service operations. N.J.A.C. 18:24-12.7 deals with gratuities and service charges.

### Social Impact

The proposal will make clear to both vendors and vendees (sellers and buyers) the application of sales tax or exemption on the purchase of certain items of food and drink. It may affect their maintenance of records of what is taxable and what is exempt. The rules will also serve to advise the public more clearly of what is taxable and what is exempt and the type of establishments required to collect the tax.

### Economic Impact

Some economic impact is expected as a result of this proposal, although the amount of tax of six percent does not change, nor does the exemption or taxability of almost all of the items change in any material way. Sales tax revenues should increase as a result of compliance and enforcement of the proposed new rules, although the anticipated increase can not be estimated.

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

SUBCHAPTER 12. [CRITERIA FOR DETERMINING TAXABILITY OF FOOD] **RECEIPTS FROM THE SALE OF FOOD AND DRINK**

[18:24-12.1 Food sold for immediate consumption

Food items sold for immediate consumption, whether the sale is made by a restaurant, tavern, snack bar, lunch counter or other similar facility, or a mobile sale facility, are taxable.

## TREASURY-TAXATION

(a)

### DIVISION OF TAXATION

#### Sales and Use Tax

#### Receipts from the Sale of Food and Drink

**Proposed Repeals: N.J.A.C. 18:24-12.1 through 12.4**

**Proposed New Rules: N.J.A.C. 18:24-12.1 through 12.7**

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:32B-1 et seq., specifically 54:32B-24.

Proposal Number: PRN 1985-41.

Address comments and inquiries to:

Jack Silverstein  
Chief Tax Counselor  
Division of Taxation  
50 Barrack Street, CN 269  
Trenton, NJ 08646

18:24-12.2 Factors determining immediate consumption

(a) In determining whether an item of food is sold for immediate consumption, there shall be considered the customary consumption practices prevailing at the selling facility.

(b) The quantity of food or number of separate items sold in any single transaction shall not be a determining factor in the taxability of said sale.

18:24-12.3 Food sold for later consumption

Food items sold for later consumption are exempt from the sales tax when the condition and packaging of such items is of the same type as used in the sale of like foods in a supermarket, grocery store or delicatessen.

18:24-12.4 Food and drink provided in rest homes, residential health care facilities, nursing homes and boarding homes

A rest home, residential health care facility, nursing home, and boarding home licensed by the Department of Health, Department of Human Services or the Department of Community Affairs is not required to collect sales tax for food and drink which are included in the total charges it makes to its residents for board, shelter and care.]

18:24-12.1 Scope of subchapter

This subchapter will clarify the application of the New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1, et seq.) to the sale of food and non-alcoholic drink in or by restaurants, taverns or other establishments and caterers.

18:24-12.2 Definitions

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

“Food stores” shall mean any establishment which is principally engaged in selling food or drink which is not prepared and ready to be eaten. Supermarkets, grocery stores, fish markets, produce markets, bakeries and meat markets are examples of the types of establishments considered to be food stores. When a department within food stores makes sales of food or drink which are subject to tax, it must collect the tax. For purposes of these rules, stores which are principally engaged in selling food prepared and ready to be eaten are not food stores.

“For consumption off the premises” shall mean that the food or drink is intended by the customer to be consumed at a place away from the vendor’s premises.

“For consumption on the premises” shall mean that the food or drink sold may be immediately consumed on the premises where the vendor conducts his business.

1. In determining whether an item of food is sold for immediate consumption, there shall be considered the customary consumption practices prevailing at the selling facility.

“Premises” shall mean the total space and facilities in or on which the vendor conducts his business, including, but not limited to, parking areas for the convenience of in-car consumption, counter space, indoor or outdoor tables, chairs, benches and similar convenience.

18:24-12.3 Receipts subject to sales tax

(a) Sales tax is imposed on the receipts, including any cover, minimum, entertainment or other charge, or the value of a coupon, from every sale of food and non-alcoholic drink of any nature sold in or by restaurants, taverns or other establishments in this State or by caterers:

1. In all instances where the sale is for consumption on the premises where sold;

2. In those instances where the sale is for consumption off the premises of the vendor and consists of a meal, or of food prepared and ready to be eaten, including sandwiches and other food or drink, unless the food and drink, other than sandwiches, is sold in:

i. An unheated state; and

ii. The same form and condition, quantities and packaging commonly used by food stores not principally engaged in selling foods prepared and ready to be eaten.

(b) The following establishments, as well as other establishments engaged in the sale of food and drink for consumption on or off premises, are required to collect the tax:

Automats	Drive-In	Mobile Vending Operators
Cafes	Restaurants	Oyster and Clam Bars
Cafeterias	Fast Food	Pizzerias
Carry-Out	Operators	Restaurants
Restaurants	Hamburger and	Sandwich Bars and Shops
Caterers	Hot Dog Stands	Snack Bars
Chili Parlors	Ice Cream Stands	Soda Fountains
Dairy Bars	Lunch Bars,	Taverns, Grills and Bars
Delicatessens	Counters and	Wiener Restaurants
Diners	Rooms	
	Luncheonettes	

(c) The determination of whether food and drink is sold either in a heated or unheated state must be made according to the vendor’s method of merchandising.

1. If the vendor attempts to maintain the food at a temperature which is warmer than the surrounding air temperature by using heating lamps, warming trays, ovens or similar units, or cooks to order, the vendor is selling food in a heated state.

2. If the vendor sells prepared food items from units maintained at or below surrounding air temperature, such sales are sales of prepared food in an unheated state.

Example: A food store sells potato salad by the pound and also sells hot pastrami by the pound for home consumption. The potato salad is not taxable but the pastrami is subject to tax.

Example: A supermarket sells barbecued chicken hot from a rotisserie to be taken home and eaten. This is a taxable sale of heated food.

3. Food sold in an unheated state is taxable when sold as sandwiches or as meals ready to be eaten when arranged on plates or platters as individual or multiple servings regardless of how the sales price is arrived at (pound versus serving).

4. Food or drink sold in an unheated state is not subject to tax when commonly sold in food stores in bulk, by weight, by the dozen (or part thereof) or by volume (gallon, quart, etc.) for off premises consumption.

i. The exemption for food or drink provided in this paragraph does not include any item classified as a candy or confectionary or carbonated soft drinks and beverages.

5. Sales of heated and unheated food in combination on plates or as dinners are subject to tax on the total charge.

Example: A supermarket sells and arranges cold cuts on platters for customers. The customer is charged by the pound for cold cuts. Sales of this type are taxable.

Example: A take-out establishment sells ten pieces of chicken, six rolls and one pound of potato salad as a meal for three persons and charges one price for the package. A sale of this type is taxable in full.

**18:24-12.4 Sales through vending machines**

Sales of food and drink through vending machines are subject to sales tax. (See N.J.A.C. 18:24-16.1, et seq. and 18:24-17.1, et seq.)

**18:24-12.5 Receipts exempt from sales tax**

(a) The tax imposed on the sale of food and drink shall not apply to the following:

1. Alcoholic beverages;
2. Food and drink sold to an airline for consumption in flight;
3. Food or drink sold in an elementary or secondary school at a restaurant or cafeteria located on the premises of such schools;

4. Food or drink sold to an enrolled post secondary school student under the terms of a contractual agreement whereby the student does not pay cash when served. The sales may be made at a restaurant, tavern or other establishment on the premises of the school which is a post secondary school or in a fraternity, sorority or eating club operated in connection therewith;

Example: A student who has paid a semester charge for room and board or board alone has entered into a contractual arrangement for food and drink. The arrangement provides for a fixed number of meals over the duration of the contract, which are served in designated areas. The student is provided with identification, which entitles the student to be served meals. This plan qualifies for the exclusion.

5. Food or drink provided as all or part of a food service project funded by government or by private nonprofit organizations to certain elderly or disabled persons for:

- i. Meals especially prepared for and delivered to homebound elderly, age 60 or older, and to disabled persons.
- ii. Meals prepared and served at a group sitting at a location outside of the home to otherwise homebound elderly persons, age 60 or older, and otherwise homebound disabled persons.

6. Food or drink provided by an employer to an employee as a convenience to the employer, and

- i. The cost of the food or drink is not subject to Federal income tax;
- ii. The meal is considered part of the employee's wages and is furnished as a cash substitute.

7. Food or drink included in the total charges made by a rest home, residential health care facility, nursing home and boarding home licensed by the Department of Health, Department of Human Services or the Department of Community Affairs to residents for board, shelter and care.

(b) See N.J.A.C. 18:24-9.12 regarding sales of food and drink to exempt organizations.

**18:24-12.6 Subsidized employee cafeterias and food service operations**

(a) An employer who by contract or otherwise engages a caterer or food service contractor to provide food and drink or service to employees at the employer's expense is the purchaser of food and drink subject to the sales tax.

Example: Employer E provides food and drink to his employees without charge. E contracts with a food service contractor F to prepare and serve the food and drink for a fee to be paid by E. The fee paid by E is subject to tax as a receipt from the sale of food and drink.

(b) Sales of food, drink or service to employees through a cafeteria on an employer's premises are subject to the sales tax, except as provided in N.J.A.C. 18:24-14.3(a)6.

Example: Employer E maintains a cafeteria or restaurant on his premises for the purpose of selling food and drink to his employees. The sale of the food and drink to the employees is taxable.

(c) When the employer subsidizes the caterer or food service contractor, such subsidy, regardless of whether it is called a management fee, guarantee of profit or some other designation, is taxed as a receipt from the sale of food and drink.

Example: Caterer C agrees to charge employer E's employees a scheduled amount for each item of food and drink it sells to them. E agrees to pay caterer C an amount, in addition to the employees payments, which would guarantee a 12½ percent profit from the sales to the employees. The amount paid by E to the caterer is a taxable receipt from the sale of food and drink.

Example: Employer E enters into an agreement with caterer C. The agreement provides that C prepare, serve and sell food and drink to E's employees at a price mutually agreed to and, in addition, E will pay a subsidy to C for operating the facility. The subsidy will be in such an amount to allow C to make a profit on its sales of food and drink to the employees. However, if C's profit from the sale of food and drink exceeds a set figure, C and E will share the excess profit in an agreed apportionment. Irrespective of the profit sharing agreement, the subsidy paid by E is considered to be a receipt from the sale of food and drink.

(d) If a subsidy is paid by an employer in addition to a specified amount paid by the employees, both amounts are taxed as the receipt from the sale of food and drink.

Example: Employer E will pay \$0.50 to a caterer for each sale of food and drink to E's employees. E's employees will pay any amount due which exceeds the \$0.50 paid by E. Both the amount paid by the employee and the \$0.50 paid by E are taxable receipts from the sale of food and drink.

(e) The caterer or food service contractor is a vendor required to collect the tax on receipts from either the employee, employer, or both.

**18:24-12.7 Gratuities and service charges**

(a) Any charge made to a customer is taxable as a receipt from the sale of food or drink unless:

1. The charge is separately stated on the bill or invoice given to the customer; and
2. The charge is specifically designated as a gratuity; and
3. All such monies received are paid over in total to employees.

## OTHER AGENCIES

### CASINO CONTROL COMMISSION

The following proposals are authorized by the Casino Control Commission, Theron G. Schmidt, Executive Secretary.

(a)

#### Accounting and Internal Controls Patron Credit

#### Proposed Repeal and New Rule: N.J.A.C. 19:45-1.27

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(g) and (1) and 5:12-101.

Proposal Number: PRN 1985-49.

Address comments and inquiries to:

William H. Delaney, Director  
Division of Financial Evaluation and Control  
Casino Control Commission  
3131 Princeton Pike Office Park  
Building No. 5, CN 208  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

The Casino Control Commission proposes to amend further N.J.A.C. 19:45-1.27 as it was originally proposed in the August 6, 1984 Register at 16 N.J.R. 2076(a). The proposal defines the detailed procedures which casinos must follow when granting gaming credit and recording gaming checks which have been exchanged, redeemed or consolidated. The information that the casinos must obtain from prospective credit patrons and record in the credit files is specified. It also specifies the information that must be verified, how the verification procedures are to be performed, how often they are to be repeated, and who is authorized to perform them.

In addition, the proposal specifies the personnel who are authorized to grant credit to patrons and requires recordation of the reasons why the patron's credit line was granted, changed or denied. Specific parameters have also been imposed for granting patrons temporary increases to their credit lines.

Finally, the proposal defines the procedures that must be followed if a patron has a check returned to a casino and the information and documentation that must be recorded in the patron's credit file.

Both the Atlantic City Casino Hotel Association and the Division of Gaming Enforcement made recommendations regarding this section. The majority of the recommendations relate to the information that must be verified and the methods for verification. The Commission made numerous revisions to the original proposal most of which were of a substantive nature requiring republication and additional public notice and comment. Due to the nature and extent of the revisions, the Commission has decided to republish this section in its entirety as a repeal and new rule.

Other proposed amendments to N.J.A.C. 19:45 were published on August 6, 1984 at 16 N.J.R. 2076(a) and are being adopted in this issue of the Register.

#### Social Impact

The proposed new rule would provide casinos with additional information on which to make a credit decision on the patron. The impact on regulatory agencies would be to provide these agencies with verified information regarding patrons and the casino's credit decisions which would aid them in criminal and administrative investigations. The impact on patrons would be to require them to disclose additional information which is not currently required. With this additional information, the casino will more accurately judge the ability of the patron to repay credit and can set the credit limit accordingly. The result should be that less patrons are overextended. The new rule would also deter credit frauds and scams since more information would be verified.

#### Economic Impact

The proposed new rule would impose upon the industry certain costs of compliance. Such costs would include: new credit application forms to allow for the recording of all required information; the costs associated with credit reference verifications; and the costs associated with establishing a method to review the reasonableness and accuracy of player rating forms. The casinos would also experience a potential cost savings because the extension of credit would be based on more verifiable information which may result in the denial of credit to patrons who are not credit worthy. The impact on the regulatory agencies would be some cost savings for investigations since much of the information which they need to prosecute patrons perpetrating a crime would now be readily available (address, employment, etc.). The impact on the general public would be minimal. However, banks, credit bureaus and casino credit clearing houses may experience additional demands for information regarding credit applicants and patrons. If these demands generate fees to the requested entity, additional revenues may be obtained by them.

Full text of the proposed repeal appears on the New Jersey Administrative Code at N.J.A.C. 19:45-1.27.

Full text of the proposed new rule follows.

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed, or consolidated

(a) A credit file for each patron shall be prepared by a general cage cashier or credit department representative with no incompatible functions either manually or by computer prior to the casino licensee's approval of a patron's credit limit. All patron credit limits and changes thereto shall be supported by the information contained in the credit file. Such file shall contain a credit application form upon which shall be recorded, at a minimum, the following information provided by the patron:

1. The patron's name;
2. The address of the patron's residence;
3. The number of years at that address;
4. The telephone number at the patron's residence;
5. Employment information including:
  - i. The name of the patron's employer, or an indication of self employment or retirement;
  - ii. Type of business;
  - iii. The patron's position;
  - iv. Number of years employed;
  - v. The patron's business address; and
  - vi. The patron's business telephone number.
6. Banking information including:
  - i. The name and location of the patron's bank; and

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ii. The account number of the patron's personal checking account upon which the patron is individually authorized to draw and upon which all Counter Checks and all checks used for substitution, redemption or consolidation will be drawn. Checking accounts of sole proprietorships shall be considered as personal checking accounts. Partnership or corporate checking accounts shall not be considered personal checking accounts.

7. The credit limit requested by the patron;

8. The name of each casino where the patron has a casino credit limit and the amount of the credit limit and outstanding balance;

9. The amount and source of all other outstanding indebtedness;

10. The amount and source of income and assets sufficient to support the requested credit limit; and

11. The patron's signature indicating acknowledgement of the following statement, which shall be included at the bottom of every credit application form containing the information required to be submitted by the patron pursuant to this subsection: "I certify that I have reviewed all of the information provided above and that it is true and accurate. I authorize (insert the name of the casino licensee) to conduct such investigations pertaining to the above information as it deems necessary for the approval of my credit limit. I am aware that I may be subject to criminal prosecution if any of the information provided by me is willfully false."

(b) A general cage cashier or credit department representative with no incompatible functions shall record the following information in the credit file prior to the casino licensee's approval of a patron's credit limit:

1. A physical description of the patron which shall include, but not be limited to, the following:

- i. Date of birth;
- ii. Height;
- iii. Weight;
- iv. Hair color; and
- v. Eye color.

2. The type of identification credentials examined containing the patron's signature and whether said credentials included a photograph or general physical description of the patron; and

3. The signature of the general cage cashier or credit department representative with no incompatible functions indicating that the signature of the patron in the credit file appears to agree with the signature on the identification credentials presented by the patron and that the physical description of the patron appears to agree with the patron's actual appearance. The signature of the general cage cashier or credit department representative with no incompatible functions shall be dated and time stamped.

(c) Prior to the casino licensee's approval of the patron's credit limit, a credit department representative with no incompatible functions shall:

1. Verify the address of the patron's residence;

2. Verify the patron's current casino credit limits and outstanding balances which shall include the following:

i. The date the patron's credit account was established;

ii. The amount of the current approved credit limit at each casino; and

iii. The current balance and status of the patron's credit account at each casino including checks deposited by New Jersey casinos that have not yet cleared the bank and derogatory information. ("Derogatory" is defined as patron credit accounts partially or completely uncollectible, checks re-

turned unpaid by the patron's bank, settlements, liens, judgments, and any other credit problems of the patron);

3. Verify the patron's outstanding indebtedness; and

4. Verify the patron's personal checking account information which shall include, but not be limited to, the following:

i. Type of account (personal or sole proprietorship);

ii. Account number;

iii. Date the account was opened;

iv. Average balance of the account for the last twelve months, if available (if this information is not available, then this shall be noted in the credit file);

v. Current balance in the account if available (if this information is not available then this shall be noted in the credit file);

vi. Whether the patron can sign individually on the account; and

vii. Name and title of the person supplying the information.

(d) All verifications performed by the credit department in (c) above together with accurate and verifiable information received from the security and surveillance departments pursuant to N.J.A.C. 19:45-1.11(c) shall be recorded in the credit file and accompanied by the signature of the credit department representative who performed the required verifications or filed the relevant information. The signature of the credit department representative shall be dated and time stamped. The casino licensee's credit department shall fulfill the requirements of (c) above as follows:

1. Verification of the address of the patron's residence, as required by (c)1 above, shall be satisfied by confirming the patron's address with a credit bureau or bank. If neither of these sources has the patron's address on file or will not provide the information, the licensee may use an alternative source. The casino licensee shall record the source of verification and the method by which such verification was performed in the patron's credit file. Verification of the patron's address may be performed telephonically.

2. Verification of the patron's current casino credit limits and outstanding balances, as required by (c)2 above, shall be performed through a casino credit bureau and, if appropriate, through direct contact with other casinos. The casino licensee shall record the source of verification and the method by which such verification was performed in the patron's credit file. If no casino credit information relating to the patron is available from these sources, this shall be noted in the patron's credit file. The verification may be performed telephonically prior to the credit approval provided the casino licensee obtains written documentation of all such information as soon as possible and includes such written documentation in the patron's credit file.

3. Verification of the patron's outstanding indebtedness, as required by (c)3 above, shall be performed by contacting a consumer credit bureau and a casino credit bureau to determine whether the applicant has any liabilities or if there is any derogatory information concerning the applicant's credit history. Such contact shall be considered a verification of the outstanding indebtedness provided by the patron. The casino licensee shall record the source of verification and the method by which such verification was performed in the patron's credit file. If either one or both of these sources do not have information relating to a patron's outstanding indebtedness this shall be recorded in the patron's credit file. The verification may be performed telephonically prior to the credit approval provided the casino licensee obtains written documentation of all information obtained as soon as possible and

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includes such written documentation in the patron's credit file.

4. Verification of the patron's personal checking account information, as required by (c)4 above, shall be performed with the patron's bank. If such information is not immediately available, the casino licensee may use an alternative source. The casino licensee shall record the source of verification and the method by which such verification was performed in the patron's credit file. Verification of the patron's personal checking account information may be performed telephonically. Written verification of the patron's personal checking account information, or a statement that the patron's bank has indicated that such written verification is not available, shall be recorded in the patron's credit file.

(e) Any New Jersey casino licensee requesting information from another New Jersey casino licensee concerning a credit patron shall represent to the requested casino licensee that the patron has a credit line or has applied for credit and shall provide the information required by (a)1, (a)2 and (a)6i above. Upon receipt of this information, the requested New Jersey casino licensee shall be required to furnish to other New Jersey casinos any information in its possession concerning a patron as required by (c)1, (c)2 and (c)4 above.

(f) The credit limit, and any changes thereto, must be approved by any one or more of the individuals holding the job positions of vice president of casino operations (or an equivalent executive of a casino licensee that is either a partnership or sole proprietorship), credit manager, assistant credit manager, credit shift managers, or a credit committee composed of casino key employees with no incompatible functions which may approve credit as a group but whose members may not approve credit individually unless such person is included in the job positions referenced above. The casino manager, assistant casino manager, or casino shift manager may contribute to the credit limit decision but shall not have approval authority. The approval shall be recorded in the credit file and shall include:

1. An explanation of how the patron's credit worthiness was determined or the reason for denying or reducing the requested credit limit;

2. A reason as to why credit was approved if derogatory information was obtained during the verification process;

3. Any other information used to support the credit limit and any changes thereto, including the source of the information; and

4. The signature of the employee approving the credit limit. Such signature shall be dated and time stamped.

(g) Prior to approving a credit limit increase, a representative of the casino licensee's credit department shall:

1. Obtain a written request from the patron which shall include, but not be limited to:

i. Date and time of the patron's request;

ii. Amount of credit limit increase requested by the patron; and

iii. Signature of the patron.

2. Verify the patron's current casino credit limits and outstanding balances, as required by (c)2ii and (c)2iii above, unless such verification has been performed earlier that same gaming day;

3. Verify the patron's outstanding indebtedness and personal checking account information, as required by (c)3 and (c)4 above, unless such procedures have been performed within the previous six months;

4. Consider the patron's player rating based on a continuing evaluation of the amount and frequency of play subse-

quent to the patron's initial receipt of credit. The patron's player rating shall be readily available to representatives of the casino licensee's credit department prior to their approving a patron's request for a credit limit increase. The information for the patron's player rating shall be recorded on a player rating form by casino department supervisors and shall include, but not be limited to, the following:

i. Patron's name;

ii. Game and table number;

iii. Average bet;

iv. Approximate length of time played;

v. Rating as determined by supervisor;

vi. Rater's signature and license number; and

vii. Date of observations.

5. Include the information and documentation required by paragraphs 1 through 3 above in the patron's credit file.

(h) Credit limit increases may be approved without performing the requirements of (g)2 and (g)3 above if the increases are temporary and are noted as being for this trip only (TTO) in the credit file. Temporary increases shall be limited to two during any thirty day period and the total amount of the temporary increases during that period shall not exceed ten percent of the currently approved credit limit.

(i) The casino licensee's credit department shall verify the patron's address, current casino credit limits, outstanding balances, outstanding indebtedness, and personal checking account information, as required by (c)1 through (c)4 above every six months for each credit patron or shall reduce the patron's credit limit to zero. If an approved credit limit has been reduced to zero, the required procedures shall be performed before the credit limit is reinstated.

(j) Any patron having a check returned to any casino unpaid by the patron's bank shall have his credit limit reduced to zero at all New Jersey casinos until such time as the returned check has been paid in full. All derogatory information concerning a patron's credit limit shall be reported by each casino licensee on a daily basis to a casino credit bureau used by New Jersey casinos. All New Jersey casinos shall obtain any derogatory information on a daily basis from the casino credit bureau and shall record such information in the patron's credit file. Notwithstanding the fact that a check has been returned unpaid, a casino licensee may continue the patron's credit limit if the licensee records the explanation for its decision in the credit file before accepting any further checks from the patron.

(k) All transactions affecting a patron's outstanding indebtedness to the casino licensee shall be recorded in chronological order in the patron's credit file and credit transactions shall be segregated from the safekeeping deposit transactions. The following information shall be included:

1. The date, amount and check number of each Counter Check initially accepted from the patron;

2. The date, amount and check number of each consolidation check and the check numbers of the checks returned to the patron;

3. The date, method, amount and check number of each redemption transaction and the check number of the redeemed check returned to the patron;

4. The date, amount and check number of each substitution transaction and the check number of the check returned to the patron;

5. The date, amount and check number of each check deposited;

6. The date, amount and check number of each check returned to the casino licensee by the patron's bank and the reason for its return; and

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- 7. The outstanding balance after each transaction.
  - (l) A log of all Counter Checks exchanged and of all checks received for redemption, consolidation or substitution shall be prepared, manually or by computer, on a daily basis, by check cashiers and such log shall include, at a minimum, the following:
    - 1. The balance of the checks on hand in the cashiers' cage at the beginning of each shift;
    - 2. For checks initially accepted and for checks received for consolidation, redemption or substitution;
      - i. The date of the check;
      - ii. The name of the drawer of the check;
      - iii. The amount of the check;
      - iv. The Counter Check serial number(s) for Counter Check(s) received; and
      - v. An indication as to whether the check was initially accepted or received in a redemption, consolidation or substitution.
    - 3. For checks deposited, redeemed by patrons for cash or cash equivalents, gaming chips and plaques, or any combination thereof, consolidated or replaced:
      - i. The date on which the check was deposited, redeemed, consolidated or replaced;
      - ii. The name of the drawer of the check;
      - iii. The amount of the check;
      - iv. The Counter Check serial number(s) for Counter Check(s) deposited, redeemed, consolidated or replaced; and
      - v. An indication as to whether the check was deposited, redeemed, consolidated or replaced.
    - 4. The balance of the checks on hand in the cashiers' cage at the end of each shift.
  - (m) A list of all Counter Checks on hand, and of all checks received for redemption, consolidation or substitution shall be prepared, manually or by computer, on a monthly basis, at a minimum, and shall include the following:
    - 1. The date of the check;
    - 2. The name of the drawer of the check;
    - 3. The amount of the check; and
    - 4. The Counter Check serial number(s) for Counter Check(s) received.
  - (n) At the end of gaming activity each day, at a minimum, the following procedures shall be performed:
    - 1. The daily total of the amounts of checks initially recorded as described in (l)2 above shall be agreed to the daily total of Counter Checks issued;
    - 2. The daily total of the checks indicated as deposited on the log required by (l)3 above shall be agreed by employees with no incompatible functions to the bank deposit slips corresponding to such check; and
    - 3. The balance required by (l)4 above shall be agreed to the total of the checks on hand in the cashiers' cage.
  - (o) All information recorded in the credit file shall be in accordance with the licensee's system of internal accounting control submitted to the Commission.

(a)

**Gaming Equipment  
Issuance and Use of Tokens**

**Proposed Amendments:**

- Alternative I: N.J.A.C. 19:46-1.33**
- Alternative II: N.J.A.C. 19:45-1.37;  
19:46-1.26, 1.27, and 1.33**
- Alternative III: N.J.A.C. 19:46-1.33**

Authority: N.J.S.A. 5:12-63(c).  
Proposal Number: PRN 1985-71.

Address comments and inquiries to:  
Michael A. Santaniello  
Deputy Director, Operations  
Casino Control Commission  
Division of Financial Evaluation and Control  
Princeton Pike Office Park  
Building No. 5, CN 208  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

The proposed amendment to N.J.A.C. 19:46-1.33 supersedes the proposed amendment published in the January 3, 1984 issue of the New Jersey Register at 16 N.J.R. 41. The proposal includes three alternatives, only one of which will be adopted by the Casino Control Commission. All three alternatives include the revised Federal government specifications related to the physical characteristics of tokens.

The only difference between the alternatives is in the denominations of tokens to be allowed for use in Atlantic City casinos. Alternative I permits the use of tokens in any denomination. It places no restrictions on slot machines which accept tokens over a \$1.00 denomination, other than the usual restrictions placed on all slot machines. Alternative II also allows the use of tokens in any denomination, however, certain restrictions are placed on the use of tokens in denominations in excess of \$1.00. Specifically, slot machines which accept tokens in excess of \$1.00 are restricted as follows:

- 1. They must have a payout percentage of at least 94 percent on each type of wager offered by the machine except when the machine is a five percent progressive in which case the payout percentage must have at least a 92 percent payout;
  - 2. Each play of the slot machine must be no more than three tokens; and
  - 3. The number of slot machines that accept tokens in excess of \$1.00 cannot exceed one percent of the total number of slot machines authorized for use in that particular casino. The restrictions are addressed in the proposed amendments to N.J.A.C. 19:45-1.37 and N.J.A.C. 19:46-1.26 and -1.27.
- Alternative III does not change the present regulation which restricts tokens to \$1.00 denominations but simply includes the new government specifications.

**Social Impact**

The social impact of Alternatives I and II will result from the public's use of gaming tokens in denominations other than \$1.00. Although the specific social effects are difficult to project, several are possible. Among these are the potential for more affluent patrons to be attracted to slots by virtue of higher denomination machines made possible by the use of tokens having a value in excess of \$1.00. Another potential effect might be the transference of lower denomination machine players to higher denomination machines. If this change impacts on the bankroll these individuals would have otherwise wagered, the increase in bankroll would represent a transference of assets that might have been used for non-gaming activity to the gaming environment. Of course, the social consequences of such transfer may be significant or insignificant depending on the total assets of a given player. Even though on a player by player basis this insignificance may hold true, if a volume of players participate in this manner, the aggregate transference may exceed the insignificant in overall importance. Additionally, it can be anticipated that the use of tokens in excess of \$1.00, which will increase the denominational characteristics of slot machines, may create higher potential jackpots causing the various psychological, sociological, attitudinal, and social inducements and ramifications associated therewith. Alternative II will affect social impact to a lesser degree than Alternative I by restricting the use of tokens in excess of \$1.00.

There will be no social impact resulting from Alternative III since the rule is not being changed but simply includes the new Federal government specifications.

**Economic Impact**

Alternatives I and II may have diverse impacts in the economic sphere. Since new tokens would be issued, it would effect the cost to the casinos of purchasing, controlling, and accounting for such tokens. As a corollary, it is anticipated to engender a positive economic impact to those who distribute and manufacture gaming tokens. From the prospective of casino gross revenue or win, it has the potential for either increasing or decreasing slot revenue dependent on the popularity of these tokens and machines that use them among the populace of slot patrons. Of course, the popularity of a given type of slot machine is dependent on many characteristics aside from denomination. Therefore, any empirical evidence of the precise effect will be difficult given the problematic nature of isolating this variable. Since tax revenue from slots is expressed as a percentage of gross revenue, any effect on casino slot revenue resulting from these tokens will have a proportional effect to tax revenue associated with machines using these tokens. Alternative II will affect the economic impact to a lesser degree than Alternative I because of the restrictions of the use of tokens in excess of \$1.00. In addition, economic impacts may also be seen in the cost associated with any equipment changes required to be made to such items as wrapping machines, wrapping paper, wrapped coin trays, carts, holding devices, and counting and sorting equipment.

The economic impact of Alternative III will be minimal with the exception of the negative impact resulting in the costs already incurred by two casinos and a token manufacture in the lobbying effort to persuade the Federal government to reevaluate its position regarding the use of tokens in denominations in excess of \$1.00, in the costs incurred by the casinos having filed petitions, design schematics and samples of \$5.00 tokens, and in the costs incurred by the manufacturer of

tokens for preparing design schematics, samples, and obtaining the Treasury Department approval of same.

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

ALTERNATIVE I

19:46-1.33 Issuance and use of tokens for gaming in slot machines

(a) A casino licensee may, with the approval of the Casino Control Commission, issue [\$1.00] metal tokens designed for gaming use in its slot machines provided that such tokens:

- 1.-4. (No change.)
- 5. Are not deceptively similar to any **current or past** coin of the United States or a foreign country;
- 6. (No change.)
- 7. Are not manufactured from a three-layered material consisting of a copper-nickel alloy clad on both sides of a pure copper core **nor from a copper based alloy except if the total zinc, nickel, aluminum, magnesium and other alloying metal exceeds 25 percent of the tokens weight; nor from a ferromagnetic material.**
- 8. Comply with [either of] the following specifications:
  - i. [Measure less than 1.475 inches or more than 1.525 inches in diameter and not more than .115 inches in thickness, with any reeds or serrations on the periphery not to exceed 150.] **Measure outside the following ranges in diameter (inches):**

<b>0.680</b>	<b>0.860</b>
<b>0.890</b>	<b>0.980</b>
<b>1.018</b>	<b>1.068</b>
<b>1.180</b>	<b>1.230</b>
<b>1.475</b>	<b>1.525</b>

ii. [Measure more than 1.068 inches or less than 1.120 inches in diameter and .074 inches in thickness, with any reeds or serrations on the periphery not to exceed 90.] **Weight no less than two grams;**

iii. **Be no less than 0.060 inch thick.**

(b) No casino licensee shall issue or cause to be utilized in its casino any tokens **for gaming use in slot machines** unless and until such tokens are approved by the Casino Control Commission. In requesting approval of such tokens, a casino licensee shall first submit to the [C]commission a detailed schematic of its proposed token which shall show the front, back and edge of such token, its diameter and thickness and any logo, design and wording to be contained thereon, all of which shall be depicted on such schematic as they will appear, both as to size and location, on the actual token. Once the design schematics are approved by the Casino Control Commission **or its designee**, no token shall be issued or utilized until and unless a sample of such token is also submitted and approved by the [C]commission.

(c) No casino licensee shall request design schematic approval of a \$1.00 token by the Casino Control Commission unless and until the casino licensee submits to the United States Treasury Department for approval a detailed schematic of its proposed token which shall show the front, back and edge of such token, its diameter, thickness, serrations and any logo, design and wording to be contained thereon all of which shall be depicted on such schematic as they will appear, both as to size and location, on the actual token. No casino licensee shall request sample approval of a \$1.00 token by the Casino Control Commission unless and until the casino licensee submits a sample token to the Bureau of the Mint for approval.

(d) A casino licensee utilizing a \$1.00 token prior to the effective date of this regulation shall submit a sample to the United States Treasury Department for approval.

(e) Token issued by a casino license shall:

1. Only be issued for use in the slot machines in the casino of such licensee and only be sold by such licensee at the request of its patrons and shall not be used or given as change in any other transaction;

2. Only be redeemed by such licensee from its patrons and shall not be knowingly redeemed from any non-patron source;

3. Not be knowingly accepted, exchanged, used or redeemed, in any gaming or non-gaming transaction, by any other licensee, except that such other licensee may redeem at its cashiers' cage foreign tokens upon the representation of a patron that such tokens had been received from the payout chutes of slot machines on the premises or have been purchased from an employee of such licensee working on the premises.

(f) Notwithstanding the provisions of (e), a casino licensee shall redeem promptly its own genuine tokens from other legally operated casinos upon the representation that such tokens were unknowingly or inadvertently accepted, were unavoidably received in slot machines through patron play or were redeemed from patrons pursuant to (e)3 above.

(g) Each casino licensee shall redeem promptly from its patrons its own genuine tokens, by cash or by check dated the day of such redemption on an account of the casino licensee as requested by the patron, except when the tokens were obtained or being used unlawfully.

(h) Each casino licensee shall prominently and conspicuously post in its casino signs notifying patrons that "It is a violation of Federal law to use tokens issued by this casino outside these premises or to use tokens by another casino here".]

#### ALTERNATIVE II

19:45-1.37 Slot machines; identifications; signs; meters

(a) (No change.)

(b) Unless otherwise authorized by the Commission, each slot machine in a casino shall be equipped with the following:

1. A mechanical, electrical or electronic device, to be known as an "in-meter," that continuously and automatically counts the number of coins **or tokens** placed by patrons into the machine;

2. A mechanical, electrical or electronic device, to be known as a "drop meter," that continuously and automatically counts the number of coins **or tokens** dropped into the machine's drop bucket;

3. A mechanical, electrical or electronic device, to be known as a "[jackpot] payout meter," that continuously and automatically counts the number of coins **or tokens** automatically paid by the machine; and

4. A mechanical, electrical or electronic device, to be known as a "win meter," visible from the front of the machine that advises a player of the number of coins **or tokens** that have been paid to him by the machine upon hitting a winning combination.

(c) Unless otherwise authorized by the Commission, each slot machine which does not totally and automatically pay the full amount of a jackpot to a patron shall be equipped with a mechanical, electrical or electronic device to be known as a "manual jackpot meter" that continuously and automatically records a pulse(s) for a predetermined number of coins **or tokens** to be paid manually.

(d) (No change.)

(e) (No change.)

(f) The casino licensee shall set each slot machine to pay out, at a minimum, 83 percent of the amount of coins or [currency] token placed by patrons into the slot machine [and] **except that any slot machine accepting tokens in denominations in excess of \$1.00 shall be set to pay out no less than 94 percent on each type of wager offered by the machine unless the machine is a five percent progressive in which case the machine shall be set to payout no less than 92 percent on each type of wager offered. The casino licensee shall maintain a record of each slot machine setting and theoretical payout percentage.**

**(g) Any slot machines used for gaming that accept tokens in denominations in excess of \$1.00 shall not accept more than three tokens for each play of the machine.**

[(g)] (h) Each slot machine in a casino shall have such test connections as may be specified by the Division and approved by the Commission for on-site inspection, examination, and testing of such machine.

[(h)] (i) Each slot machine in a casino shall have such devices, equipment, features, and capabilities as may be required by the Commission for that particular model of slot machine after the prototype model is tested and examined by the Division.

#### ALTERNATIVE II

19:46-1.26 Slot Machines; identification; signs; meters; other devices

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

(e) A casino licensee shall set each slot machine to pay out a minimum 83 percent of the amount of coins or tokens placed by patrons into the slot machine [and] **except that any slot machine accepting tokens in denominations in excess of \$1.00 shall be set to pay out no less than 94 percent on each type of wager offered unless the machine is a five percent progressive in which case the machine shall be set to payout no less than 92 percent on each type of wager offered. The casino licensee shall maintain a record of each slot machine setting and theoretical payout percentage.**

**(f) Any slot machines used for gaming that accept tokens in denominations in excess of \$1.00 shall not accept more than three tokens for each play of the machine.**

[(f)] (g) Each slot machine in a casino shall have such test connections as may be specified by the Division and approved by the Commission for the on-site inspection, examination and testing of such machine.

[(g)] (h) In addition to the above requirements, each slot machine in a casino shall have such devices, equipment, features and capabilities as may be required by the Commission for that particular model of slot machine after the prototype model is tested and examined by the Division.

#### ALTERNATIVE II

19:46-1.27 Aisles; grating; electrical outlets; denominations; density; floor space; arrangement; floor plan; slot stools

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

(d) Each casino licensee having slot machines in its casino shall have at least five percent of said machines of a five cent variety [and], at least 10 percent of said machines of a 25 cent variety **and no more than one percent of a variety that accept tokens in a denomination in excess of \$1.00.**

(e)-(k) (No change.)

ALTERNATIVE II

19:46-1.33 Issuance and use of tokens for gaming in slot machines  
(Same as Alternative I.)

ALTERNATIVE III

19:46-1.33 Issuance and use of tokens for gaming in slot machines

(a) A casino licensee may, with the approval of the Casino Control Commission, issue \$1.00 metal tokens designed for gaming use in its slot machines provided that such tokens:

1.-4. (No change.)

5. Are not deceptively similar to any current or past coin of the United States or a foreign country;

6. (No change.)

7. Are not manufactured from a three-layered material consisting of a copper-nickel alloy clad on both sides of pure copper core nor from a copper based alloy except if the total zinc, nickel, aluminum, magnesium and other alloying metal exceeds 25 percent of the tokens weight; nor from a ferromagnetic material.

8. Comply with [either of] the following specifications:

i. [Measure less than 1.475 inches or more than 1.525 inches in diameter and not more than .115 inches in thickness, with any reeds or serrations on the periphery not to exceed 150.] Measure outside the following ranges in diameter (inches):

0.680	0.860
0.890	0.980
1.018	1.068
1.180	1.230
1.475	1.525

ii. [Measure more than 1.068 inches or less than 1.120 inches in diameter and .074 inches in thickness, with any reeds or serrations on the periphery not to exceed 90.) Weigh no less than two grams;

iii. Be no less than 0.060 inch thick.

(b) No Casino licensee shall issue or cause to be utilized in its casino any tokens for gaming use in slot machines unless and until such tokens are approved by the Casino Control Commission. In requesting approval of such tokens, a casino licensee shall first submit to the [C]ommission a detailed schematic of its proposed token which shall show the front, back and edge of such token, its diameter and thickness and any logo, design and wording to be contained thereon all of which shall be depicted on such schematic as they will appear, both as to size and location, on the actual token. Once the design schematics are approved by the Casino Control Commission or its designee, no token shall be issued or utilized until and unless a sample of such token is also submitted and approved by the [C]ommission.

[(c) No casino licensee shall request design schematic approval of a \$1.00 token by the Casino Control Commission unless and until the casino licensee submits to the United States Treasury Department for approval a detailed schematic of its proposed token which shall show the front, back and edge of such token, its diameter, thickness, serrations and any logo, design and wording to be contained thereon all of which shall be depicted on such schematic as they will appear, both as to size and location, on the actual token. No casino licensee shall request sample approval of a \$1.00 token by the Casino Control Commission unless and until the casino licensee submits a sample token to the Bureau of the Mint for approval.

(d) A casino licensee utilizing a \$1.00 token prior to the effective date of this regulation shall submit a sample to the United States Treasury Department for approval.

(e) Tokens issued by a casino licensee shall:

1. Only be issued for use in the slot machines in the casino of such licensee and only be sold by such licensee at the request of its patrons and shall not be used or given as change in any other transaction;

2. Only be redeemed by such licensee from its patrons and shall not be knowingly redeemed from any non-patron source;

3. Not be knowingly accepted, exchanged, used or redeemed, in any gaming or non-gaming transaction, by any other licensee, except that such other licensee may redeem at its cashiers' cage foreign tokens upon the representation of a patron that such tokens had been received from the payout chutes of slot machines on the premises or have been purchased from an employee of such licensee working on the premises.

(f) Notwithstanding the provisions of (e), a casino licensee shall redeem promptly its own genuine tokens from other legally operated casinos upon the representation that such tokens were unknowingly or inadvertently accepted, were unavoidably received in slot machines through patron play or were redeemed from patrons pursuant to (e)3 above.

(g) Each casino licensee shall redeem promptly from its patrons its own genuine tokens, by cash or by check dated the day of such redemption on an account of the casino licensee as requested by the patron, except when the tokens were obtained or being used unlawfully.

(h) Each casino licensee shall prominently and conspicuously post in its casino signs notifying patrons that "It is a violation of Federal law to use tokens issued by this casino outside these premises or to use tokens issued by another casino here".]

# RULE ADOPTIONS

## EDUCATION

### (a)

#### STATE BOARD OF EDUCATION

#### State Approved Adult High Schools (Locally Issued, State Endorsed, Diplomas for Adults)

#### Adult High School Graduation Requirements

#### Adopted Amendments: N.J.A.C 6:30-2.5

Proposed: October 15, 1984, at 16 N.J.R. 2719(a).  
 Adopted: December 5, 1984, by State Board of Education, Saul Cooperman, Secretary.  
 Filed: December 21, 1984, as R.1984, d.614, **without change.**

Authority: N.J.S.A. 18A:4-15, 18A:48-1 and 18A:7C-1 et seq.

Effective Date: January 21, 1985.  
 Expiration Date pursuant to Executive Order No. 66(1978): January 1, 1987.

#### Summary of Public Comments and Agency Responses:

The Department received two letters on the proposal. One was received from the Director of Continuing Legal Education in the Willingboro public schools, and expressed strong support for the amendments. The other was from an educational broker in the Salen City Adult High School. This writer also registered strong support for the amendments, but also raised the following questions:

1. How would an appropriate test be identified?
2. Would an item analysis for individual performance on the test be available to determine students' educational deficiencies?
3. Would testing be continuous?

#### Response:

1. This would be done on the basis of compatibility of skills measured, level of difficulty, and testing security.
2. The equivalent test is not intended to replace the Statewide Assessment Test, but is an option to adults who do not wish to wait until the next annual administration, of the Statewide Assessment Test. An item analysis for individual student performance as is available for the Statewide Assessment Test may not be available for the optional test because of the prohibitive cost.
3. Testing would be continuous throughout the year and would be administered by the State's General Educational Development (GED) testing centers.

Full text of the adoption follows.

#### 6:30-2.5 Graduation

(a) Each adult high school shall establish graduation requirements on the basis of basic skills mastery and demonstrated proficiency through either course credits, program completion, or a combination of course credits and program completion as follows:

1. Basic skills mastery: Each adult high school shall establish graduation requirements on the basis of mastery on either the Statewide assessment test or an equivalent test approved by the Commissioner of Education.

2. Course Credits: Each adult high school shall establish graduation requirements on the basis of a minimum number of credits to be not less than 92, of which no more than 20 may be in physical education, health and safety, and must include 20 credits in communication, 10 credits in computation, 10 credits in social studies and history; five credits in fine, practical and/or performing arts, five credits in natural or physical science and 2.5 credits in career exploration or development. Course credits may be obtained in any of the following ways:

- i. Credits transferred from other accredited schools or institutions;
  - ii. Basic military training: A maximum of 10 credits;
  - iii. College courses at accredited schools: Amount of credit determined by the district board of education;
  - iv. Previous work experience: Amount of credit determined by the district board of education, not to exceed 10 credits;
  - v. Apprenticeship and on-the-job training: Amount of credit determined by the district board of education, not to exceed 30 credits;
  - vi. Credit by examination: All tests used for credit by examination will be kept on file for review by the Department of Education. A maximum of five credits per examination will be allowed;
  - vii. Independent study: Amount of credit to be determined by the district board of education and kept on file for review by the Department of Education;
  - viii. Class participation: Successful completion of course instruction based on proficiencies which meet the State required number of class hours per credit awarded.
3. Program completion: District boards of education may determine and establish a set number of curricular activities or programs for promotion, credit and graduation purposes:
- i. Programs shall be planned for individuals and/or a group based on specific proficiencies;
  - ii. The principal shall certify completion of curricular activities or programs based upon specific proficiencies;
  - iii. Group programs based on specific proficiencies shall be approved in the same manner as other approved courses. Individual programs shall be on file in the local district subject to review by the commissioner or his or her representative.

## ENVIRONMENTAL PROTECTION

### (b)

#### DIVISION OF ENVIRONMENTAL QUALITY

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

## ADOPTIONS

## ENVIRONMENTAL PROTECTION

**Adopted Amendments: N.J.A.C. 7:27-14.1 and 14.2****Adopted Repeal: N.J.A.C. 7:27-14.2**

Proposed: November 5, 1984 at 16 N.J.R. 2887.

Adopted: December 28, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: January 2, 1985 as R.1985, d.1, **without change** (except for N.J.A.C. 7:27-14.3, which is not being adopted at this time).

Effective Date: January 21, 1985.

Operative Date: July 1, 1985.

DEP Docket No. 067-84-10.

Expiration Date pursuant to Executive Order No. 66(1978): June 30, 1989.

**Summary of Public Comments and Agency Responses:**

**Comment:** New Jersey should proceed immediately with its own comprehensive control program for diesel-powered motor vehicles, because of the uncertainty regarding adoption of the Environmental Protection Agency's (EPA) proposed particulate standard, the expanded use of diesel-powered vehicles, the health effects of diesel exhaust, the harmful effects of diesel exhaust upon visibility, and the inequity in New Jersey's 1/M program through the exclusion of diesel-powered vehicles.

**Response:** The Department identifies and prioritizes its control activities according to need. This need is determined largely by New Jersey's attainment status of the national ambient air quality standards for the criteria pollutants. Although the secondary standard for particulates is not being attained in all areas of the State, attainment of the primary standard has been realized. Given clean air mandates as established by the Clean Air Act and Federal funding, along with limited resources, the Department must pursue those control activities having the greater priority. These activities are those associated with attaining the national ambient air quality standard for ozone by December 31, 1987. The Department will not take further action beyond the proposal at this time for the control of particulate emissions from diesel-powered vehicles.

**Comment:** The Public Advocate questions whether the self-inspection program proposed for diesel-fueled motor vehicles is sufficiently stringent to reduce Total Suspended Particulate (TSP) emissions to within the Federal standards since the program is expected to result in no significant deterioration in air quality when the State needs an improvement in air quality to attain the Federal air quality standards by December 1987.

**Response:** The self-inspection program discussed in the Basis Document for N.J.A.C. 7:27-14 is a description of the inspection program adopted by the New Jersey Department of Transportation (DOT) pursuant to their authority. This program was adopted by DOT on September 26, 1983, and implemented on October 17, 1983.

With the exception of Camden and Jersey City, New Jersey has attained the TSP primary ambient air quality standard Statewide. Camden and Jersey City have been designated as

unclassifiable with respect to attainment of the primary TSP national ambient air quality standard. Parts of the State are designated as non-attainment for the secondary TSP standard. The Clean Air Act does not establish an attainment date for this standard, although it specifies attainment as expeditiously as practicable. Currently, relatively few violations of the secondary TSP standard are occurring. It is anticipated that the entire State will be in attainment with the revised ambient standards proposed by EPA.

Since New Jersey is in attainment of the primary TSP ambient standard, the Department is proposing to amend only the autobus test procedure and the associated test standard in order to resolve a diesel autobus test program inequity.

**Comment:** N.J.A.C. 7:27-14.1, Definitions: Why are only trucks and buses included within the definition of "Diesel-powered motor vehicles"? Why not include diesel train engines and diesel powered cars?

**Response:** The original intent of N.J.A.C. 7:27-14 was to control smoke emissions from heavy-duty diesel-powered motor vehicles. The proposed amendment to the definition was made in order to grammatically clarify the definition. Diesel train engines are regulated pursuant to N.J.A.C. 7:27-3.4, "Smoke Emissions From The Combustion of Fuel In Mobile Sources." Light duty diesel vehicles and diesel construction equipment have historically been omitted from DEP rulemaking because of their relatively small contribution to the total emissions inventory.

**Comment:** The diesel-powered truck inspection standard should be revised from 20 percent smoke opacity to 25 percent smoke opacity, (N.J.A.C. 7:27-14.2(a)) because diesel fuel quality is deteriorating and this deterioration leads to increased diesel engine smoke emissions.

**Response:** The amendment to N.J.A.C. 7:27-14.2(a) did not change the inspection standard for diesel-powered trucks (see former N.J.A.C. 7:27-14.3). Rather N.J.A.C. 7:27-14.2(a) was amended due to the new physical organization of the regulations. Further the supporting documents submitted by the commenters were not current. For the above reasons and the reason that the Department is satisfied that the inspection standard for diesel-power trucks is fair, there will be no change to that standard.

**Comment:** The inspection standard, N.J.A.C. 7:27-14.2 should be applicable only to those vehicles licensed in New Jersey.

**Response:** N.J.A.C. 7:27-14.2, "Inspection Standard", applies to New Jersey registered diesel-powered motor vehicles. By definition, passenger automobiles, motorcycles and off-highway vehicles are excluded from the inspection standard.

**Comment:** It was suggested that a less stringent in-use standard for pre-1974 diesel vehicles reflecting the higher "bare-line" emission level of these vehicles be applied.

**Response:** The Department is not aware of any pre-1974 model year diesel-powered motor vehicles, or motor vehicle classes, which have encountered difficulty in complying with the established standard. Nor has the Department observed data which demonstrate an inequity in smoke emission rejection rates between pre-1974 and post-1973 model year diesel-

powered motor vehicles. Consequently, the Department will not consider a less stringent smoke opacity standard for pre-1974 diesel-powered motor vehicles.

Comment: The trucking industry, the motorcoach industry and the Department of Transportation stated that while they supported the proposed idling standard, N.J.A.C. 7:27-14.3, it was too restrictive because it did not take into account the need to idle for safe operation of the vehicle, proper climate control for passengers and the regulatory requirements of the Department of Transportation, N.J.A.C. 16:53.

Response: The Department believes there should be an idling limitation for diesel-powered trucks and buses, because such a limitation would reduce the annoying and adverse health effects of excessive diesel odors and exhaust resulting from idling vehicles in New Jersey. Because of the serious concerns raised by the commenters, the Department has decided to further study the idling limitation to determine if a practically enforceable standard can be adopted which will also satisfy the safety and regulatory concerns of the commenters. Since the commenters support the concept of an idling limitation, the Department will take advantage of their offer to help it establish a workable idling limitation. For these reasons the proposed N.J.A.C. 7:27-14.3 will not be adopted at this time.

Full text of the adoption follows.

SUBCHAPTER 14. 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.

... "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 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.

...

7:27-14.2 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 established at N.J.A.C. 7:27B-4.3.

(b) Any diesel-powered autobus which is subject to the inspection rules and regulations of the 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 established at N.J.A.C. 7:27B-4.4.

7:27-14.3 Idle standard (Reserved)  
(This section is not being adopted at this time.)

(a)

DIVISION OF ENVIRONMENTAL QUALITY

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

Adopted Amendments: N.J.A.C. 7:27-15.1, 15.2, 15.3, 15.4, 15.5, 15.7 and 15.8

Proposed: November 5, 1984 at 16 N.J.R. 2889.  
Adopted: December 28, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.  
Filed: January 2, 1985 as R.1985 d.2, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5). N.J.A.C. 7:27-15.6 is not being adopted at this time.

Effective Date: January 21, 1985.  
Operative Date: July 1, 1985.  
DEP Docket No.: 065-84-10.  
Expiration Date pursuant to Executive Order No. 66(1978): June 30, 1989.

Summary of Public Comments and Agency Response:

Comment: The Environmental Protection Agency (EPA) commented that the proposed amendments fall far short of meeting the State Implementation Plan (SIP) commitment associated with the anti-tampering/anti-fuel switching program. The emissions reductions claimed by New Jersey for the roadside examinations are generally consistent with guidance information provided by EPA. However, the emission reduction resulting from the annual inspection would be substantially less than that claimed by the Department. Further, EPA believes that relying solely on presentation of a bill of sale, rather than a visual inspection, will not adequately ensure that necessary corrective work was performed. (See Response following the next comment.)

Comment: Although the Public Advocate fully supports the adoption of each of the proposed measures, it had serious concerns as to the effectiveness and legal sufficiency of the anti-tampering and misfueling program actually proposed in the regulations. The program proposed by the DEP will not achieve the level of air pollution reduction committed to in the 1982 SIP and fails to meet the standards established by the Federal EPA for effective anti-tampering programs.

Response: The Department, the Division of Motor Vehicles (DMV) and a representative of the Governor's Office met

with EPA on December 3, 1984, in order to review EPA's position on New Jersey's proposed anti-tampering/anti-fuel switching proposal. As a result of these discussions and further review by New Jersey, the Department agrees that the proposed anti-tampering/anti-fuel-switching program will not provide the emission reductions committed to in New Jersey's 1982 ozone SIP revision. Therefore, EPA will demonstrate the necessary level of an anti-tampering/anti-fuel switching program for New Jersey on December 18 and 19. On the basis of this demonstration and subsequent analyses, New Jersey will develop, in conjunction with EPA, a second anti-tampering/anti-fuel switching proposal. In the interim, the proposal as published on November 5, 1984, will be adopted and will become effective July 1, 1985. The second proposal will be proposed by March 1, 1985, adopted by June 1, 1985, and implemented by December 1, 1985. This second proposal will be compatible with the existing DMV inspection process, will fulfill the requirements of the SIP, and will fulfill EPA requirements.

Comment: The public highway standard for gasoline-fueled motor vehicles, N.J.A.C. 7:15-2, was challenged as being deficient for the same reasons as the former diesel smoke emission standard struck down by the courts, and as being unfair because it does not allow for the vapors emitted during engine warm-up.

Response: The former public highway standard for diesel-powered motor vehicles was struck down by the courts because it could not be attained without modifying the engines. Therefore, it was void and unenforceable because it was prohibited by the Department's enabling legislation. The public highway standard for light-duty gasoline-fueled motor vehicles was adopted in 1972, and is achievable without engine modification. The standard has now been extended to heavy-duty gasoline-fueled motor vehicles. Additionally the amendments relax the original standard by specifying a test period of three consecutive seconds. Finally the commenter's concern regarding the visible water vapor during a cold engine start is not an issue since the definition of smoke as contained in N.J.A.C. 7:27-15.1 specifically excludes water vapor.

Comment: N.J.A.C. 7:27-15.3(a) and (b) sets forth the standards for new vehicle inspections. While the Division proposes no significant changes to the current procedure, in view of other statutory changes relative to the use of "approved" emission testing equipment, it appears that dealers who have otherwise decided not to become private inspection centers (PICs) because of the cost of the equipment, might be forced to purchase an approved analyzer in order to comply with new vehicle inspection procedures. While we understand that it is not the Department's intent to require dealers who are not PICs to purchase approved emission testing equipment, we think N.J.A.C. 7:27-15.3(a) and (b) and 15.4(b) should be clarified.

Response: N.J.A.C. 7:27-15.3(a) requires that a new motor vehicle conform with emission specifications prescribed by the manufacturer in the new motor vehicle pre-delivery checklist. It is the Department's position that unless the pre-delivery checklist specifies an emissions test, the dealership is not required to have an approved emissions analyzer to comply with this section. N.J.A.C. 7:27-15.3(b) states that whenever emission specifications are not prescribed by the vehicle manufacturer, the standards established in N.J.A.C. 7:27-15.4(b) shall apply. Consequently, the Department's position is if the vehi-

cle manufacturer has not specified a pre-delivery checklist for emissions, the dealer must then perform the New Jersey I/M test using the New Jersey emission standards. To do this, the dealer must use Department approved emission test equipment. The Department does not feel that a clarification of the wording of N.J.A.C. 7:27-15.3 is necessary.

Comment: N.J.A.C. 7:27-15.3(c) requires new car dealers to furnish warranty information to the purchaser which already is required by Federal law and regulations. Consequently this requirement is unnecessary.

Response: The Department agrees with this comment and is not adopting the proposed N.J.A.C. 7:27-15.3(c).

Comment: The New Jersey Automobile Dealers Association (NJADA) expressed concern with proposed N.J.A.C. 7:27-15.5(c) which prohibits the selling of a tampered motor vehicle. The reason offered for this is that the burden of responsibility will lie with the dealer who routinely takes vehicles in trade. NJADA believes this proposal would overburden the industry and would place an undue hardship on motor vehicle dealers.

Response: The Department disagrees with NJADA's position. The dealer, as in the case with any consumer, has a responsibility to inspect the vehicle he is receiving in trade or, in reality, buying. The Department feels that the true person responsible under this proposed subsection is the seller. The intent of this subsection is to provide the purchaser with recourse against an individual selling a tampered vehicle.

Comment: Ford Motor Company requested that the Department include the Ford alternate test procedure as the I/M test method for Ford vehicles. In addition, Ford encouraged the incorporation of the Federal equipment and calibration specifications into the New Jersey I/M equipment specifications if performance warranty is to be offered to all New Jersey's consumers.

Response: New Jersey's I/M program is designed for implementation in a defined New Jersey test environment; that is, a centralized system consisting of 36 state operated stations and approximately 3800 decentralized garages. To establish the precedent of fine tuning test procedures for one vehicle manufacturer creates the potential for havoc within the program. A program of this size requires test procedures which can be administered as consistently and as simply as possible through both the centralized and decentralized systems. The DMV has instructed its examiners to perform a retest at the end of the test lane on any Ford vehicle rejected for emissions at the beginning of the test lane. Given the constraints of the New Jersey I/M system, the Department believes that this is a practical and satisfactory solution of the Ford I/M test procedure question. By the same token, test equipment designed for use in the New Jersey system must reflect the needs and objectives of that system rather than generalized objectives as defined by EPA. Certainly, the guidance and experience provided by EPA, as well as other agencies were carefully reviewed and considered during the preparation of the New Jersey equipment specifications. Although not all of EPA's suggested specifications are included in the New Jersey equipment specification, DEP believes that the specified equipment represents the state-of-the-art equipment best suited for New Jersey's test environment. Once the Department has its test equipment in place in both the centralized and decentralized systems, and once calibration and test procedures are final-

ized for both systems, DEP will petition EPA and request a determination of compliance with the performance warranty requirements.

**Comment:** The Ford Motor Company questions the use of the term "less effective than designed by the original equipment manufacturer" in N.J.A.C. 7:27-15.5(c). It points out that EPA's policy requires that a reasonable basis exist for believing that the use of an after-market part will not adversely affect emissions performance.

**Response:** It is not the Department's intent to limit after-market parts to only those manufactured by the original equipment manufacturer. Rather, the intent is to require a vehicle with a complete emission control system as defined by the design of that vehicle when originally sold. That is to say, if the vehicle was originally marketed by the manufacturer with an air pump, the vehicle must be operated and sold with an operating air pump. As long as the replacement air pump is equivalent in design to the original equipment, it fulfills the intent of this section.

**Comment:** The Department received comments from the trucking industry, the motorcoach industry and the Department of Transportation that while they support the concept of an idling limitation, they believe the limitation as proposed at N.J.A.C. 7:27-14.3 is defective from a safety, climate control and regulatory standpoint. The Department has determined that their concerns have merit and that further research must be undertaken before adopting an idling limitation. Therefore, the Department has decided not to adopt the idling limitation at N.J.A.C. 7:27-14 at this time. The Department then had to evaluate whether it should adopt the idling limitation proposed at N.J.A.C. 7:27-15.6 for gasoline-fueled engines.

**Response:** The Department has decided not to adopt the idling limitation for gasoline-fueled engines at this time because most of the problems caused by idling are due to diesel-fueled vehicles. There are many more gasoline-fueled vehicles than diesel-fueled vehicles. Therefore, to adopt the idling limitation for gasoline-fueled vehicles without adoption of an idling limitation for diesel-fueled vehicles would require the State to implement an enforcement effort which would be too expensive for the environmental and health benefits derived from the effort. The Department will adopt an idling standard for gasoline-fueled vehicles at the same time as it adopts one for diesel-fueled vehicles.

**Comment:** It is already apparent that "extraordinary measures" will have to be adopted and implemented well in advance of 1987 for New Jersey to be in attainment of the national ambient air standards by this Federally-mandated deadline. The Department should promptly propose these measures, as it promised it would do by 1984 in the SIP Revision—so that they can be adopted and implemented without delay.

**Response:** The SIP Revision (p. 49) states that the magnitude of emission reductions needed from extraordinary measures will depend on the air quality improvements through 1984 and amount of reductions achieved from the reasonably available measures. If at that time (the end of 1984) air quality methodology and data indicate that changes are called for, NJDEP will process appropriate SIP revisions. Until and unless such revisions are approved, New Jersey is committed to a specific variety of extraordinary measures. The schedule for

stationary sources is given on page 55 and for mobile sources I/M on page 61. These schedules call for evaluation of control technologies for stationary sources and of feasibility of more stringent I/M measures during 1985, with rule drafting and adoption during 1986.

The commitments were originally based on the expectation that the Northeast Corridor Regional Modeling Programs (NCRMP) which was to address the issue of pollutant transport along the northeast coast would by 1984 provide a basis for a lower required reduction or confirm the reductions originally derived for the SIP. NCRMP, however, has been abandoned by USEPA. Remodeling studies of both the Metropolitan Philadelphia and NJ-NY-Conn AQCRs have been undertaken but at this time neither provides any basis for a revision of emission reduction targets. A report on Reasonable Further Progress in 1983 has been prepared and submitted to EPA. This shows a record of generally meeting the SIP's commitments to action, reductions of emissions since 1980 generally exceeding those projected, and some improvement in air quality. Since there is as yet no basis for supporting any changes in the requirements for extraordinary measures, the Department intends to carry out its commitments in regard to them scheduled for 1985 through 1987 in the 1982 SIP.

**Full text** of the adoption follows (additions to the proposal shown in boldface with asterisks **\*thus\***; deletions from the proposal in brackets with asterisks **\*[thus]\***).

#### SUBCHAPTER 15. CONTROL AND PROHIBITION OF AIR POLLUTION FROM 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 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 band 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 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 colorless, odorless, tasteless gas at standard conditions 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 compo-

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nents 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 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 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 cause, suffer, allow or permit the operation of any gasoline-fueled motor vehicle upon the public highways of the State if the vehicle emits visible smoke in the exhaust emissions or in the crankcase emissions for a period in excess of three consecutive seconds.

(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 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 the vehicle emission control apparatus.

(b) Whenever emission specifications are not prescribed, the inspection standards as set forth in N.J.A.C. 7:27-15.4(b) shall apply to such new motor vehicles.

\*(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 State of New Jersey

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in accordance with the provisions of N.J.S.A. 39:8, 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 undergoing the 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 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 not emit carbon monoxide (CO) 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 inspection test procedure established at N.J.A.C. 7:27B-4.5.

(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  
 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 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

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effective than designed by the original equipment manufacturer.

### 7:27-15.6 Idle standard (Reserved)

(This section is not being adopted at this time.)

### 7:27-15.7 Exceptions

(a) This Subchapter shall not apply to motorcycles or to motor vehicles with an engine displacement of less than 50 cubic inches (819 cubic centimeters).

(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.

### 7:27-15.8 Variances

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.

(a)

## DIVISION OF ENVIRONMENTAL QUALITY

### Air Test Method 4, Testing Procedures for Motor Vehicles

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

Proposed: November 5, 1984 at 16 N.J.R. 2894.

Adopted: December 28, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: January 2, 1985 as R.1985 d.3, **without change**.  
Effective Date: January 21, 1985.

Operative Date: July 1, 1985.

DEP Docket No. 066-84-10.

Expiration Date pursuant to Executive Order No. 66(1978): June 30, 1989.

#### Summary of Public Comments and Agency Responses:

Comment: What is the accuracy of the emission testing equipment which will be used by New Jersey and how is it determined?

Response: The emissions test procedure for gasoline-fueled vehicles requires the use of an "approved exhaust gas analytical system" which is defined in N.J.A.C. 7:27-15.1. Design accuracy specifications are available for the existing Division of Motor Vehicles (DMV) station analyzers, proposed DMV station analyzers, reinspection center (RIC) analyzers, and private inspection center (PIC) analyzers. These specifications may be obtained by written request submitted to Dan Cowperthwait, New Jersey Department of Environmental Protection, Division of Environmental Quality, CN 027, Trenton, N.J. 08625.

As part of New Jersey's I/M quality assurance program, the Department also has prepared calibration gas audit specifications for the existing DMV station analyzers, proposed

DMV station analyzers, RIC analyzers, and PIC analyzers. Gas audits are performed on PIC analyzers at a rate of once a month. Gas audits/calibrations are performed on the DMV station analyzers at a rate of twice a month. These specifications may also be obtained by written request submitted to the above address.

Full text of the adoption 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 to 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 and 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.

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

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"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)**

**OCCUPATIONAL AND ENVIRONMENTAL HEALTH SERVICES**

**Worker and Community Right to Know Act**

**Adopted Amendments: N.J.A.C. 8:59-4.1, 5.1, 5.5, 6.1, 6.2, 6.3, 7.2, 7.5 and 8.5**

Proposed: October 15, 1984 at 16 N.J.R. 2735(a).

Adopted: December 31, 1984 by J. Richard Goldstein, M.D., Commissioner, Department of Health.

Filed: December 31, 1984 as R.1984 d.626, with changes not in violation of N.J.A.C. 1:30-3.5.

Authority: L. 1983, c. 315, N.J.S.A. 34:5A-1 et seq., specifically N.J.S.A. 34:5A-32.

Effective Date: January 21, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): October 1, 1989.

**ADOPTIONS**

**HEALTH**

**Summary of Public Comments and Agency Responses:**

The New Jersey Department of Health proposed several amendments to the Worker and Community Right to Know Act regulations, N.J.A.C. 8:59, in the New Jersey Register on October 15, 1984, 16 N.J.R. 2735. The public comment period remained open for 30 days through November 15, 1984. Fifteen written comments were submitted by the following:

- Chemical Workers Association Incorporated
- Essex Specialty Products, Inc.
- Fragrance Materials Association/Flavor and Extract Manufacturers' Association (FMA/FEMA)
- GPU Nuclear Corporation
- HLR Service Corporation
- Independent Oil Workers Union
- J.T. Baker Chemical Co.
- Jersey Central Power & Light Company (JCP&L)
- Merck & Co., Inc.
- N.J. Department of the Public Advocate
- New Jersey Petroleum Council
- Oil, Chemical and Atomic Workers International Union (OCAW)
- Philadelphia Area Project on Occupational Safety and Health (PhilaPOSH)
- Public Interest Law Center of Philadelphia (PILCOP)
- United Steelworkers of America (AFL-CIO)

The following summarizes the comments received and provides the Department's response to these comments. All comments are on file at the Department of Health.

1. Comment: NJAC 8:59-1.3—The expanded definition of "process container" was supported by Merck, New Jersey Petroleum Council, J.T. Baker, and JCP&L, while Essex Specialty Products and FMA/FEMA suggested that the time period be increased beyond 24 hours. The Public Advocate, Independent Oil Workers Union, United Steelworkers, Chemical Workers Association, PILCOP, and PhilaPOSH oppose the amendment to the regulations because it is inconsistent with the Legislature's intent and would reduce workers' knowledge of the hazardous substances with which they are working. OCAW also opposes the change because, while a worker would know the chemicals added to a container during his or her shift, workers in the next two shifts would not have the same knowledge and their safety would be reduced.

Response: The proposed amendment has not been adopted. Defining "process container" using an eight hour shift is more appropriate than any other time period because employees normally work an eight hour shift. Employees would be familiar with the hazardous substances with which they work on their own shift but would not be familiar with the hazardous substances handled by the prior shift. The intent of the legislature to protect employee health and safety is met by providing employees with the names of the hazardous substances with which they work. To change to a twenty four hour period as proposed would mean that workers on two shifts would be unaware of the names of the chemicals they work with. The Department has mitigated the economic burden of labeling process containers by allowing the posting of a batch sheet which all chemical companies currently use in their operation.

2. Comment: N.J.A.C. 8:59-4.1, 6.1, 6.3, 7.2, and 7.5—The deletion of all references to Material Safety Data Sheets was supported by Merck, New Jersey Petroleum Council,

JCP&L, Essex Specialty Products, and FMA/FEMA. The Public Advocate, Independent Oil Workers Union, United Steelworkers, PILCOP, OCAW, and PhilaPOSH urge the retention of the use of Material Safety Data Sheets in the regulations because they reflect the hazards of mixtures which hazardous substance fact sheets do not, and their acquisition and maintenance would not impose any additional burdens on employers.

Response: The proposal deleting all references to Material Safety Data Sheets has been adopted because the statute does not make specific reference to such Data Sheets. While the Department will not require the use and distribution of Material Safety Data Sheets, an employer may find it necessary to obtain these Data Sheets in order to determine the chemical substance components of mixtures, to obtain information about health and safety hazards of hazardous substances for use in education and training programs, and to obtain accurate information about the health and safety hazards of flammable, reactive, and corrosive substances that are contained in mixtures. The Department encourages the distribution of Material Safety Data Sheets to employees.

3. Comment: N.J.A.C. 8:59-5.1(b)—FMA/FEMA supports the proposed amendment, while Merck opposes it because it could produce more problems than it is intended to solve, the Independent Oil Workers Union opposes it, and PILCOP and the Public Advocate recommend that the threshold percentage below which a "Contents Unknown" or "Contents Partially Unknown" label would be necessary be reduced to 0.1 percent from 1 percent.

Response: The amendment has been adopted as proposed in order to remove the need to identify trace contaminants in a product.

4. Comment: N.J.A.C. 8:59-5.1(i)—The increase in size of a container which can be labeled by means of a code or number system from two ounces to one liter was supported by Merck, New Jersey Petroleum Council, J.T. Baker, and Essex Specialty Products, while JCP&L recommended that the container size be increased to one gallon. United Steelworkers, Chemical Workers Association, OCAW, PhilaPOSH, Independent Oil Workers Union, the Public Advocate, and PILCOP strongly object to the amendment because it is contrary to the intent of the law and there is no provision in the law which allows such an exemption.

Response: The proposed amendment has not been adopted. The statute does not provide for alternate labeling based on size of container. However, the Department recognizes the impracticality of labeling very small containers with names of chemicals that are readable, and promulgated N.J.A.C. 8:59-5.1(j) to address this issue. Upon consideration of comments received, the Department recognizes that the rationale for this provision is not appropriate for containers larger than two ounces. Such an administrative interpretation of a statutory provision must be narrowly applied when it is necessary for feasible implementation of the law.

5. Comment: N.J.A.C. 8:59-5.5(d)—The New Jersey Petroleum Council supports this amendment, while FMA/FEMA and Merck urge that any size container labeled pursuant to the Federal Food, Drug and Cosmetic Act be exempt from additional labeling requirements under the Right to Know Act. The Chemical Workers Association and the Independent Oil Workers Union oppose this amendment.

Response: The amendment has been adopted as proposed because existing Food, Drug and Cosmetic Act labeling is not comprehensive enough to meet the intent of legislation to provide information to employees who work with large containers, but is adequate for five gallons or less.

6. Comment: N.J.A.C. 8:59-5.5(f) and (g)—JCP&L, New Jersey Petroleum Council, and Merck support labeling exceptions for PCBs labeled pursuant to the Toxic Substances Control Act, and for gas utility pipelines labeled pursuant to the USDOT Minimum Federal Standards for Gas Lines. The Independent Oil Workers Union urges the Department to insure that the labeling requirements of these Federal laws are at least equivalent to those afforded by the Right to Know Act.

Response: The amendment has been adopted as proposed because these Federal laws provide sufficient information to employees regarding the hazardous substances that an employee would work with.

7. Comment: N.J.A.C. 8:59-5.5(h)—JCP&L, New Jersey Petroleum Council, and Merck support labeling exceptions for nuclear fuel labeled pursuant to the Atomic Energy Act. HLR Service Corporation and GPU Nuclear suggest that "nuclear fuel" be expanded to "radioactive materials". The Independent Oil Workers Union urges the Department to insure that the labeling requirements of this Federal law is at least equivalent to those afforded by the Right to Know Act.

Response: The amendment has been adopted as proposed because the Atomic Energy Act provides sufficient identification of the hazardous substances that an employee would work with. After reviewing the Act, the Department feels the modification of changing "nuclear fuel" to "radioactive materials" is appropriate.

8. Comment: N.J.A.C. 8:59-8.5(c)—Allowing an employer to make a trade secret claim for the name of a substance on an employee health and exposure record is supported by Merck, New Jersey Petroleum Council, JCP&L, and FMA/FEMA, while FMA/FEMA urges the Department to promulgate procedures for processing such claims. PILCOP, the Public Advocate, Independent Oil Workers Union, and Chemical Workers Association oppose the amendment because it would deny an employee significant information about his or her exposures. PILCOP further recommends that an employer should include a statement in the employee's record about the trade secret claim and should place in the employee's record a copy of the trade secret substance hazardous substance fact sheet.

Response: The amendment has been adopted as proposed. An employer should be entitled to trade secret protection if it can meet the requirements for a trade secret under the Act. The law allows trade secret information to be released to a physician or osteopath for diagnosis or treatment. Although a trade secret, the name of the substance would still have to be revealed to the Department.

9. Comment: The United Steelworkers, PhilaPOSH, and the Public Advocate questioned why changes were being made in the regulations so soon after promulgation without allowing them to be used to see how they work.

Response: The amendments proposed by the Department were originally proposed by commenters in comments on the Right to Know Act regulations proposed on July 16, 1984. Rather than incorporating these amendments into the final

regulations promulgated on October 1, 1984, the Department felt that additional public notice and comment was necessary because of their substantive and controversial nature. As a result of the additional comments received, two of the proposed amendments are not being adopted.

10. Correction to Prior Response: In its response to comment #55 on the Right to Know Act regulations published on October 1, 1984, at 16 N.J.R. 2555, 2561, the Department provided an inaccurate response to the suggestion that Administrative Law Judge decisions be sent to employers prior to final decisions being made by the Department. Pursuant to State law governing the Office of Administrative Law, the recommended report and decision of an Administrative Law Judge will be delivered or mailed to the parties of record who shall have an opportunity to file exceptions, objections and replies thereto, and to present argument to the head of the agency, either orally or in writing, as the agency may direct, before the agency makes a final decision.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***).

#### SUBCHAPTER 1. GENERAL INFORMATION

##### 8:59-1.3 Definitions

"Process container" means a container, excluding a pipeline, the content of which is changed frequently; or a container of 10 gallons or less in capacity, into which substances are transferred from labeled containers, and which is intended only for the immediate use of the employee who performs the transfer; or a container on which a label would be obscured by heat, spillage or other factors; or a test tube, beaker, vial, or other container which is routinely used and reused. The contents of a container will be deemed to be "changed frequently" if the contents are changed at least once **\*per shift\*** **\*[every 24 hours]\***. "Routinely used and reused" shall not include the situation where the same substances are continually being added and removed from the process container as in a continuous flow process.

#### SUBCHAPTER 4. HAZARDOUS SUBSTANCE FACT SHEET

##### 8:59-4.1 General provisions

- (a)-(c) (No change.)
- (d) (Deleted.)
- (e)-(f) renumbered **(d)-(e)** (No change.)

#### SUBCHAPTER 5. LABELING CONTAINERS

##### 8:59-5.1 General provisions

- (a) (No change.)
- (b) By March 1, 1985, every container at an employer's facility in which more than one percent of the content of the container are unknown, shall bear a label stating "Contents Unknown" or "Contents Partially Unknown", as appropriate, in addition to other labeling required by N.J.A.C. 8:59-5.
- (c)-(h) (No change.)
- (i) Containers which are **\*[one liter (1.057 quarts) or]\*** smaller **\*than 56.7 grams (2 ounces)\*** may be labeled by means of a code or number system if the code or number system will allow the employee free and ready access at all times to a fact sheet which will provide the employee with the chemical name or common name permitted by N.J.A.C. 8:59-5.7, and Chemical Abstracts Service number of the substance contained in the container, or the trade secret registry number

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assigned to the substance, allow the employee access to this information without the permission or assistance of management, and be available to the employee at close proximity to his specific job location or locations.

(j) (No change.)

## 8:59-5.5 Exceptions to labeling requirements

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

(d) The information required on a label for a drug, cosmetic, food, flavor or fragrance pursuant to the Federal Food, Drug and Cosmetic Act (FDCA) may be substituted for the information required by N.J.A.C. 8:59-5.1. This exception shall apply to all containers where the name of all hazardous and other substances of active, excipient, and "inactive" chemicals as defined by FDCA are included on the label according to N.J.A.C. 8:59-5.1(a) and (c). If all active, excipient and "inactive" chemicals are not included on the label then this exception shall apply only to containers which are five gallons (18.9 liters) or smaller. An employer shall make available to employees on request, all hazardous substance fact sheets prepared by the department relevant to the above products, including hazardous substance fact sheets on inactive ingredients as defined by the FDCA.

(e) (No change.)

(f) Electrical equipment containing dielectric fluid may be labeled according to Section 761 of the Federal Toxic Substances Control Act.

(g) Gas utility pipelines in transmission and distribution systems that meet the United States Department of Transportation's Minimum Federal Standards for Gas Lines may be labeled pursuant to those standards. An employer shall maintain and make readily accessible to employees a document that describes and identifies the contents of gas utility pipelines. An employer shall make available to employees on request, all hazardous substance fact sheets prepared by the department relevant to a gas utility pipeline.

(h) Containers containing \*[nuclear fuel]\* **\*radioactive materials\*** regulated by the Atomic Energy Act and the Nuclear Regulatory Commission may be labeled according to regulations promulgated by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act.

## SUBCHAPTER 6. EDUCATION AND TRAINING PROGRAM

## 8:59-6.1 General provisions

(a) Every employer shall establish an education and training program for its employees, which shall be provided on paid employer time and shall:

1. Inform employees in writing and orally of the potential health and safety risks of the hazardous substances listed on the Workplace Hazardous Substance List and the particular hazards of mixtures that contain one or more hazardous substances, to which they are exposed or are potentially exposed in the course of their employment; and

2. Train them in the proper and safe procedures for handling the hazardous substances under all circumstances.

(b)-(e) (No change.)

## 8:59-6.2 Program for employees

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

(e) Prior to entering an employment agreement with a prospective employee, an employer shall notify the prospective employee of the availability of workplace surveys and appropriate hazardous substances fact sheets at the Department of Health; county health department, county clerk, or design-

nated county lead agency; and employer's facility for the facility at which the prospective employee will be employed.

## 8:59-6.3 Contents of program

(a) (No change.)

(b) An education and training program for employees shall contain, at a minimum, the following:

1.-3. (No change.)

4. Information regarding the provisions of the Worker and Community Right-to-Know Act:

i.-iii. (No change.)

iv. A description of the existence, location, and hours of operation of the central file maintained by the employer for storing the workplace survey and appropriate hazardous substance fact sheets;

v. An explanation of the employee's right and relevant procedures to obtain a copy of the workplace survey and hazardous substance fact sheets from the employer, from the county health department, county clerk, or designated county lead agency, or from the Department of Health; to obtain copies from the county health department, county clerk, or designated county lead agency, and Department of Health in confidence; and the employer's obligation to supply, without cost, copies of the workplace survey and appropriate hazardous substance fact sheets to employees within five working days of a request;

vi. (No change.)

5.-6. (No change.)

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

(e) Research and development laboratories shall provide their employees with appropriate hazardous substance fact sheets as part of their education and training program.

## SUBCHAPTER 7. EMPLOYEE AND PUBLIC ACCESS TO INFORMATION

## 8:59-7.2 Employer obligations

(a) Every employer shall, upon completion of a workplace survey, establish and maintain a central file at its facility in which it shall retain a completed workplace survey for the facility, appropriate hazardous substance fact sheets, Workplace Hazardous Substance List, and, if applicable, a copy of the completed environmental survey for the facility.

(b) Every employer shall post on bulletin boards readily accessible to employees a notice of the availability of workplace surveys, hazardous substance fact sheets, Workplace Hazardous Substance List, and environmental surveys, from the employer, from the Department of Health, from the Department of Environmental Protection, and from the county health department, county clerk, or designated county lead agency. At such time as the department supplies a poster to the employer, this poster shall be used to meet the requirements of this subsection.

(c) (No change.)

(d) An employer shall, upon request, provide an employee or employee representative with a copy of a workplace survey, appropriate hazardous substance fact sheets and, if applicable, and environmental survey, at no cost. The information shall be provided as soon as possible but at the latest within five working days of the request.

(e)-(g) (No change.)

(h) If an employer cannot supply a hazardous substance fact sheet or the chemical name and Chemical Abstracts Service number of a substance to an employee who requested it, because the employer has not received the hazardous sub-

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stance fact sheet which the employer requested from the department, or does not know the name of the substance or substances constituting the components of the product and has reported this to the department, the employer shall:

1. Inform the employee in writing that it has requested and not received the hazardous substance fact sheet from the department, or

2. Inform the employee in writing that it has reported to the department that it does not know the name of the substance or substances constituting the components of the product.

(i) (No change.)

**8:59-7.5 Employee rights**

(a) Any employee or employee representative may request, in writing, from his or her employer, a copy of a workplace survey, hazardous substance fact sheet, or, where applicable, environmental survey, for the facility at which he or she is employed.

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

**SUBCHAPTER 8. ENFORCEMENT**

**8:59-8.5 Employee health and exposure records**

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

(c) An employer who wishes to file a trade secret claim for the name of a substance on employee health and exposure records may do so. Said employer shall contact the department for instruction regarding the filing of such a claim.

**(a)**

**DRUG UTILIZATION REVIEW COUNCIL**

**Interchangeable Drug Products**

**Adopted Amendment: N.J.A.C. 8:71**

Proposed: February 6, 1984 at 16 N.J.R. 202(a).

Adopted: December 20, 1984 by the Drug Utilization Review Council, James Perhach, Ph.D., Acting Chairman.

Filed: December 21, 1984 as R.1984 d.613, **without change.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: January 21, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

The following product and its manufacturer were **adopted**:

**Prenatal vitamins (Materna 1.60 formula) Amide**

OFFICE OF ADMINISTRATIVE LAW NOTE: See related Notices of Adoption at 16 N.J.R. 1092(a), 1595(a), 1994(a), 2673(a).

**(b)**

**Interchangeable Drug Products**

**Adopted Amendment: N.J.A.C. 8:71**

Proposed: June 18, 1984, at 16 N.J.R. 1436(a).

Adopted: December 20, 1984 by the Drug Utilization Review Council, James Perhach, Ph.D., Acting Chairman.

Filed: December 21, 1984 as R.1984 d.612, **with portions** of the proposal not adopted but still **pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: January 21, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

**Summary of Public Comments and Agency Responses:**

Regarding tolazamide:

The Upjohn Company objected to the proposed substitution of Zenith's tolazamides for Upjohn's product, Tolinase, stating that the magnitude of the differences seen in comparative blood level studies were sufficient to cause therapeutic problems in patients if the generics were used in place of Tolinase.

The Council will seek an unbiased clinical opinion on the therapeutic meaningfulness of the observed tolazamide blood level differences for the 250 mg and 500 mg products, but accepted the 100 mg Zenith tolazamide as an acceptable substitute for Tolinase, 100 mg, no significant differences being seen in the blood level comparisons of the 100 mg Zenith product versus Tolinase, 100 mg.

The following products and their respective manufacturers were **adopted**:

<b>Ergoloid Mesylates oral tabs 1 mg</b>	<b>Danbury</b>
<b>Doxycycline Hyclate caps 50, 100 mg</b>	<b>Zenith</b>
<b>Prenatal vitamins (Materna 1.60 formula)</b>	<b>Copley</b>
<b>Prenatal vitamins (Natalins Rx formula)</b>	<b>Copley</b>
<b>Prenatal vitamins (Pramet FA formula)</b>	<b>Copley</b>
<b>Prenatal vitamins (Stuartnatal 1 + 1 formula)</b>	<b>Copley</b>
<b>Tolazamide tabs 100 mg</b>	<b>Zenith</b>

The following products and their respective manufacturers remain **pending**:

Amitriptyline HCL tabs 10, 50, 75, 100 mg	Purepac/ Kalipharma
Doxycycline Hyclate tabs 100 mg	Zenith
Spiroinolactone tabs 25 mg	Purepac/Kalipharma
Tolazamide tabs 250, 500 mg	Zenith

OFFICE OF ADMINISTRATIVE LAW NOTE: A related Notice of Adoption appears at 16 N.J.R. 2672(b).

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**(a)**

**Interchangeable Drug Products**

**Adopted Amendment: N.J.A.C. 8:71**

Proposed: October 1, 1984 at 16 N.J.R. 2483(a).

Adopted: December 20, 1984 by the Drug Utilization Review Council, James Perhach, Ph.D., Acting Chairman.

Filed: December 21, 1984 as R.1984 d.615, with portions of the proposal **not adopted and portions** not adopted but still **pending**.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: January 21, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

**Summary of Public Comments and Agency Responses:**

Regarding erythromycin ethylsuccinate tablets:

Abbott Laboratories objected to this proposed substitute for Abbott's branded product "EES 400", stating that the substitute's slower dissolution profile, and differing blood level data may render the proposed substitute non-equivalent. In addition, Abbott questioned the ability of the substitute's testing laboratory to perform adequate microbiological tests. The Council decided to reject the substitute based on its differences in blood level comparison tests, rendering Abbott's other contentions moot.

Phoenix Pharmaceuticals, Inc., objected to Lemmon's proposed products, claiming that Lemmon is using Phoenix's NDA/ANDA numbers without permission to do so.

The Council notes that the FDA has allowed Lemmon to market the contested products (while applying for new NDA/ANDA numbers) without requiring new bioequivalency studies. The Council therefore accepted the Lemmon products, Lemmon and Phoenix to resolve their legal differences without the council's interference.

Regarding thioridazines:

Sandoz Pharmaceuticals objected to the proposed substitutes for Mellaril, stating that, in general, the U.S. Food and Drug Administration's standards for establishing the bioequivalency of generic thioridazines to Mellaril are faulty, and that the FDA allows variability among thioridazines that may lead to clinical problems. Sandoz also made specific objections to the proposed Barr and Danbury thioridazines based on an analysis of the bioequivalency studies performed.

The Council decided to defer final action on any phenothiazines (a category that includes thioridazine) until the FDA adopts formal bioequivalency standards for phenothiazines, or until manufacturers of the generics present clinical data proving the therapeutic equivalency of their thioridazines to Mellaril.

The following products and their respective manufacturers were **adopted**:

Acetaminophen Codeine caps 30, 60 mg	Lemmon
Acetaminophen Codeine tabs 15, 30, 60 mg	Lemmon
Bethanechol CL tabs 10, 25 mg	Sidmak
Butabarbital sodium tabs 15, 30 mg	Lemmon
Chlordiazepoxide HCL caps 5, 10, 25 mg	Lemmon
Chlorpheniramine comp. syrup (Naldecon formula)	Naska

Chlorpheniramine ped. comp. syrup (Naldecon ped. formula)	Naska
Chlorpromazine HCL concentrate 30 mg/ml, 100 mg/ml	Cord
Chlorpropamide tabs 100, 250 mg	Danbury, Mylan
Chlorpropamide tabs 100, 250 mg	Duramed
Cyproheptadine HCL tabs 4 mg	Sidmak
Dicyclomine HCL 10, 20 mg	Lemmon
Diphenhydramine HCL caps 25, 50 mg	Lemmon
Doxycycline Hyclate caps 100 mg	West-Ward, Lemmon
Fluocinolone acetonide cream 0.01%, 0.025%	NMC
Fluocinonide cream 0.05%	K-Line
Furosemide tabs 40 mg	Barr
Gentamicin sulfate cream, oint. 0.1%	NMC
Hydralazine HCL tabs 25, 50 mg	Sidmak, Lemmon
Hydrochlorothiazide tabs 50 mg	Lemmon
Hydroxyzine HCL tabs 10 mg	Barr
Hydroxyzine HCL tabs 10, 25, 50 mg	Lemmon
Isoxsuprine HCL tabs 10, 20 mg	Sidmak
Metronidazole tabs 250 mg	Lemmon
Metronidazole tabs 250, 500 mg	Chelsea
Nystatin oral tabs 500,000 u.	Lemmon
Nystatin vaginal tabs 100,000 u.	Lemmon
Propoxyphene HCL caps 65 mg	Lemmon
Sulfamethoxazole/Trimethoprim tabs 400/80, 800/160	Lemmon
Theophylline/Potassium iodide syrup	Naska

The following products and their manufacturers were **not adopted**:

Aminophylline tabs 100, 200 mg	Barr
Amitriptyline HCL tabs 10, 25, 50, 75, 100, 150 mg	Copley
Chlorothiazide 250, 500/Reserpine 0.125 tabs	West-Ward
Erythromycin ethylsuccinate tabs 400 mg	Barr
Hydrochlorothiazide tabs 25	Lemmon
Hydrochlorothiazide 50/Reserpine 0.125 tabs	West-Ward
Prednisone tabs 50 mg	West-Ward
Probenecid tabs 500 mg	Zenith
Theophylline 150/Guaifensin 90 caps	Banner

The following products and their manufacturers **remain pending**:

Clomiphene citrate tabs 50 mg	Ikapharm
Gramicidin, Neomycin, Polymyxin B sulfate ophth. sol'n	Solopak
Hydrochlorothiazide tabs 50 mg	Quantum
Pilocarpine HCL ophth. sol'n 0.5, 1, 2, 3, 4, 5, 6%	Solopak
Sulfacetamide sodium ophth. sol'n 10%, 15%, 30%	Solopak
Sulfasalazine tabs 0.5 g	VIP
Thioridazine HCL tabs 100 mg	Danbury
Thioridazine HCL tabs 10, 15, 25, 50, 100 mg	Barr

**HUMAN SERVICES**

**(b)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Pharmaceutical Assistance to the Aged and Disabled**

**Authorization to Release Information Regarding Prescriptions**

**Adopted Amendments: N.J.A.C. 10:69A-6.9**

Proposed: August 6, 1984 at 16 N.J.R. 2050(a).

Adopted: December 24, 1984 by George J. Albanese, Commissioner, Department of Human Services.

Filed: December 24, 1984 as R.1984 d.617, **without change**.

Authority: N.J.S.A. 30:4D-20, 24.

Effective Date: January 21, 1985.  
Expiration Date pursuant to Executive Order 66(1978):  
April 26, 1988.

**Summary of Public Comments and Agency Responses:**

There was one comment submitted by the New Jersey Department of the Public Advocate. The commentator had two main concerns. First, it was suggested that the release of information by prescribing practitioners should be limited to the Division of Medical Assistance and Health Services only. The Division's response, which was prepared after consultation with the Division of Criminal Justice, was that this provision would impose an unnecessary administrative burden on the Division, and, in addition, would hinder ongoing criminal investigations being conducted by the Division of Criminal Justice.

The commentator's second concern was that both the application and renewal application contain more specific language regarding release provisions. The Division believes that the language contained in the current forms, when supported by this regulation, is sufficient.

It should be noted this rule was primarily concerned with providers of pharmaceutical services rather than PAAD beneficiaries.

**Full text of the adoption follows.**

**10:69A-6.9 Authorization**

(a) By signing/marketing the certification and authorization statement on the application/renewal application form, the applicant/reapplicant authorizes:

1. The New Jersey Division of Medical Assistance and Health Services to verify any information on the form by contacting the Social Security Administration, the Internal Revenue Service, the New Jersey Division of Taxation, employers and others as the need arises;
2. Visitation and review by representatives of the Division's Bureau of Quality Control;
3. Assignment of benefits to the State of New Jersey if he/she or his/her spouse has any other plan of assistance or insurance that covers, at least in part, the cost of prescription drugs; and
4. Prescribing practitioners to release information concerning prescriptions which have been paid by the PAAD program, to the New Jersey Division of Medical Assistance and Health Services or any law enforcement authority of this State charged with the investigation or prosecution of violations of

the criminal provisions of the "Pharmaceutical Assistance to the Aged and Disabled Act" or the criminal laws of this State.

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**(a)**

**DIVISION OF PUBLIC WELFARE**

**Public Assistance Manual  
Persons Eligible for Medical Assistance**

**Adopted Amendment: N.J.A.C. 10:81-8.22**

Proposed: October 15, 1984 at 16 N.J.R. 2740(a).  
Adopted: December 24, 1984 by George J. Albanese,  
Commissioner, Department of Human Services.  
Filed: December 24, 1984 as R.1984 d.618, **without change.**

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Effective Date: January 21, 1985.  
Expiration Date pursuant to Executive Order 66(1978):  
June 4, 1989.

**Summary of Public Comments and Agency Responses:  
No comments received.**

**Full text of the adoption follows.**

**10:81-8.22 Persons eligible for medical assistance**

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

(e) Individuals who were admitted to a hospital and were subsequently referred to the CWA through the use of Form PA-1C, Public Assistance Inquiry, may be eligible for Medicaid benefits from the date the PA-1C was completed, provided:

1. Such individual was an inpatient at the time the referral was made;
2. Except for good cause, the individual applies for Medicaid benefits within three months after the referral is made.
  - i. If the CWA determines that the individual had good cause for not applying within three months, an extension may be granted for an additional three months.

# LAW AND PUBLIC SAFETY

## (a)

### DIVISION OF MOTOR VEHICLES

#### Enforcement Service Inspection of New Passenger Vehicles and New Motorcycles

#### Adopted Amendments: N.J.A.C. 13:20-28

Proposed: October 1, 1984 at 16 N.J.R. 2500(a).  
Adopted: December 17, 1984 by Clifford W. Snedeker,  
Director, Division of Motor Vehicles.  
Filed: December 24, 1984, as R.1984 d.622, without  
change.

Authority: N.J.S.A. 39:8-2

Effective Date: January 21, 1985.

Operative Date: July 1, 1985.

Expiration Date pursuant to Executive Order No. 66  
(1978): August 5, 1985.

Summary of Public Comments and Agency Responses:  
**No comments received.**

Full text of the adoption follows.

#### SUBCHAPTER 28. INSPECTION OF NEW MOTOR VE- HICLES

##### 13:20-28.1 Purpose

(a) The purpose of this subchapter is to effect increased equipment and vehicular safety by requiring new motor vehicle dealers to inspect new motor vehicles prior to delivery to an ultimate purchaser in New Jersey.

(b) (No change.)

##### 13:20-28.2 Applicability

The provisions of this subchapter shall be applicable to all new motor vehicle dealers licensed by the Director.

##### 13:20-28.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. (Note: Any other term used in this subchapter and not defined within this section shall have the meaning as defined in N.J.A.C. 39:1-1 et seq.)

...

“New motor vehicle dealer” means a dealer licensed pursuant to N.J.S.A. 39:10-19, to sell new motor vehicles, his employees and/or agents.

“Pre-delivery check list” means a list of items and procedures which a new motor vehicle dealer is required or recommended by a manufacturer to check or follow prior to delivery of a new vehicle to a purchaser.

...

##### 13:20-28.4 Manufacturers' new vehicle inspection procedure

(a) Every new motor vehicle dealer shall, prior to delivery to an ultimate purchaser of any new motor vehicle, inspect the safety devices on such vehicle and perform such services as

may be necessary so that such vehicle conforms to certain specifications established by the manufacturer and contained in its pre-delivery check list.

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

##### 13:20-28.5 United States Transportation Department standards

(a) All new motor vehicles subject to inspection shall meet the standards now or hereafter prescribed by the manufacturer or by statute or by regulation of the Director or by the standards prescribed by the U.S. Department of Transportation.

(b) (No change.)

##### 13:20-28.6 Decal

(a) Every new motor vehicle dealer shall, after satisfactory completion of inspection, affix a decal or other indication of successful inspection as the Director may prescribe, upon such vehicle.

(b) Any new motor vehicle receiving a decal or other indication of successful inspection shall next be inspected one year from the date of initial registration of that vehicle.

(c) In the event that the ultimate purchaser of any new motor vehicle transfers registration from a previously owned vehicle registered in his name to a new motor vehicle, the new motor vehicle dealer shall affix a decal or other indication of inspection to such vehicle, which shall indicate that such vehicle shall next be inspected at the conclusion of the period represented by the unexpired period of time of the transferred registration plus one year.

(d) In the event that the ultimate purchaser of any new motor vehicle registers that vehicle with a fixed registration expiration date, the dealer shall affix a decal or other indication of inspection to such vehicle, which shall indicate that such vehicle shall next be inspected at the conclusion of the period represented by the expiration date of the registration plus one year.

##### 13:20-28.7 Compliance

No new motor vehicle dealer may deliver a new vehicle to an ultimate purchaser until such vehicle has been found to be in safe operating condition as determined by compliance with the inspection standards established by the provisions of this subchapter.

##### 13:20-28.8 Evidence of compliance

(a) Completion by a new motor vehicle dealer of a manufacturer's pre-delivery check list or report shall be evidence of compliance with the provisions of this subchapter.

(b) Such pre-delivery check list or report shall be retained by the new motor vehicle dealer for a period of at least three years from the date of inspection.

##### 13:20-28.9 Recommended practices and forms

The pre-delivery check list used by a new motor vehicle dealer shall indicate the place and date of inspection, the person or persons performing such inspection, and compliance with the standards of safety established by this subchapter.

##### 13:20-28.10 Additional inspection

Nothing in this subchapter shall be construed to limit or deny the Director to require any additional inspection, including an inspection to assure the proper functioning of emission control devices or systems of new motor vehicles, nor shall this subchapter be construed to abridge any code, rule or regulation now or hereafter promulgated pursuant to Title 26,

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Chapter 2C of the New Jersey Statutes Annotated, "Air Pollution Control Act of 1954."

### 13:20-28.11 Determination of compliance by Director

The Director or any of his designees may enter upon the premises of any new motor vehicle dealer to determine compliance with any section of this subchapter.

### 13:20-28.12 Violation

Any new motor vehicle dealer, who violates any provision of this subchapter shall be subject, after notice and hearing, to the suspension or revocation of his New Jersey dealer license.

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## (a)

### DIVISION OF MOTOR VEHICLES

#### Enforcement Service

#### Motor Vehicle Reinspection Centers

#### Adopted Amendment: N.J.A.C. 13:20-32.14

Proposed: November 19, 1984 at 16 N.J.R. 3175(a).  
Adopted: December 20, 1984 by Clifford W. Snedeker, Director, Division of Motor Vehicles.  
Filed: December 24, 1984 as R.1984 d.619, **without change**.

Authority: N.J.S.A. 39:8-34.

Effective Date: January 21, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): February 7, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text of the adoption follows.**

#### 13:20-32.14 Mechanic qualifications

(a) If licensed as a reinspection center on or before June 30, 1983, it shall be sufficient until May 1, 1985 for the licensee to meet the requirements of this rule if the licensee or someone in his employ shall have:

1. At least three years of paid experience in general automotive repair and service; or
2. Have completed a course in automotive repair at an approved vocational school and at least one year of applicable experience; or
3. Have been certified as a general mechanic, or in the applicable categories, by the National Institute for Automotive Service Excellence.

(b) If licensed as a reinspection center subsequent to June 30, 1983, and for all licensees subsequent to May 1, 1985, the licensee or someone in his employ shall meet one of the following criteria:

1. One year experience as a paid automotive mechanic and successful completion of advanced courses in automotive mechanics, specifically designed for and restricted to professionals engaged in the trade which shall meet the requirements of N.J.A.C. 13:20-32.15; or

2. Three or more years paid experience in general automotive repair and service or at least one year paid experience and completion of an automotive repair course at a vocational school may be certified, provided the applicant has successfully passed the National Institute for Automotive Service Excellence test for engine tuneup and at least one other test from the following areas:

- i. Brakes;
- ii. Front End;
- iii. Automotive Electrical Systems.

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## (b)

### NEW JERSEY RACING COMMISSION

#### Thoroughbred Rules: Definitions

#### Harness Rules: Definitions

#### Readoptions: N.J.A.C. 13:70-2 and 13:71-4

Proposed: November 5, 1984 at 16 N.J.R. 2976(a).  
Adopted: December 20, 1984 by Harold G. Handel, Executive Director, New Jersey Racing Commission.  
Filed: December 24, 1984 as R.1984 d.621, **without change**.  
Authority: N.J.S.A. 5:5-30

**Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:70-2 and 13:71-4.**

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## (c)

### NEW JERSEY RACING COMMISSION

#### Harness Rules: Safety Helmets

#### Adopted Amendment: N.J.A.C. 13:71-19.4

Proposed: November 5, 1984 at 16 N.J.R. 2977(a).  
Adopted: December 20, 1984 by Harold G. Handel, Executive Director, New Jersey Racing Commission.  
Filed: December 24, 1984 as R.1984 d.620, **without change**.

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

Effective Date: January 21, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): January 21, 1990.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text of the adoption follows.**

#### 13:71-19.4 Safety helmets

No individual will be permitted to drive on a racetrack unless wearing a protective safety helmet of a type satisfactory

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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 1984 Snell Harness Racing Standard or in compliance with any other safety standard as approved from time to time by the Commission.

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# TRANSPORTATION

## (a)

### NEW JERSEY TRANSIT CORPORATION

#### Use or Occupancy of NJ TRANSIT-Owned Property

##### Adopted New Rule: N.J.A.C. 16:77

Proposed: September 17, 1984 at 16 N.J.R. 2415(b).  
Adopted: December 17, 1984 by Jerome C. Premo, Executive Director, New Jersey Transit Corporation.  
Filed: December 27, 1984 as R.1984 d.625, 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. 27:25-5(e), (h), (k) and (o).

Effective Date: January 21, 1985.

Expiration Date pursuant to Executive Order No. 66: January 21, 1990.

#### Summary of Public Comments and Agency Responses:

Comments were received from Elson T. Killam Associates, Inc., Public Service Electric and Gas Company, American Water Works Service and the Atlantic City Electric Company. A summary of their written comments and NJ TRANSIT'S response follows:

1. Elson T. Killam Associates (Killam)
  - a. Killam objected to N.J.A.C. 16:77-1.3 which governs the indemnification that NJ TRANSIT requires from its permittees. Killam objects to the requirement that a permittee indemnify NJ TRANSIT against the negligent acts of NJ TRANSIT or its employees. This provision has been in NJ TRANSIT'S use and occupancy regulations and permits since August 20, 1979. NJ TRANSIT feels that this requirement is reasonable because there would be no chance of any claim being filed against NJ TRANSIT were it not for the use of NJ TRANSIT property by the permittee. For this reason, we see no reason to change the proposed indemnification provision of the regulation.
  - b. Killam was also concerned with stream and storm sewer crossings. They claim that the proposed fees will put an unreasonable burden upon permittees for future flood control and storm water facilities. A review of the proposed fees reveals that such a permittee would pay \$300.00 per year for a five foot (60") pipe. NJ TRANSIT does not feel that such a fee is an unreasonable burden and, therefore, rejects Mr.

Killam's proposal that permits for storm drainage and flood control facilities be exempt from fees.

c. Killam claims that the construction of the railroad impeded the natural flow of storm water, created an encroachment upon the natural condition and where an undersized railroad culvert exists it can be the direct cause of flooding. Where a municipality or other agency is willing to improve an existing culvert in order to alleviate upstream flooding, then NJ TRANSIT should provide a permit without fee. NJ TRANSIT feels that it is correct in imposing a fee under these circumstances because:

1. The railroad culvert, when originally built, was not undersized and that other changes to the topography and flow (caused by municipally approved development or unapproved drainage) are the cause of the flooding; and
2. While addressing flooding problems may be one reason for a municipality to improve existing culverts, another reason may be that the municipality wishes to approve additional development so as to improve the tax base of the community.

#### 2. Public Service Electric & Gas Company (PSE&G) Claims:

- a. That the fee structures are unlawful because there was no rationale provided to support them.
- b. That the permit and application fees must have a correlation to the reasonable cost of processing the application or the reasonable value of the occupation.
- c. That it is improper as a matter of law for NJ TRANSIT to make money through the use of its properties which revenues are used to reduce the deficit incurred in other areas of NJ TRANSIT'S operations.
- d. That a 100 percent increase in fees over a five year period is exorbitant.
- e. That the proposed fee structure will have a detrimental impact on the public since it constitutes an operating expense which must be borne by its ratepayers.

PSE&G claims that NJ TRANSIT'S permit and application fees are governed by the same standards as those of any other State agency. This claim is incorrect. NJ TRANSIT was created by the Legislature in 1979 in response to a public transportation crisis in the State of New Jersey. In order to meet this crisis and improve the rail and bus services crucial to New Jersey's existence, NJ TRANSIT was given broad powers by the Legislature. N.J.S.A. 27:25-5(1) provides that NJ TRANSIT may "restrict the rights of persons to enter or construct any works in or upon any property owned or leased by the corporation, except under such terms as the corporation may prescribe; perform or contract for the performance of all acts necessary for the management, maintenance and repair of real or personal property leased or otherwise used or occupied pursuant to this act."

N.J.S.A. 27:25-5(o) further provides that NJ TRANSIT may "set and collect rentals, fees, charges or other payments from the lease, use, occupancy or disposition of properties owned or leased by the Corporation; such revenues shall be available to the Corporation for use in furtherance of any of the purposes of this act."

These statutory provisions give NJ TRANSIT the power and right to charge fees that not only reflect the costs of the use and occupancy program and the value of the property being used, but also to raise revenue to help offset the deficits incurred in providing mass transit services.

NJ TRANSIT originally established the existing fees on August 20, 1979 shortly after acquiring most of its railroad property from the consolidated Rail Corporation (Conrail)

pursuant to Federal law. The fees established then were slightly higher than the rates established by Conrail in 1976. Prior to 1976, the rates had not been increased by the predecessor bankrupt railroads for many years. For these reasons, there were no comments or objections to the original fees established by NJ TRANSIT in 1979. Therefore, the actual fees charged the permittees have been artificially low for many years and not merely the five years mentioned by PSE&G. While it may double the fees paid NJ TRANSIT, PSE&G provides no data to support its claim that these payments are not de minimus when considered in the context of the size of the utilities' operating budget on the particular permit in question.

### 3. American Water Works Service Company (Water Works) Claims:

a. Water mains constructed in public streets are not subject to these regulations because N.J.S.A. 48:19-17 authorizes public utilities to use such public roads free from all charges. There is no need to deal at great length with this comment. Three formal opinions of the Office of the Attorney General have dealt with this or related questions (AAAM 81-5143. Formal Opinion 1961-No. 26 (September 10, 1961). Formal Opinion 1958-No. 18 (December 8, 1958). The Attorney General ruled that Title 48 has placed no restriction on the power of NJ TRANSIT to issue permits and charge fees for the occupancy of its property because the relevant portion of Title 48 which applies to each type of utility simply do not apply to a State agency like NJ TRANSIT.

b. That it was improper for NJ TRANSIT to raise revenues through the fees charged for the use and occupancy of its property. This argument had been dealt with above.

c. The indemnification provision of the regulations are totally unreasonable. This argument has also been dealt with above.

d. A complete justification of the annual fee of \$100.00 for pipe-lines up to 24 inch inside diameter must be provided. Many factors go into determining an appropriate fee. They include the following costs: personnel, billing, accounting, new or supplemental agreements, computer costs, etc. Because it is a complicated and inexact science, NJ TRANSIT does not intend and feels it has no obligation to justify every fee charged permittees.

### 4. Atlantic City Electric Company (ACEC) Claims:

1. That it was improper for NJ TRANSIT to increase its fees in order to subsidize its deficit operation. This comment has been dealt with above.

2. The public rights-of-way issue dealt with above was also raised by ACEC.

3. If NJ TRANSIT is allowed to charge fees for such public rights-of-way, they are duplicative of the gross receipt and franchise taxes paid by the utilities for the use of the public rights-of-way. The Attorney General, in the opinions mentioned above, dealt with this same issue and ruled that the fees are charged for acquisition of a property interest and, therefore, the taxation statutes do not apply.

NJ TRANSIT originally published its use and occupancy permit regulations August 20, 1979. No permittee saw fit to comment on the original regulations. The proposed regulations will make only minor substantive changes to the original regulations apart from the increased fees. In spite of that, ACEC, in particular, has taken this occasion to question numerous parts of the regulations which have been in effect for over five years. Therefore, NJ TRANSIT will not deal with many of these comments in any detail.

NJ TRANSIT has the following responses to certain of ACEC'S comments by section:

1. N.J.A.C. 16:77-1.1 Definition—By deleting the word “used” and inserting the word “intended” NJ TRANSIT intends to include its property over which rail service is presently discontinued or abandoned. The intent of this change is to make it clear that these regulations also apply to this property.

2. N.J.A.C. 16:7-1.2 Permit Applications—ACEC also requested that a provision be inserted requiring review and processing by NJ TRANSIT of applications within a given time and if not approved within that time, that they be deemed approved. The proposed application procedure has been in effect for over five years and NJ TRANSIT is not aware of any of the problems cited by ACEC. In addition, NJ TRANSIT has no intention of surrendering control over the use of its property through the permit procedure. ACEC'S proposal to amend an existing permit rather than require a new permit in order to modify an existing use or occupancy shall remain subject to NJ TRANSIT'S discretion.

3. N.J.A.C. 16:77-1.3 Permit Conditions—ACEC'S objection to NJ TRANSIT'S indemnification provision have been dealt with above. Subsection (d) is designed to apply when there is a safety concern regarding NJ TRANSIT'S operations and generally the permittees specifications will be adequate. Subsection (h), (k) and (n) all exist in the original regulations.

4. N.J.A.C. 16:77-1.4 Administrative Fees—ACEC objects to the amount of the increases applied to the application fees, the inconsistency in percentage increase between the categories and the addition of a charge for surface drainage. In addition, ACEC demands in effect an itemized detailed bill for each permit. Suffice it to say, that if ACEC does not want to do business with NJ TRANSIT and does not like the terms and conditions for obtaining such permits, then it is simply free not to use our property. NJ TRANSIT, in leasing its property, is acting in a proprietary fashion separate and apart from its public service obligations of providing bus and rail services. Therefore, it is free to lease or not to lease its property on such terms and conditions it deems appropriate. This statement applies to wherever ACEC has demanded more specific guidelines and provisions. What ACEC also fails to recognize is that the permit process is, to a certain extent, one of negotiation between the parties no matter what these regulations state. Because of this, NJ TRANSIT feels it is under no obligation to provide detailed guidelines that may be contrary to the desired use of its property in the future.

5. N.J.A.C. 16:77-1.5 Permit Fees General Conditions—NJ TRANSIT feels it has no obligation to refund any fees to a utility if it terminates prior to the end of the permit. NJ TRANSIT has already incurred the cost of generating the permit and the utility itself is free to request the appropriate term in the first place.

6. N.J.A.C. 16:77-1.6 Permit Fees: Transverse Occupations—ACEC objects to the change in the voltage criteria although they say they cannot determine what the impact will be with regard to their company. From its experience with the program since 1979, NJ TRANSIT feels that the new proposed steps are appropriate considering the type of use contemplated.

7. Throughout its comments ACEC complains that the fees are being increased by a certain percentage. In many cases,

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while the percentage increase is high, the actual dollar amount of the increase is minimal after considering that the fees have not been changed in many years. In addition, the fees are also minimal on a per year basis when considered in the context of a multi-year permit. ACEC and all of the other commentators failed to set forth any facts to rebut NJ TRANSIT'S position that the impact on each permittee will be minimal.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets **\*[thus]\***).

### CHAPTER 77 USE OR OCCUPANCY OF NJ TRANSIT-OWNED PROPERTY

#### SUBCHAPTER 1. PERMITS AND CONDITIONS

##### 16:77-1.1 Definitions

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

"Cable" means consisting of more than two conductors insulated from each other, with or without a protective covering, either self supporting or having a common support.

"Composite coaxial cable" means a cable made up of one or more transmission lines in which one conductor is centered inside a metallic tube that serves as the second conductor. Other standard insulated conductors may be included in the same overall sheath.

"Wire" means a solid or stranded single conductor, either bare or insulated.

"Coaxial television cable" means a transmission line cable having an inner conductor surrounded by insulation and an outer sheath serving as the second conductor.

"Communication wires" means wires used for telegraph, telephone, fire alarm, police, and signal circuits for public or private communication of signal service, which operate at not exceeding 400 volts to ground or 750 volts between any two points of the circuit and the transmitted power of which does not exceed 150 watts.

"Individual service" means a service to a single individual dwelling.

"Involved jurisdiction" means the New Jersey Transit Corporation (NJ TRANSIT), its authorized representative(s), and the NJ TRANSIT's authorized railroad operator, where appropriate.

"Lightfiber, fiberoptic and glassfiber cable" means any cable using light as a transmitter and receiver and a glass or plastic fiber as the transmission medium.

"Longitudinal occupation" means any occupation of NJ TRANSIT-owned property other than a direct crossing over or under railroad tracks and right-of-way as defined under Item 15.

"Messenger wires" means shall be considered as part of the wires or cables supported and no charge shall be assessed therefor.

"NJ TRANSIT-owned property" means railroad property in the State of New Jersey or New York owned and operated by NJ TRANSIT regardless of operating agent.

"Permit" means the written permission for the use or occupancy of NJ TRANSIT-owned property including short term uses. Uses or occupancies of NJ TRANSIT-owned property shall include:

1. Transverse or longitudinal crossings on, over, or under NJ TRANSIT-owned property:

i. Aerial or underground wires and cables (communications and power);

ii. Poles, towers, guys and anchors;  
iii. Pipes and sewers;  
iv. Uses for overhead or underground conveyors, pipe bridges, pedestrian tunnels, or any other facility which NJ TRANSIT shall determine as requiring a permit.

2. Uses or occupancies for short term activities, of less than one year duration.

"Permittee" means the owner of a facility which is to be constructed, installed or maintained on NJ TRANSIT-owned property, or a user of said property for a fixed short term.

"Power wires" means all wires used for transmitting a supply of electrical energy except those defined as "communication wires" above.

"Transverse occupation" means that part of any overhead or undergrade line which crosses a track or tracks of the NJ TRANSIT-owned railroad within the limits of that portion of its right-of-way intended for railroad purposes.

##### 16:77-1.2 Permit applications

(a) No person may use or occupy NJ TRANSIT-owned property without obtaining a permit from NJ TRANSIT. All requests for permits shall be submitted by letter and addressed to:

New Jersey Transit Corporation  
Department of Property Management  
and Development  
McCarter Highway and Market Street  
P.O. Box 10009  
Newark, NJ 07101

(b) Once an application has been received, the applicant shall be responsible to NJ TRANSIT for application fees, regardless of permit completion.

(c) Once an application has been entered into the review process, the applicant shall be responsible to the involved jurisdiction for the applicable review fees, regardless of permit completion.

(d) No refund shall be made after an application for a permit has been submitted.

(e) Upon the applicant's request and proper NJ TRANSIT approval, NJ TRANSIT will notify the application of its decision regarding the issuance of a permit. If NJ TRANSIT approves the application after being reviewed by the involved jurisdiction, a permit will be sent to the applicant for completion. It shall be the applicant's responsibility to complete the permit and return it to NJ TRANSIT with the designated fee. No permit shall be issued unless the designated fee, for use and occupancy of NJ TRANSIT-owned property, has been collected, as provided in N.J.A.C. 16:77-1.6. In addition to the above, the applicant shall reimburse the party operating over the affected property for costs related to their review of the applicant's plans and specifications, if applicable.

(f) If the permittee seeks to modify its use or occupancy of the NJ TRANSIT-owned property during the term of the permit, the permittee shall be required to apply for a new permit according to the provisions of this section.

(g) Upon expiration of a permit, NJ TRANSIT may issue a new permit without requiring the permittee to submit a new application. A new fee will be assessed in accordance with the fee schedule rates in effect at that time.

##### 16:77-1.3 Permit conditions

(a) The permittee shall provide the indemnification insurance required by NJ TRANSIT.

1. The permittee shall indemnify, keep and save harmless NJ TRANSIT, NJ TRANSIT RAIL OPERATIONS, and other railroad(s) operating on the affected property, their

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successors, assigns, agents, employees, servants, and officials, and each and every one of them, against all claims, just or unjust, made against NJ TRANSIT, NJ TRANSIT RAIL OPERATIONS, and other Operating Railroad(s), or the permittee, or their successors, assigns, agents, employees, servants or officials on account of injuries, deaths, losses of any kind whatsoever, damages, suits, liabilities, judgments, claims for infringement of patent, trademark or copyright, costs and expenses which may in anywise accrue against NJ TRANSIT, NJ TRANSIT RAIL OPERATIONS, or the other operating railroad(s), their successors, assigns, agents, employees, servants, and officials, in consequence of the granting of a permit or which may in anywise result therefrom, and whether or not it shall be alleged or determined that the cause thereof was the negligence, acts, or omissions of NJ TRANSIT, NJ TRANSIT RAIL OPERATIONS, or the other operating railroad(s), or permittee, their successors, assigns, agents, employees, servants and officials, or of other persons, and the permittee shall appear, defend and pay, at its own expense, all costs, including counsel fees, arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against NJ TRANSIT, NJ TRANSIT RAIL OPERATIONS, or the operating railroad(s), their successors, assigns, agents, employees, servants and officials, in any such action, the permittee shall, at its own expense, satisfy and discharge the same.

(b) The permittee shall properly safeguard all work performed under the conditions of the permit. If considered necessary by the involved jurisdiction, the permittee will be required to employ additional safety devices including uniformed traffic directors.

(c) Upon approval of a permit, the permittee shall give notice in writing to the involved jurisdiction, at least seven days prior to the use, work, or occupancy of NJ TRANSIT-owned property.

(d) Construction work materials and workmanship shall conform to NJ TRANSIT specifications.

(e) Work or occupancy shall not begin until a formal notice in writing is issued to the permittee by NJ TRANSIT.

(f) All uses, work or occupancy within NJ TRANSIT-owned property shall be subject to the review by the involved jurisdiction affecting the safety and operations of the trains. The safety and continuity of railroad operation shall be of the first importance and shall be at all times protected, and safeguarded, and the permittee, and the permittee's contractor and/or subcontractors shall perform and arrange all use, work, and occupancy accordingly. All use and work shall be performed carefully and shall be regulated so as to avoid interruption and interference of train movements and damage to the tracks and all other facilities and appurtenances.

(g) Upon vacation of the site, the permittee shall restore the affected area to the satisfaction of NJ TRANSIT and/or involved jurisdiction.

(h) NJ TRANSIT assumes no obligations whatsoever in connection with the use, work, and/or occupancy by the permittee and is not obligated to make any repairs to the property or furnish men, equipment or materials in connection with use, work and/or occupancy by the permittee. The use, work, and/or occupancy provided for by the permit shall be performed at no cost to the involved jurisdiction.

(i) The permittee shall reimburse the involved jurisdiction for all costs incurred by the involved jurisdiction as a result of the permit project which shall include, but not be limited to, inspectors, watchmen, operators, flagmen, and other personnel.

(j) The permittee shall have the responsibility during the term of the permit to maintain its facility in a safe and proper manner, to the satisfaction of the involved jurisdiction. If repair or maintenance of the permittee's facility is required, the permittee must notify NJ TRANSIT in writing and request permission to initiate, repair, or maintain such facility. The permittee may not begin such work without prior written approval from NJ TRANSIT.

1. In the event of an emergency, the permittee shall take immediate action upon notification of the operating agency and secondly, NJ TRANSIT.

(k) If it is deemed necessary by NJ TRANSIT, the permittee shall be required to submit a certified check in an amount sufficient to guarantee that, should the permittee fail to restore the disturbed area in a safe and proper manner, there will be enough money to pay for the cost of any work performed by the involved jurisdiction in consequence of that failure. This guarantee shall not operate to waive the permittee's complete responsibility with regard to restoring the affected area.

(l) When applications require movement or relocation of facilities by NJ TRANSIT, NJ TRANSIT and/or the appropriate involved jurisdiction shall prepare an estimate of cost. Using this estimate, NJ TRANSIT shall request as a condition in granting the permit, a written agreement by the permittee, stating that the permittee shall assume all expenses involved in the movement or relocation of facilities and any expenses for additional facilities necessitated by the move.

(m) Upon the termination of the permit, the permittee, subject to the review and approval by NJ TRANSIT, shall remove all permit related facilities and shall restore the affected area to the satisfaction of NJ TRANSIT. The permittee is responsible for all costs incurred for restoring the affected area.

(n) The involved jurisdiction reserves the right to impose special conditions in appropriate cases, as required.

**16:77-1.4 Administrative fees**

(a) Administrative fees will be charged as follows:

1. Wire and cable crossings and longitudinal occupations over or under NJ TRANSIT-owned property:
  - i. Not exceeding 300 volts to one individual service \$100.00
  - ii. All other transverse crossings ..... \$200.00
  - iii. All longitudinal occupations and any agreement regardless of voltage, not less than ..... \$400.00
2. Pipe and sewer crossings and longitudinal occupations over or under NJ TRANSIT-owned property:
  - i. Pipe not exceeding 3 inches inside diameter to one individual service ..... \$100.00
  - ii. All other transverse crossings ..... \$200.00
  - iii. All longitudinal occupations and any agreement regardless of size of pipe, not less than ..... \$400.00
3. All surface drainage not contained within a pipe occupying NJ TRANSIT property ..... \$400.00
4. Short term or occupancy:
  - i. Application for the use or occupancy of track, trains, or property which will require the alteration of track usage or train schedules ..... \$250.00
  - ii. Application for the use or occupation of NJ TRANSIT-owned property not covered by i. above ..... \$100.00
5. Additional fees
  - i. All occupations requiring engineering reviews will be assessed an additional fee as compensation to NJ TRANSIT Rail Operations.
  - ii. In addition, when railroad personnel or services are utilized by the permittee, reimbursement to NJ TRANSIT Rail

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Operations or other involved jurisdictions will be made within 30 days of receipt of billing.

16:77-1.5 Permit fees: general conditions

(a) Long term use or occupancy permit fees are subject to the following conditions:

1. The permit fee equals the annual occupancy rate multiplied by the estimated duration of occupancy in years, not to exceed 20 years and no less than one unless otherwise described within this schedule.

2. The minimum annual permit fee under any application shall be \$100.00.

3. Should the facility be terminated at any time less than the estimated years of occupancy, the fees collected are not subject to a refund for any permit less than the estimated years of occupancy. (Minimum 1 year—Maximum 20 years).

4. NJ TRANSIT reserves the right to consider additional fees or crossings in excess of 200 feet. When increased preparation costs are incurred, the increases will be passed on to the permittee.

5. Any occupation of NJ TRANSIT property other than transverse track crossings will be charged as a longitudinal crossing based on the lineal foot of the occupation.

6. Fees are based on a minimum right-of-way width of 30 feet with a fee applicable up to a 200 foot width. For all crossings in excess of 200 linear feet, a per foot charge at the applicable 30 foot rate will be assessed.

7. All fees for occupancies encased as a group or otherwise bundled or joined together will be calculated as if they were individual occupancies.

8. Should the facility be modified during the term of the permit, new permit, or supplement to the existing permit, the associated fees will be required. If a new permit is approved, an amount proportionate to the time remaining on the superseded permit will be credited toward the new fee.

9. In the event the facility goes beyond its paid estimated life, a new fee will be assessed in accordance with the fee schedule rates in effect at that time.

10. Drainage discharge onto NJ TRANSIT property shall be calculated as if it were contained in a circular pipe and the fees shall be in accordance with the transverse occupation fee schedule, under pipes and sewers.

(b) An annual occupancy fee for attachments will be charged as follows when higher rates are not fixed:

1. Attachments of aerial wires and cables to poles or other structures of NJ TRANSIT-Owned facilities used in wire line construction:

i. Up to and including 32,500 volts for each attachment to NJ TRANSIT-Owned cross-arms or brackets . . . . \$5.00

ii. Up to and including 32,500 volts for each attachment to (licensee's) permittee's cross-arms or brackets when they are attached to a NJ TRANSIT-owned facility . . \$4.00

iii. Wires over 32,500 volts attached to the NJ TRANSIT-owned cross-arms or brackets . . . . . \$10.00 per attachment

iv. Wires over 32,500 volts and attached to (licensee's) permittee's cross-arms or brackets when those brackets are attached to NJ TRANSIT-owned facilities . . . . . \$8.00 per attachment

2. Attachments of aerial wires and cables to buildings or other structures:

i. Each wire or cable attached to railroad bridges or structures, including railroad or highway bridges . . . . . \$10.00 per attachment

3. Attachments of cable terminals to poles, buildings, or structures including highway bridges, railroad bridges owned by NJ TRANSIT:

i. Each cable terminal, loading coil, transformer, or like device is subject to special consideration in each case, but not less than \$36.00.

4. Pipeline carried along NJ TRANSIT-owned property on bridges or other supports are subject to special consideration in each case if permitted by current New Jersey Department of Transportation specifications.

5. Charges for attachments of pipes to bridges, buildings, or structures of the NJ TRANSIT-owned property are subject to special consideration in each case.

(c) An annual occupancy fee for guy wire crossings and overhanging cross-arms and power wires and cables of \*pole]\* \*transmission\* lines outside of NJ TRANSIT-owned right-of-way will be calculated as follows:

1. Each guy wire crossing NJ TRANSIT-owned property but not anchored thereon . . . . . \$5.00

2. Cross-arms overhanging NJ TRANSIT-owned property from poles located outside thereof, one or more cross-arms on any pole . . . . . \$3.00

3. Power wires and cables overhanging NJ TRANSIT-owned property from poles located outside thereof shall be calculated at the rates specified in N.J.A.C. 16:77-1.6(b) and (c) "Permit fees: transverse occupations" and on a pro-rated basis, depending upon the number of overhanging wires, excluding the neutral, ground static or lighting wires.

(d) In any event, if a permit fee is determined to be less than the minimum \$100.00 annual fee, the duration of the permit will be extended to whatever multiple is necessary to achieve the minimum fee.

(e) Occupation charges for overhead or underground conveyors, pipe bridges, pedestrian tunnels, or any other facilities not covered by this section will be subject to special consideration.

(f) The minimum permit fee under any agreement where a miscellaneous use of occupancy is involved, not previously defined, shall be \$100.00. The applicant may be subject to possible charges which may result from expenses incurred by NJ TRANSIT's subsidiaries or involved jurisdictions.

(NOTE: Permit fees for miscellaneous use or occupancy of NJ TRANSIT-owned property will be determined and charged on an individual basis because of the various types of requests.)

(g) Short-term use on occupancy fees are subject to the following conditions:

1. The permit fee equals the annual occupancy rate prorated for the estimated duration of occupancy.

2. The minimum permit fee under any application shall be \$100.00.

3. Should the facility be terminated at any time less than the estimated period of occupancy, the fees collected are not subject to a refund.

4. At no time shall the short-term use and/or occupancy fee be less than the estimated annual fee for the same use covered under the long-term fee schedule.

5. Should the facility be modified during the term of the permit, a new permit and fee will be required. If a new permit is approved, an amount proportionate to the time remaining on the superseded permit will be credited toward the new fee.

6. In the event the facility goes beyond its paid estimated life, a new fee will be assessed in accordance with the fee schedule rates in effect at that time.

16:77-1.6 Permit fees: transverse occupation

(a) All fees in this section are based on a minimum right-of-way width of 30 feet with a fee applicable up to a 200 foot

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width. For all crossings in excess of 200 feet, a per foot charge at the applicable 30 foot rate will be assessed.

(b) Aerial and underground wire (power and communication) crossings not exceeding 200 feet in length will be charged an annual occupancy fee as follows:

1. Power:
  - i. All crossings up to but not exceeding 6,900 volts . . . . . \$100.00
  - ii. Over 6,900 volts but not exceeding 32,500 volts . . . . . \$180.00
  - iii. Over 32,500 volts but not exceeding 50,000 volts . . . . . \$300.00
  - iv. Over 50,000 volts but not exceeding 345,000 volts . . . . . \$400.00
  - v. Over 345,000 volts but not exceeding 500,000 volts . . . . . \$600.00
  - vi. Over 500,000 volts . . . . . \$800.00
  - vii. Ducts or pipes carrying conductors . . . NO CHARGE
  - viii. Manholes (each) . . . . . \$50.00

(NOTE: Attachments of wires, cables, etc. to bridges, buildings, poles or structures of railroad subject to special consideration in each case.)

2. Communication:
 

- i. Telephone and other communication cables (not including composite coaxial cables):

- (1) Cable containing not more than 500 pairs . . . \$100.00
- (2) Cable containing 501 to 1100 pairs . . . . . \$175.00
- (3) Cable containing 1101 to 1800 pairs . . . . . \$250.00
- (4) Cable containing over 1800 pairs . . . . . \$400.00
- ii. Composite coaxial cables and coaxial television cables containing not more than 4 conductors . . . . \$150.00
- iii. All cables containing over four conductors shall be at a rate of \$20.00 for each additional conductor.

3. Fiberoptics:
 

- i. All fiberoptics installations will be charged through a negotiated fee.

(NOTE: Crossings of right-of-way by pipe type cable consisting of one or more high voltage cables encased in a steel pipe under inert oil pressure and/or further encased in a larger steel pipe and the space between the pipes filled with compacted sand should be subject to special consideration and each case handled individually.)

(c) Poles, towers, guys, and anchors and spare ducts or pipes will be charged an annual fee as follows:

1. Single wooden pole (per pole) . . . . . \$25.00
2. All other supporting structures other than the auxiliary facilities and appurtenances listed in 3, 4, 5, 6, 7 and 8 below . . . . . \$50.00
3. Each brace, stub pole, or anchor . . . . . \$25.00
4. Each guy anchored on or crossing NJ TRANSIT-Owned railroad property . . . . . \$5.00
5. All towers, if not included in a longitudinal occupation shall be assessed per tower leg at . . . . . \$30.00
6. Each span guy wire crossing . . . . . \$25.00
7. Spare or unoccupied ducts or pipes, each (when the duct shall be occupied in the future by a cable, the annual fee shall govern and the \$25.00 charge cease) . . . . . \$25.00
8. Guys, stubs, anchors, and push or pull braces required by specification for the support of a crossing pole on NJ TRANSIT-owned right-of-way at the request of the NJ TRANSIT-owned shall be considered as a part of the crossing pole and no charge made therefore.

(NOTE: The above charges in (c)1-8 are in addition to the wire and cable occupation charges provided in (b)1-3 above.)

(d) Annual permit occupancy fees for pipes and sewer crossings not exceeding 200 feet in length will be calculated as follows:

1. Circular lines carrying no pressure:
  - i. Pipes up to and including 12 inches ID . . . . . \$100.00
  - ii. Pipes over 122 inches and not exceeding 24 inches ID . . . . . \$125.00
  - iii. Pipes over 24 inches and not exceeding 60 inches ID will be charged at a rate of \$3.00 per inch of ID over the first 24 inches. This rate is in addition to a minimum fee of \$150.00
  - iv. Pipes over 60 inches ID will be charged at a rate of \$2.00 per inch of ID over the first 60 inches. This rate is in addition to a minimum fee of . . . . . \$300.00

2. Circular lines under pressure and carrying non-flammable, non-explosive, or non-combustible supporting materials, except coal and water slurry:

- i. Pipes up to and including 24 inches ID . . . . . \$100.00
- ii. Pipes over 24 inches ID and not exceeding 60 inches ID will be charged at a rate of \$5.00 per inch of ID over the first 24 inches. This rate is in addition to a minimum fee of \$120.00
- iii. Pipes over 60 inches ID will be charged at a rate of \$3.00 per inch of ID over the first 60 inches. This rate is in addition to a minimum fee of . . . . . \$250.00

3. Circular lines under pressure and carrying flammable, explosive, or combustible supporting materials, except coal and water slurry:

- i. Pipe not exceeding three inches inside nominal diameter—minimum charge for any one crossing . . \$150.00
- ii. Pipe over three inches inside nominal diameter and not exceeding 12 inches inside diameter—minimum charge for any one crossing . . . . . \$200.00
- iii. Pipe over 12 inches inside diameter and not exceeding 24 inches inside diameter shall be charged at a rate of \$9.00 per inch of ID over the first 12 inches. This rate is in addition to a minimum charge for any one crossing of . . . . . \$200.00
- iv. Pipe exceeding 24 inches in diameter shall be charged at a rate of \$10.00 per inch of ID over the first 24 inches. This is in addition to a minimum charge for any one crossing of . . . . . \$320.00

4. Charges for non-circular pipes shall be determined by the diameter of a circular pipe having an equivalent cross-sectional area.

5. Charges for pipe tunnels or other special underground construction shall be subject to special consideration.

6. Pipe lines carried over NJ TRANSIT-owned or other supports subject to special consideration in each case if permitted by NJ TRANSIT current specifications.

7. Manholes (each) . . . . . \$50.00

8. Charges for attachments of pipes to bridges, buildings, or structures of the NJ TRANSIT-owned property subject to special consideration in each case.

9. Where pipe or pipes are encased in a protective pipe of larger diameter, no charge shall be made for the protective encasement.

16:77-1.7 Permit fee: longitudinal occupations

(a) Recognizing the many variables and intangibles involved in each longitudinal occupation of NJ TRANSIT-owned property, each application shall be considered on its own merits, with suggested minimum permit fee per year of occupancy being applied as set below.

(b) For occupations less than one mile in length, the charge shall be a proportionate amount of the rates calculated to the nearest dollar but no fee for any wire cable, duct, or pipe

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occupation shall be less than the charge for one-quarter mile of such occupation.

(c) The following charges cover the complete transmission line occupation and additional charges are not to be made unless there are attachments to NJ TRANSIT-owned facilities. For the purpose of determining voltage, guy wires, messengers and grounded conductors shall be considered as zero voltage. All other conductors shall be rated at voltage to other conductors, whichever is higher.

- 1. Aerial wires:
  - i. Transmission line, highest voltage not exceeding 6,900 volts ..... \$1,000 per circuit per mile.
  - ii. \*[Pole]\* \*Transmission\* line over 6,900 volts up to but not including 32,500 volts ..... \$1,800 per circuit per mile.
  - iii. Transmission line over 32,500 volts, up to and including 50,000 ..... \$2,500 per circuit mile.
  - iv. \*[Pole]\* \*Transmission\* line, 50,000 volts and over. The fee will be based on a negotiated rate.

- 2. Aerial and underground cables:
  - i. Telephone communication cables (not including composite coaxial cables):
    - (1) Cable containing not more than 1,100 pairs ..... \$1,000.00 per cable per mile
    - (2) Cable containing 1,101 to 1,800 pairs ..... \$1,800.00 per cable per mile
    - (3) Cable containing over 1,800 pairs: The fee will be negotiated at a rate not less than \$1,800.00 per cable mile.
    - (4) For underground communication cables the minimum charge is \$2,000.00 per cable per mile.

- ii. Composite coaxial cable and coaxial television cables subject to negotiation but not less than . . . \$2,500 per mile
- iii. Underground power cables:
  - (1) When cable is buried in an open trench and covered with soil: Minimum charge . . \$1,500.00 per circuit per mile.
  - (2) When cable is buried in an open trench and surrounded with from 6 to 12 inches of thermal sand: Minimum charge ..... \$2,500.00 per circuit per mile
  - (3) When cable is encased in a steel pipe under inert oil pressure and/or further encased in a larger steel pipe and the space between the pipes filled with compacted sand: \$5.00 per inch of nominal diameter of the largest pipe per 100 feet of occupation or fraction thereof with a minimum charge of \$2,500.00 per mile.

- iv. Spare or unoccupied ducts or pipes, each per mile ..... \$300.00
- v. Manholes, splicing chambers on pull boxes, each when these structures are necessary for longitudinal occupation ..... NO CHARGE
- vi. An additional charge shall be made for use of NJ TRANSIT-owned property duct lines based on the value of the facility.

(NOTE: Charges shown under iv., v., vi., above are in addition to the charges shown under i. to iii. inclusive.)

(d) All manholes necessary for periodic inspection, cleaning and maintenance will be covered under the longitudinal pipeline fee. On transverse occupations all manholes will be charged in excess of the transverse facilities occupancy fee.

(e) All structures other than manholes will be charged based through their own individual negotiations. Examples of these structures are meter chambers, siphon chambers, substations, pump station, etc.

(f) An annual occupancy fee for pipes and sewers will be charged as follows:

1. Circular lines carrying no pressure: \$2.00 minimum charge per inch of inside nominal diameter or fraction thereof per 100 feet of occupation or fraction thereof.

2. Circular lines under pressure and carrying non-flammable, non-explosive, and non-combustible supporting materials, except coal and water slurry: \$2.50 minimum charge per inch of inside nominal diameter per 100 feet of occupation or fraction thereof.

3. Circular lines under pressure and carrying flammable, explosive, and combustible supporting materials, and coal and water slurry: \$5.00 minimum charge per inch of inside nominal diameter per 100 feet of occupation or fraction thereof.

4. Charges of non-circular pipes shall be determined by the diameter of a circular pipe having an equivalent cross-sectional area.

5. Charges for pipe tunnels or other special underground construction shall be subject to special consideration.

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**(a)**

**ELECTION LAW ENFORCEMENT COMMISSION**

**Public Financing of Campaigns; Primary and General Elections for the Office of Governor**

**Notice of Correction: Executive Order No. 66(1978) Expiration Date: N.J.A.C. 19:25-15**

An error appears in the December 17, 1984 issue of the New Jersey Register at 16 N.J.R. 3485(b) concerning the Executive Order No. 66(1978) Expiration Date of N.J.A.C. 19:25-15. The expiration date should read **February 13, 1986**.

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**(b)**

**CASINO CONTROL COMMISSION**

**Permission for the Redemption of Coupons by Changepersons**

**Adopted Amendments: N.J.A.C. 19:45-1.1, 1.35, and 1.46**

Proposed: August 6, 1984 at 16 N.J.R. 2075(b).  
Adopted: December 26, 1984 by New Jersey Casino Control Commission, Walter N. Read, Chairman.  
Filed: December 26, 1984 as R.1984 d.623, with **technical changes** not requiring additional notice and comment (see N.J.A.C. 1:30-3.5).

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**ADOPTIONS**

Authority: N.J.S.A. 5:12-63(c), 69(a) and 70(i).

Effective Date: January 21, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 7, 1988.

**Summary of Public Comments and Agency Responses:**

The Division of Gaming Enforcement was the sole respondent to the proposed amendments. The Division objected to the proposal based upon the belief that changepersons could not adequately and accurately keep an accounting of coupon redemption. Further, the Division believes that it would be more difficult to adequately control coupon programs. The Commission determined, however, that the redemption of coupons would merely add a fourth category to the changeperson's shift and inventory and would not complicate or compromise the procedures for the accounting of redeemed coupons.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).

**19:45-1.1 Definitions**

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

...

"Changeperson" means a person employed in the operation of a casino to possess an imprest inventory of a coin created from slot booth funds and used for the even exchange with slot machine patrons of coupons, coin, currency and slot tokens.

...

**19:45-1.35 Accounting controls within the slot booths**

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

(d) The slot booth inventory may be used to supply changepersons with an imprest inventory of coin, provided that such inventory shall only be used to exchange currency \*, \* [and] \* coin, and coupons presented by a patron for an equivalent amount of currency and coin. The exchange of coupons shall be in accordance with N.J.A.C. 19:45-1.46(i).

**19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs**

(a)-(h) (No change.)

(i) Coupons redeemable for cash or slot tokens shall only be redeemed by changepersons or at the slot change booths or the cashiers' cage located on the casino floor. A changeperson, slot cashier or general cage cashier shall accept the coupons in exchange for the stated amount of cash or slot tokens and shall cancel the coupons upon acceptance. Cancellation of coupons by changepersons shall be in a manner that will permit subsequent identification of the individual who accepted and cancelled the coupon. Redeemed coupons shall be maintained by the slot or general cashier and shall be exchanged with the Main or Master Coin Bank for a like amount of cash at the conclusion of gaming activity each day, at a minimum. Changepersons shall exchange redeemed coupons with slot booths for a like amount of cash at the conclusion of each shift, at a minimum.

(j)-(n) (No change.)

**(a)**

**CASINO CONTROL COMMISSION**

**Accounting and Internal Controls  
Patron Credit; Tips**

**Adopted Amendments: N.J.A.C. 19:45-1.11, 1.19, 1.25, 1.26 and 1.29 (1.27 not adopted, but repropose; 1.28 still pending)**

Proposed: August 6, 1984 at 16 N.J.R. 2076(a).

Adopted: December 26, 1984 by the Casino Control Commission, Walter N. Read, Chairman.

Filed: December 26, 1984 as R.1984 d.624, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(g) and (1) and 5:12-101.

Effective Date: January 21, 1985.

Operative Date: July 20, 1985 for N.J.A.C. 19:45-1.25(h)1; March 22, 1985 for N.J.A.C. 19:45-1.26(a).

Expiration Date pursuant to Executive Order No. 66(1978): April 7, 1988.

AGENCY NOTE: Due to the nature and extent of the numerous revisions which the Commission has made to N.J.A.C. 19:45-1.27, the Commission has decided to repropose the entire section. See Rule Proposals in this issue of the Register.

**Summary of Public Comments and Agency Responses:**

The Division of Gaming Enforcement (DGE) and the Atlantic City Casino Hotel Association (ACCHA) filed written comments relevant to the proposal. The following summarizes the significant comments received and provides the Commission's responses to these comments.

1. Comment: N.J.A.C. 19:45-1.11—The ACCHA recommends that formal written communications between the credit department and the security and surveillance departments be limited to accurate, verifiable information which is relevant to the credit decision and is within the expertise of the security and surveillance departments.

Response: The Commission agrees and has modified this section.

2. Comment: N.J.A.C. 19:45-1.11—The ACCHA recommends that communication of information between the credit department and the security and surveillance departments be communicated orally rather than in writing. The ACCHA believes mandating that such information be in writing will subject credit managers to undue criticism for bad credit decisions.

Response: The Commission disagrees. Without sufficient documentation the basis for credit decisions cannot be properly supported.

3. Comment: N.J.A.C. 19:45-1.25(h)—The DGE recommends a modification to the wording, which would allow the casinos the option of comparing the patron's signature, obtained at the gaming table, to either the original signature or a computer generated facsimile thereof contained with the patron's credit file.

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Response: The Commission agrees and has modified this section.

4. Comment: N.J.A.C. 19:45-1.25(h)—The ACCHA suggests that the current procedures for verifying a patron's identification at the gaming table are adequate and that the proposed revisions are too restrictive.

Response: The Commission disagrees with ACCHA's position; however, appropriate wording has been added to provide casinos the flexibility necessary to comply with these revised procedures.

5. Comment: N.J.A.C. 19:45-1.25(1)—The DGE recommends adding the requirement that cage cashiers, before redeeming patrons' chips in excess of \$500.00, must ascertain from the check bank whether the patron owes any counter checks and if so, request the patron to redeem the counter check with the chips in his possession.

Response: For this requirement to be enforceable the patron would have to provide proof of identification which should include a physical description. Merely asking patrons their names will not be sufficient for the casinos to comply with this requirement. Casinos must demand and receive proof of identification from every patron who attempts to cash in chips, in excess of \$500.00, before allowing the transaction to be completed. To make that type of demand on patrons appears to be unreasonable. If the patron does not possess sufficient identification to prove his identity he would not be allowed to cash in his chips.

This requirement could be easily circumvented by patrons requesting other individuals, who do not have outstanding counter checks, to cash in the chips for them. Because the Commission does not agree with the recommendation, this section has not been modified.

6. Comment: N.J.A.C. 19:45-1.29—The ACCHA recommends amendments to this section to reflect the various circumstances under which the intent of the regulation can be effectuated. It suggests modifying the wording relating to the use of outside collection attorneys to include any attorney representing a casino. It also suggests modifying the wording relating to the results of the collection efforts to include the reason why the efforts have been unsuccessful or the reason why collection efforts should not be pursued further.

Response: The Commission agrees and has modified this section. In all situations the attorney merely acts as a conduit of information and a party who follows his clients orders. The final decision whether to pursue the collection efforts further or to cease efforts and write off the debt will continue to remain with the casino's management.

No comments were received relating to N.J.A.C. 19:45-1.19 or -1.26, therefore, these sections will be adopted as published.

AGENCY NOTE: Amendments proposed to N.J.A.C. 19:45-1.28 cannot be adopted at this time because the dollar limits and time periods specified in this section were taken directly from N.J.S.A. 5:12-101. Adoption of the Commission's amendments will be held in abeyance until the Legislature amends section 101 of the Casino Control Act.

AGENCY NOTE: The ACCHA recommended delaying the effective date for implementing N.J.A.C. 19:45-1.25(h)1 for 180 days and -1.26(a) for 60 days following publication of the adopted amendments in the New Jersey Register. The ACCHA indicated it would need additional time primarily to retrain employees, redesign casino forms, and revise internal control procedures. The Commission has agreed to delay im-

plementation of N.J.A.C. 19:45-1.25(h)1 for 180 days and -1.26(a) for 60 days following notice of adoption in the New Jersey Register.

**Full text** of the adoption follows (additions to proposal shown in boldface with asterisks **\*thus\***; deletions shown in brackets with asterisks **\*[thus]\***).

19:45-1.11 Casino licensee's organization

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

(c) Each casino licensee shall, at a minimum, establish the following departments with respect to the casino operation:

1. (No change.)

i.-v. (No change.)

vi. The video taping of illegal and unusual activities monitored; **\*[and]\***

vii. The notification of appropriate supervisors, the Commission, and the Division upon the detection and taping of cheating, theft, embezzlement, or other illegal activities**\*[.]\*** **\*; and\***

viii. The communication in writing of **\*[any]\*** **\*accurate and verifiable\*** information regarding casino patrons to the credit manager which may be **\*[useful]\*** **\*relevant\*** in determining a patron's credit worthiness.

2.-5. (No change.)

6. A credit department supervised by a credit manager who shall cooperate with, yet perform independently of, all other departments and shall report directly to the Vice President of Casino Operations or his equivalent. The credit manager shall be responsible for the credit function including, but not limited to, the following:

i. (No change.)

ii. The establishment of patron credit limits; **\*[and]\***

iii. The maintenance, review and update of the patron's credit files**\*[.]\*** **\*; and\***

iv. The communication in writing of the names and addresses of casino patrons with newly approved credit limits to, at a minimum, the directors of security and surveillance on a daily basis in accordance with the casino licensee's normal business practice**\*[.]\*** (such practice must be submitted in writing to both the Commission and Division).

7. A security department supervised by a director of security who shall cooperate with, yet perform independently of, all other departments and shall report directly to the Chief Executive Officer or his equivalent. The director of security shall be responsible for the overall security of the establishment including, but not limited to, the following:

i.-vi. (No change.)

vii. The control and maintenance of a system for the issuance of Temporary Access Badges; **\*[and]\***

viii. (No change.)

ix. The communication in writing of **\*[any]\*** **\*accurate and verifiable\*** information regarding casino patrons to the credit manager which may be **\*[useful]\*** **\*relevant\*** in determining a patron's credit worthiness.

8.-9. (No change.)

(d)-(g) (No change.)

19:45-1.19 Acceptance of tips or gratuities from patrons

(a) No casino key employee or boxperson, floorperson, or any other casino employee who serves in a supervisory position shall solicit or accept, and no other casino employee shall solicit, any tip or gratuity from any player or patron of the casino where he is employed. The casino licensee shall not permit any practices prohibited by (a) of this section.

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

**OTHER AGENCIES**

**ADOPTIONS**

19:45-1.25 Procedure for exchange of checks submitted by gaming patrons

(a)-(g) (No change.)

(h) For each Counter Check exchanged at a gaming table, the casino clerk shall:

1. Verify the patron's identity by either:

i. Obtaining the patron's signature, on a form, which signature shall be compared to the **\*original\*** signature **\*[on]\* \***, **or a computer generated facsimile thereof, contained within\*** the patron's credit file. The casino clerk shall sign the form indicating that the signature of the patron on the form appears to agree with the signature on his credit file. Such form shall be attached to the accounting copy of the Counter Check exchanged by the patron prior to forwarding it to the accounting department in conformity with (m) below.\* **\*[;or]\***

**\*After the patrons's identity has been verified by the casino clerk as required above, the requirements for subsequent verification of the patron's identity during the same shift and in the same gaming pit may be satisfied by that casino clerk signing a form attesting to the patron's identity before each subsequent counter check is exchanged. The form shall include the patron's name and the serial number of the initial counter check exchanged by the patron. Such form shall be attached to the accounting copy of the counter check prior to forwarding it to the Accounting Department in conformity with (m) below; or\***

ii. Obtaining the attestation of a casino supervisor as to the identity of the patron. The casino supervisor shall sign a form attesting to the patron's identity and shall record his license number thereon. Such form shall be attached to the accounting copy of the Counter Check exchanged by the patron prior to forwarding it to the accounting department in conformity with (m) below.

2. Determine the patron's remaining credit limit from the cashiers' cage.

3.-6. (No change.)

(i)-(k) (No change.)

(l) If the total amount of chips or plaques possessed by a patron exceeds \$500.00\*, the casino licensee shall request the patron to apply all chips or plaques in his possession to the redemption of Counter Checks exchanged for purposes of gaming prior to exchanging such chips or plaques for cash or prior to departing from the casino area.

(m) (No change.)

19:45-1.26 Procedure for redemption, consolidation or substitution of checks submitted by gaming patrons

(a) The drawer of a Counter Check may redeem it by exchanging cash, cash equivalents, gaming chips, plaques, or any combination of another check, cash, cash equivalents, gaming chips or plaques. If a drawer has more than one

Counter Check outstanding, such checks shall be redeemed in reverse chronological order (the most recently dated check shall always be redeemed first). If more than one check bears the same date, the drawer may choose the order in which he wishes to redeem the identically dated checks.

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

19:45-1.29 Procedure for collecting and recording checks returned to the casino after deposit

(a)-(i) (No change.)

(j) After reasonable collection efforts, returned checks may be considered uncollectible for accounting purposes and **\* [deducted from]\* \*charged to\*** the casino licensee's **\*[gross revenue to the maximum limit allowed by the Casino Control Act, for the purpose of computing the gross revenue tax]\* \*allowance for uncollectible patron's checks.\*** **\*[provided, however, that a]\* \*A\*** check which is unenforceable pursuant to section 101 of the Act shall not be **\*[deducted from gross revenue.]\* \*charged to the allowance account for the purpose of computing the maximum provision allowed pursuant to section 24 of the Act.\*** Any patron's indebtedness, in excess of \$1,000, may only be considered uncollectible for accounting purposes and **\*[deducted from the casino licensee's gross revenue]\* \*charged to the allowance for uncollectible patrons' checks account\*** after the following information has been included in the patron's credit file:

1. Documentation by two or more of the casino licensee's collection department employees evidencing independent efforts to collect the patron's outstanding check(s) and the reason why **\*[the patron cannot make repayment]\* \*such collection efforts were unsuccessful\***; and/or

2. A letter from **\*[the casino's outside collection]\* \*an\* attorney \*representing the casino\*** documenting the efforts to collect the patron's outstanding checks and the reason**\*s\*** why **\*[the patron cannot make repayment]\* \*such collection efforts were unsuccessful or were not pursued further\***.

(k) Listings of uncollectible checks shall be approved in writing by, at a minimum, the Chief Executive Officer, Vice-President of Casino Operations or equivalent executives of a casino licensee that is either a partnership or sole proprietorship and Controller and such checks and listings shall be maintained and controlled by accounting department employees. A continuous trial balance of all uncollectible checks shall be maintained by employees of the accounting department with no incompatible functions. The continuous trial balance shall be adjusted for any subsequent collections.

# EMERGENCY ADOPTIONS

## HUMAN SERVICES

(a)

### DIVISION OF PUBLIC WELFARE

#### Food Stamp Program Work Registration and Voluntary Quit Amendments

#### Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:87-2.19, 3.17, 3.18, 3.19 and 3.20

Emergency Amendment Adopted: December 11, 1984  
by George J. Albanese, Commissioner, Department  
of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): Janu-  
ary 2, 1985.

Emergency Amendment Filed: January 2, 1985 as  
R.1985 d.4.

Authority: N.J.S.A. 30:4B-2, the Food Stamp and  
Commodity Distribution Amendments of 1981 (P.L.  
97-98), the Food Stamp Act Amendments of 1982  
(P.L. 97-253) and 49 FR 39035.

Emergency Amendment Effective Date: January 2,  
1985.

Emergency Amendment Expiration Date: March 3,  
1985.

**Interested persons** may submit, in writing, arguments or  
information concerning the proposal until February 20, 1985.

Address comments and inquiries to:

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

This amendment was adopted on an emergency basis and  
became effective upon acceptance for filing by the Office of  
Administrative Law (see N.J.S.A. 52:14B-4(c) as imple-  
mented by N.J.A.C. 1:30-4.4). Concurrently, the provisions  
of this emergency amendment are being proposed for readop-  
tion in compliance with the normal rulemaking requirements  
of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et  
seq. The readopted rule becomes effective upon acceptance  
for filing by the Office of Administrative Law (see N.J.A.C.  
1:30-4.4(d)).

The concurrent proposal is known as PRN 1985-72.

The agency emergency adoption and concurrent proposal  
follows:

#### Summary

The Department of Human Services is mandated by Federal  
law and regulations to implement provisions of sections 1310

and 1311 of the Food Stamp and Commodity Distribution  
Amendments of 1981 (P.L. 97-98) and sections 158 and 159 of  
the Food Stamp Act Amendments of 1982 (P.L. 97-253).  
These amendments were published as Federal final rule in the  
Federal Register of October 3, 1984 at 49 FR 39035 and must  
be implemented no later than January 2, 1985.

The Federal rule requires several changes in policy with  
regard to the work registration and voluntary quit provisions  
of the Food Stamp Program. The amendment at N.J.A.C.  
10:87-2.19 requires that the consequences of voluntarily quit-  
ting a job, without good cause, be explained to applicant  
households at the time of the household's initial interview.  
The work registration requirement at N.J.A.C. 10:87-3.17 is  
amended to provide that nonexempt participants shall be re-  
quired to register for work once every 12 months after initial  
registration, rather than once every six months.

Exemptions from the work registration requirement at  
N.J.A.C. 10:87-3.18 have been amended to allow that one  
household member may be exempted to care for a dependent  
child under the age of six, thus changing the age requirement  
from under the age of 12 to under the age of six. This section  
is further amended to eliminate the work registration exemp-  
tion for a parent or other caretaker relative of a child under  
the age of 18 in a household where another parent is working  
or registered for work. Additionally, N.J.A.C. 10:87-3.18(b)  
has been amended to establish that persons failing to comply  
with an unemployment compensation/Work Incentive (WIN)  
program requirement comparable to a food stamp work regis-  
tration or job search requirement shall be treated as though  
they failed to comply with the corresponding food stamp  
requirement.

The voluntary quit provisions at N.J.A.C. 10:87-3.19 are  
expanded to mandate disqualification for participating house-  
holds, as well as applicant households, whose primary wage  
earner voluntarily quit his or her job. The voluntary quit  
without good cause provision has been extended to include  
Federal, State, or local government employees who have been  
dismissed from their jobs because of participation in a strike  
against the government entity involved. Further, the disquali-  
fication period for voluntary quit is lengthened from two  
months to 90 days for applicant households, and a three  
month disqualification period is established for participating  
households. Good cause for failure to comply with work  
registration, job search or voluntary quit provisions has been  
expanded to include lack of adequate child care for children  
who have reached age six but are under age 12. This change is  
reflected in amendments to N.J.A.C. 10:87-3.19(a)3 and (a)5  
and N.J.A.C. 10:87-3.20(d).

Amendments at N.J.A.C. 10:87-3.20 provide that the  
county welfare agency (CWA) shall be responsible for deter-  
mining good cause for failure to comply with work registra-  
tion, job search or voluntary quit requirements. The New  
Jersey State Employment Service (NJSES) will no longer be  
involved in such determinations. Additionally, the section  
regarding penalty for noncompliance has been amended to  
reflect that the existing two month penalty remains in effect  
for failure to comply with work registration/job search re-  
quirements and that the penalty for voluntary quit has been  
extended to 90 days for applicant households, and that a three  
month disqualification period is established for participating  
households.

**Social Impact**

The amendment changing the time frames for work registration will lessen the work registration requirement procedures for clients and CWAs alike. Amendments to the work registration exemptions will bring Food Stamp Program exemptions more in line with current work registration exemptions in the Aid to Families with Dependent Children (AFDC) program thus providing greater compatibility between the work requirements of these two programs. As a result of these amendments, it is anticipated that more participants will be required to register for work which, in turn, will make more individuals subject to job search requirements and voluntary quit provisions.

The amendments stipulating that an individual's failure to comply with an unemployment compensation or WIN requirement, which is comparable to a food stamp requirement, shall be treated as if the individual failed to comply with the corresponding food stamp work registration or job search requirement, will eliminate an inequity that currently exists. Under existing regulations, when a client is sanctioned under unemployment compensation or WIN requirements, a loss in income occurs which results in an increase in food stamp benefits, thereby lessening the effect of the sanction.

Similarly, expanding the voluntary quit provision to include participating households as well as applicant households will also eliminate an inequitable distinction. Currently, if the primary wage earner in a participating household quits a job, no sanction is applied, and the household receives an increase in food stamp benefits due to the loss of income. A new applicant who has voluntarily quit a job would not be eligible for program participation for a period of two months from the date of the voluntary quit. This resulted in unequal treatment of individuals for the same action. Lengthening the period of disqualification to 90 days or three months, applying this sanction to participating households as well as applicant households, and advising households of the consequences of voluntarily quitting a job should result in fewer individuals voluntarily quitting employment as the penalty incurred will render the entire household ineligible to participate in the Food Stamp Program for a period of three months.

**Economic Impact**

The change in the frequency of work registration will have no economic impact on clients but will somewhat simplify administration of work registration requirements for CWAs by requiring clients to register once every 12 months rather than every six months. The amendment and elimination of the above cited work registration exemptions will result in more participants being subject to work registration/job search requirements and a potential increase in the number of employed participants. Dependent upon individual household circumstances, if the number of employed participants increases, these households will be eligible for fewer benefits and may eventually become ineligible for program participation.

The amendment requiring that a food stamp sanction be applied against a household containing a member who failed to comply with an unemployment compensation or WIN requirement may result in more households being disqualified from participation in the Food Stamp Program for a period of two months. The loss of food stamp benefits, coupled with the loss of income from unemployment benefits or WIN related employment, could have a serious adverse economic impact on households incurring such a penalty.

Amendments to the voluntary quit provisions and the lengthening of the penalties with regard to this provision will result in a longer disqualification period and a greater loss of benefits for households incurring such a penalty. These amendments will not adversely impact on the Department or CWAs administering the program. However, there may be some decrease in Federal funds coming into the State due to decrease or loss of benefits as described above.

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

## 10:87-2.19 Interview process

(a) All interviews for food stamp benefits shall meet the requirements below.

1. (No change.)

2. Responsibilities of interviewer: The interviewer shall not simply review the information which appears on the application, but shall explore and resolve with the household any unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview, including an explanation of the processing standards and the household's responsibility to report changes.

**i. The interviewer shall explain to the applicant the consequences of the household's primary wage earner quitting his or her job without good cause (see N.J.A.C. 10:87-3.19(a)3).**

3.-7. (No change.)

## 10:87-3.17 Registration procedure

(a) (No change.)

(b) Frequency of registration: Each nonexempt person shall be required to register at the time of application and at least once every [six] **12** months thereafter. Re-registration shall be accomplished by the return of a completed information report form to the appropriate NJSES office.

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

## 10:87-3.18 Exemptions from the work registration requirement

(a) Exemptions to the work registration requirement shall be determined when the household applies or reapplies for benefits, when there is a change in the employment status of any member of the household, and/or when the [six] **12** month registration period is initiated or renewed. The applicant shall cooperate fully with regard to the establishment of his or her exemption from the work registration requirement. If an applicant fails to cooperate in the determination of his or her exempt status, the county welfare agency shall require the applicant to complete a work registration form.

(b) The following persons shall be exempt from the work registration requirement:

1. (No change.)

2. Essential persons: The following shall be exempt from work registration as essential persons:

**i. Responsible for care of child under [12] **six** or incapacitated person:** One parent or other household member who has responsibility for the care of a dependent child under [12] **six** years of age, or who cares for an incapacitated person, shall be exempt. If the child has its [12th] **sixth** birthday within a certification period, the individual responsible for the care of the child shall fulfill the work requirement as part of the next scheduled redetermination process, unless the individual qualif[ie]d[s] for another exemption.

**ii. Responsible for care of child under 18:** A parent or other caretaker relative of a child under the age of 18 in a household where another able-bodied parent is registered for

## EMERGENCY ADOPTIONS

## HUMAN SERVICES

work, or exempt as a result of employment in accordance with the provisions in paragraph 5 of this subsection, shall be exempt.

(1) If the child has its 18th birthday within a certification period, the parent or caretaker must fulfill the work registration requirement as part of the next scheduled recertification process, unless the parent or caretaker qualifies for another exemption.]

3.-7. (No change.)

8. Recipients of unemployment compensation: Persons in receipt of unemployment compensation and persons who have applied for, but have not yet begun receiving unemployment compensation shall be exempt.

i. **Failure to comply: Persons failing to comply with an unemployment compensation requirement comparable to a food stamp work registration or job search requirement shall be treated as though they had failed to comply with the corresponding food stamp requirement.**

9. (No change.)

10. WIN registrant: A household member subject to and participating in WIN shall be exempt.

i. **Failure to comply: Persons failing to comply with a WIN requirement comparable to a food stamp work registration or job search requirement shall be treated as though they had failed to comply with the corresponding food stamp requirement.**

(c) (No change.)

10:87-3.19 Additional registration requirements

(a) For the purposes of retaining eligibility for Food Stamp benefits, a nonexempt member of the household who is registered for work shall be required to comply with the following provisions:

1.-2. (No change.)

3. **Voluntary quit:** No [applicant] household whose primary wage earner voluntarily quits his [/] or her most recent job without good cause shall be eligible for participation in the Food Stamp program except as provided in [subparagraph] (a)3ii below [of this paragraph]. Changes in employment status that result from reducing hours of employment while working for the same employer, terminating a self-employment enterprise or resigning from a job at the demand of the employer shall not be considered as a voluntary quit. **An employee of the Federal Government, or of a State or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike shall be considered to have voluntarily quit his or her job without good cause (see (a)7 below concerning strikers).**

i. [Application processing:] **Determining whether a voluntary quit occurred:** When a household files an application for participation, or when a participating household reports the loss of a source of income, the CWA shall determine if any currently unemployed ([i.e.,] **that is,** employed less than 20 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) household member who is required to register for full-time work has quit his[/] or her most recent job ([i.e.,] **that is,** employment involving 20 hours or more per week or having received weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) without good cause [within the last 60 days]. **For applicant households, the CWA shall determine if a voluntary quit occurred within the last 60 days. If the CWA learns that a household has lost a source of income after the date of application but before the household is**

**certified, the CWA shall determine whether a voluntary quit occurred. For participating households, the CWA shall determine whether any household member voluntarily quit his or her job while participating in the program.**

(1) (No change.)

(2) **CWA Action: The CWA shall take the appropriate action, as outlined in (A) or (B) below, upon a determination that the primary wage earner voluntarily quit employment.**

[2] (A) Denial of application: Upon a determination that the primary wage earner voluntarily quit employment, the CWA shall determine if the voluntary quit was with good cause as defined below. If the voluntary quit was not for good cause, the household's application for participation shall be denied for a period of [two months] **90 days** beginning with the [month of the quit] **date of application**. The household shall be advised of the reason for the denial and of its rights to reapply **at the end of the 90 day period** and [/or] **of its right to request a fair hearing.**

(B) **Disqualification of participating households: If the CWA determines that the primary wage earner of a participating household voluntarily quit his or her job while participating in the Food Stamp Program, the CWA shall provide the household with a notice of adverse action within 10 days of the date the determination of voluntary quit was made. The notice shall specify the period of the disqualification, the household's right to a fair hearing and that the household may reapply at the end of the disqualification period. The household shall be disqualified for three months beginning with the first month after normal adverse action procedures have been taken. If the household leaves the program before the sanction can be levied, the sanction shall not be imposed until the household returns to the program. If a household requests a fair hearing and the CWA determination is upheld, the disqualification period shall begin the first of the next month after the hearing decision is rendered.**

(3) Application in [second] **third** month of disqualification period: If an application for participation in the Food Stamp Program is filed in the [second] **third** month of disqualification, the CWA shall (in accordance with N.J.A.C. 10:87-6.5) use the same application for the denial of benefits in the remaining month of disqualification and certification for any subsequent months if all other eligibility criteria are met.

ii. Exceptions from voluntary quit provisions: [The following persons are exempt from the voluntary quit provisions:] **Persons exempt from the work registration provisions as stated in N.J.A.C. 10:87-3.18 are exempt from the voluntary quit provisions.**

(1) Members of certified households: Primary wage earners in households certified for the Food Stamp Program at the time of the quit.

(2) Persons exempt from work registration: Persons exempt from the full time work registration provisions as stated in N.J.A.C. 10:87-3.18.]

iii. Good cause: Good cause for leaving employment includes the good cause provisions found in N.J.A.C. 10:87-3.20(d) and resigning from a job that does not meet the suitability criteria specified in [paragraph](a)5 [of this subsection] **below**. Good cause for leaving employment shall also include:

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

(9) **Lack of adequate child care: Lack of adequate care of children who have reached age six but are under age 12.**

iv. (No change.)

4. (No change.)

**INSURANCE**

**EMERGENCY ADOPTIONS**

5. Accepting suitable employment: The registrant shall be required to accept any bona fide offer of suitable employment to which he [ / ] or she has been referred by the appropriate NJSES office.

i. Unsuitable employment: Employment offered to a registrant shall not be considered suitable when any of the following conditions exist:

(1)-(3) (No change.)

**(4) The registrant lacks adequate child care for children who have reached age 6 but are under age 12.**

ii. (No change.)

6.-7. (No change.)

(b) (No change.)

10:87-3.20 Failure to comply

(a) If the registrant fails to comply with any of the work registration or job search requirement provisions in this subchapter, without good cause, the appropriate NJSES office shall notify the county welfare agency within five working days of the date such information becomes known to the NJSES, citing specific facts and circumstances by means of an information report form. [The NJSES office shall be responsible for contacting the registrant to determine if good cause existed.]

(b) (No change.)

(c) Good cause for noncompliance: The [NJSES office] CWA shall be responsible for determining good cause in those instances where the work registrant fails to comply with the work registration, [and] job search **or voluntary quit** requirements of this subchapter. [The CWA shall determine good cause in those cases where an applicant has voluntarily quit a job (see N.J.A.C. 10:87-3.19(a)3iii). NJSES and t]The county welfare agency shall take into consideration all of the facts and circumstances which existed at the time of the registrant's alleged failure to comply including information submitted by the employer and the household member involved. Good cause shall include circumstances beyond the control of the registrant.

(d) Good cause circumstances: Good cause for noncompliance shall include circumstances such as, but not limited to, the illness of the registrant or another household member, unavailability of transportation, [and/or] an unanticipated emergency, **and/or the lack of adequate care for children who have reached age six but are under age 12.** Problems caused by inability of the registrant to speak or write English may constitute good cause. For example, a registrant who cannot read English would have good cause for not appearing for an NJSES interview if the appointment notice was written only in English.

1. (No change.)

(e) Penalty for noncompliance: If the CWA is informed by the NJSES Office that a household member has refused or failed, without good cause to comply with **any of the work registration/job search** requirements of this [subsection] **subchapter** or the CWA determines that a registrant voluntarily quit a job without good cause, the [following] **appropriate** penalty [will] **in (e)1 or (e)2 below shall** apply:

1. [Household ineligibility:] **Disqualification for failure to comply with work registration/job search requirements:** The entire household shall become ineligible for a period of two months or until such member becomes exempt, or complies with the provisions for reestablishment of eligibility (see N.J.A.C. 10:87-3.21) whichever is earlier.

2. **Disqualification for voluntary quit: The entire household shall be ineligible for a period of 90 days in cases of applicant households and three months in situations of partic-**

**ipating households in accordance with (e)2i or (e)2ii below, as appropriate:**

i. **Applicant households: In the case of applicant households, the household's application shall be denied and a sanction imposed for 90 days starting from the date of application.**

ii. **Participating households: In the case of a participating household, the household shall be disqualified for three months beginning with the first of the month after all normal procedures for taking adverse action have been followed.**

**INSURANCE**

**(a)**

**DIVISION OF ADMINISTRATION**

**Group Self Insurance  
Joint Insurance Funds for Local  
Governmental Units**

**Adopted Emergency Amendments and  
Concurrent Proposal: N.J.A.C. 11:15-2.15**

Emergency Amendment Adopted: December 19, 1984 by Kenneth D. Merin, Commissioner, Department of Insurance.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): December 24, 1984.

Emergency Amendment Filed: December 24, 1984 as R.1984 d.616.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and P.L. 1983, c.372 (N.J.S.A. 40A:10-36 et seq.).

Emergency Amendment Effective Date: December 24, 1984.

Emergency Amendment Expiration Date: February 22, 1985.

**Interested persons** may submit in writing, information or arguments concerning the concurrent proposal until February 20, 1985. Address comments and inquiries to:

Jasper J. Jackson, Director  
Legislative and Regulatory Affairs  
Department of Insurance  
CN 325  
Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 54:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

This proposal is known as PRN 1985-56.

**EMERGENCY ADOPTIONS**

**INSURANCE**

The agency emergency adoption and concurrent proposal follows:

**Summary**

On December 19, 1984, Kenneth D. Merin, Commissioner of the Department of Insurance, pursuant to the authority of N.J.S.A. 17:1-8.1, 18:1C-6(e) and P.L. 1983, c.372 (N.J.S.A. 40A:10-36 et seq.) and the applicable provisions of the Administrative Procedure Act, and upon certification by the Governor of New Jersey that an imminent peril exists (see N.J.S.A. 52:14B-4(c)), adopted an emergency amendment to N.J.A.C. 11:15-2.15 concerning the payment of assessments by joint insurance funds for local governmental units.

The purpose of this amendment is to allow members of the joint insurance fund greater flexibility in paying the annual assessments required by this section. The amendment is necessary because, after January 1, 1985, each local unit of government will be operating on a temporary budget equal to 25 percent of its previous year's operating budget. Because of such budgetary constraints, most local governmental units would be unable to satisfy the assessment provisions of the existing rule, which require that, during the first year of the fund's operation, these assessments shall be paid in full. Further, many municipalities are receiving notices of cancellation or nonrenewal of commercial insurance, and the establishment of joint insurance funds may represent a viable alternative for insurance coverage.

The proposal requires the payment of two equal installments, due January 15 and May 15, in the fund's first year of operation, except as may be otherwise permitted by the Commissioner. Subsequent years' assessments must be paid as prescribed in the fund's by-laws no later than August 1.

**Social Impact**

Emergency adoption of this regulation will enable municipalities to avail themselves of liability protection at a time

when commercial insurance cancellations, nonrenewals and escalating premium costs have created near crisis conditions in municipal insurance. Approximately 567 communities could be affected by these changes.

**Economic Impact**

The financial solvency of any fund will be maintained by this emergency adoption. The practical problems imposed by operating under a temporary budget equivalent to 25 percent of the prior year's total budget are addressed and resolved through this emergency adoption and concurrent proposal.

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

11:15-2.5 Assessments

(a) Each participating member of a joint insurance fund shall appropriate and pay to the fund its assessments as required by the joint insurance fund. During the first year of operation of a joint insurance fund these contributions shall be paid in [full] **two equal installments, the first installment payable no later than January 15 and the second installment payable no later than May 15 or in any other manner that the Commissioner in his discretion may direct.** Subsequent years' assessments may be paid in such installments as shall be provided in the fund's bylaws, **provided, however, that the full assessment shall be paid by each member no later than August 1.**

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

\_\_\_\_\_

# MISCELLANEOUS NOTICES

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF WATER RESOURCES

#### Amendment to Atlantic County Water Quality Management Plan

##### Public Notice

Take notice that the Galloway Township Council, Atlantic County, has submitted for approval an amendment to the Atlantic County Water Quality Management (WQM) Plan and the Galloway Township 201 Wastewater Facilities Plan. This amendment provides for the expansion of the Galloway Township sewerage treatment plant sewer service area to provide sewerage to the area of the Township bounded to the west by Garden State Parkway; to the north by Moss Mill Road; to the east by Pitney Road; and to the south by Great Creek Road. The delineation of this expanded sewer service area was based on existing zoning adjusted for environmentally constrained features. Sewer service may be further limited by the sewers' hydraulic capacity. This will be considered during the permit process. This amendment has been approved by the Atlantic County Department of Regional Planning and Development.

This notice is being given to inform the public that a plan amendment has been developed for the Atlantic County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Planning and Standards, 25 Arctic Parkway, CN-029, Trenton, N.J. 08628. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Planning and Standards, at the NJDEP address cited above. All comments must be submitted within thirty days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendments. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(b)

#### Amendment to Monmouth County Water Quality Management Plan

##### Public Notice

Take notice that on November 21, 1984 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" rules (N.J.A.C. 7:15-3.4), an amendment to the Monmouth County Water Quality Management Plan, for an expansion to the Township of Ocean Sewerage Authority sewerage treatment plant, was adopted by the Department.

(c)

#### Amendment to Ocean County Water Quality Management Plan

##### Public Notice

Take notice that the Lacey Township Municipal Utilities Authority (LTMUA), Ocean County, has submitted for approval an amendment to the Ocean County Water Quality Management (WQM) Plan and the Lacey Township 201 Wastewater Facilities Plan. This amendment provides for the expansion of the LTMUA sewer service area to provide sewerage to various areas in the Township. The delineation of this expanded sewer service area was based on existing zoning adjusted for environmentally constrained features. Sewer service may be further limited by the sewers' hydraulic capacity. This will be considered during the permit process. This amendment has been approved by the Ocean County Board of Chosen Freeholders.

This notice is being given to inform the public that a plan amendment has been developed for the Ocean County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the NJDEP, Division of Water Resources, Bureau of Planning and Standards, 25 Arctic Parkway, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Planning Standards, at the address cited above. All comments must be submitted within thirty days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This

**MISCELLANEOUS NOTICES**

request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

**HEALTH**

**(a)**

**Drug Utilization Review Council  
Interchangeable Drug Products**

**N.J.A.C. 8:71 Therapeutic Equivalency of  
Dipyridamole**

A public hearing will be held at 9:00 A.M. on February 8, 1985, at the Office of Administrative Law, 185 Washington Street, Newark, N.J. 07102, concerning issues surrounding the Determination of Therapeutic Equivalence for Dipyridamole.

Interested persons are invited to attend.

**TREASURY-GENERAL**

**(b)**

**DIVISION OF BUILDING AND  
CONSTRUCTION**

**Architect-Engineer Selection  
Notice of Assignments**

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
M594	New Road, Parking Lot & Site Work Phase I NJ Memorial Home at Menlo Park Edison, NJ	Bernard R. Berson & Assoc.	\$ 1,200. Services
H760	Installation of Lightning Protection System Stockton State College Pomona, NJ	John C. Morris & Assoc., Inc.	\$100,000.
H759	Removal/Installation of Canopies Various Buildings of Canopies Kean College Union, NJ	Thomas E. Torricelli, AIA	\$ 49,000.
C227-01	Emergency Study of High Temperature High Temperature Hot Water Line Correctional Institute for Women Clinton, NJ	Brownworth, Mosher & Doran	\$ 3,091. Services
M595	Replace Power House Roofing Glen Gardner Center for Geriatrics Glen Gardner, NJ	Matthew L. Ruc, AIA	\$ 43,000.

**TREASURY-GENERAL**

S167	Additional Parking Washington & Lawrenceville Water Line Installation Lawrenceville Entrance Road Repair-Freehold Motor Vehicle Inspection Stations	Van Cleef Engineering Assoc.	\$ 46,000.
M421	Additional Topographic Survey Forensic Facility Trenton Psychiatric Hospital Trenton, NJ	B2A Consultants	\$ 1,550. Services
C255	Topographical Survey Metal Storage Building Department of Corrections Whittlesey Road West Trenton, NJ	Nassau Surveying Company, Inc.	\$ 2,498. Services
S167	(Reassignment) Additional Parking-Washington & Lawrenceville; Water Line Installation-Lawrenceville; Entrance Road Repair-Freehold Motor Vehicle Inspection Stations	Van Cleef Engineering Assoc.	\$ 46,000.
C273	Utility Repairs Ocean Residential Group Center Forked River, NJ	John C. Morris Assoc., Inc.	\$150,000.
E144	Fire Suppression System Vocational High School Bldg. Marie Katzenbach School for the Deaf West Trenton, NJ	Wagner Assoc., Inc.	\$ 85,000.
E143	(Added to Original Project) Installation of Fire Door Various Buildings Marie Katzenbach School for the Deaf West Trenton, NJ	Eugene F. O'Connor, AIA	\$ 32,000.
S182	New Roofing & Roof Repairs Asbury Park, Toms River & Westfield Motor Vehicle Inspection Stations	Milstein, Yezzi, Sapp, PA	\$ 41,900.
H746	New Roof-Library Montclair State College Upper Montclair, NJ	Martin B. Dassa, AIA	\$110,000.
H761	Renovations to Fries Hall Jersey City State College Jersey City, New Jersey	Paulsen Associates	\$165,000.
H762	Restroom Renovations- Grossnickel Hall Jersey City State College Jersey City, NJ	L.J. Mineo, Jr., AIA	\$ 40,000.
T166	Masonry Pointing & Waterproofing DOT Annex Building	Richard M. Horowitz, AIA	\$ 20,000.
C270	Feasibility Study Conversion of McCray Bldg. Trenton Psychiatric Hospital Trenton, NJ	The Eggers Group	\$ 53,215. Services
S186	New Roof Division of Motor Vehicles Lodi Inspection Station Lodi, NJ	Vincent Paolicelli & Associates	\$125,000.
C268	Feasibility Study Additional Bedspaces Leesburg, NJ	CUH2A	\$ 62,200. Services
H757	New TV/Radio Studios Bozarth Campus School Glassboro State College Glassboro, NJ	Martin F. Blumberg, AIA	\$ 40,000.

**TREASURY-TAXATION**

**MISCELLANEOUS NOTICES**

A901	Ceiling, Lighting & HVAC Renovations-Lobby Areas Health & Agriculture Bldg. Trenton, NJ	Wagner Assoc., Inc.	\$ 41,800.
M607	Roof Replacement Womens' Occupational Therapy Building Greystone Psy. Hospital Greystone Park, NJ	L.J. Mineo, Jr., AIA	\$ 95,000.
A480	Replacement of Marble Column Facing Labor & Industry Bldg. Trenton, NJ	Franklyn B. Spiezle, AIA	\$220,000.
	Competitive Proposals		
		Franklyn B. Spiezle, AIA	9.00%
		Clark & Caton	9.50%
		Malloy & Duffe, AIA	10.90%
E142	Alterations-Regional Day Schools Bleshman-Paramus Millburn-Millburn Morris-Morristown Newark-Newark Piscataway-Piscataway Department of Education	Goldberg Assoc.	\$274,880.
	Competitive Proposals		
		Goldberg Associates, PA	8.85%
		Leslie M. Dennis & Son	12.50%
		Vincent E. Paoicelli & Associates	15.50%

**TREASURY-TAXATION**

**(a)**

**DIVISION OF TAXATION**

**Average Wholesale Price of Cigarettes  
Cigarette Surtax Rate**

**Public Notice**

For the purpose of complying with the requirements of Chapter 40, P.L. 1982, Sec. 4 (N.J.S.A. 54:40A-8.2), John R. Baldwin, Director of the Division of Taxation, hereby gives notice that, based upon the best available current data, the average wholesale price of cigarettes in this State during the succeeding six months commencing January 1, 1985 is \$0.4564 for each 10 cigarettes or fraction thereof.

Therefore, the cigarette surtax due for such six months, pursuant to Sec. 301 of P.L. 1948, c.65 (C. 54:40A-8), as amended, shall remain at \$0.03 for each 10 cigarettes or fraction thereof.

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

(The research supplement to the New Jersey Administrative Code)

The new Register Index of Rule Proposals and Adoptions combines the original Index of Proposed Rules and Index of Adopted Rules into a single listing published in every Register. In addition to simplifying research of State agency rulemaking, this important step refines the index in substance and form. *Rule adoptions promulgated in this issue already appear in the Index, and all adoptions in subsequent Registers will appear in the Index of the Register of promulgation.* Formerly, adoptions were not entered in the index listing until the month following adoption. This new feature will facilitate rule research by showing you at a glance all adopted rule changes in any rulemaking area since the most recent update to the Administrative Code.

Further improvements in the Index include the definition of key terms and abbreviations and the addition of an N.J.R. Citation Locator. The locator quickly leads you to the text of a proposal or adoption by converting an N.J.R. citation into the date of the Register in which the rule was published.

## HOW THE INDEX WORKS

The Register Index of Rule Proposals and Adoptions is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule changes proposed in this issue will be entered in the Index of the next Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes to a given rule, scan the citations above and below that rule to find any entries which might contain related rule adoptions, including the one you are researching.

**At the bottom of the index listing for each Administrative Code Title is the date of the latest update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the November 5, 1984 issue.**

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to timely adopt a proposed rule requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

### Terms and abbreviations:

*N.J.A.C. Citation.* The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

*Proposal Notice (N.J.R. Citation).* The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

*Document Number.* The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1984 d.300 means the three hundredth rule adopted in 1984.

*Adoption Notice (N.J.R. Citation).* The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

*Transmittal.* A number and date verifying the currency of rules found in each Title of the New Jersey Administrative Code: rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

## N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
16 N.J.R. 93 and 172	January 17, 1984	16 N.J.R. 1833 and 2026	July 16, 1984
16 N.J.R. 173 and 292	February 6, 1984	16 N.J.R. 2027 and 2184	August 6, 1984
16 N.J.R. 293 and 404	February 21, 1984	16 N.J.R. 2185 and 2318	August 20, 1984
16 N.J.R. 405 and 470	March 5, 1984	16 N.J.R. 2319 and 2390	September 4, 1984
16 N.J.R. 471 and 576	March 19, 1984	16 N.J.R. 2391 and 2474	September 17, 1984
16 N.J.R. 577 and 778	April 2, 1984	16 N.J.R. 2475 and 2708	October 1, 1984
16 N.J.R. 779 and 940	April 16, 1984	16 N.J.R. 2709 and 2864	October 15, 1984
16 N.J.R. 941 and 1130	May 7, 1984	16 N.J.R. 2865 and 3066	November 5, 1984
16 N.J.R. 1131 and 1294	May 21, 1984	16 N.J.R. 3067 and 3240	November 19, 1984
16 N.J.R. 1295 and 1406	June 4, 1984	16 N.J.R. 3241 and 3336	December 3, 1984
16 N.J.R. 1407 and 1634	June 18, 1984	16 N.J.R. 3337 and 3518	December 17, 1984
16 N.J.R. 1635 and 1832	July 2, 1984	17 N.J.R. 1 and 140	January 7, 1985
		17 N.J.R. 141 and 236	January 21, 1985

### N.J.A.C. CITATION

### PROPOSAL NOTICE (N.J.R. CITATION)

### DOCUMENT NUMBER

### ADOPTION NOTICE (N.J.R. CITATION)

#### ADMINISTRATIVE LAW—TITLE 1

1:1, 1:2	Readopt General Hearing and Summary Proceedings rules	17 N.J.R. 2(a)		
1:1-3.12	Non-lawyer representation in contested cases	16 N.J.R. 2710(a)	R.1984 d.587	16 N.J.R. 3426(a)
1:1-3.12	Correction to adoption			16 N.J.R. 3306(a)
1:2-2	Civil Service cases: readopt conference hearings	16 N.J.R. 3338(a)		
1:2-3	Motor Vehicle cases: readopt hearings on the papers	16 N.J.R. 2711(a)	R.1984 d.553	16 N.J.R. 3426(b)
1:2-3	Motor Vehicle cases: readopt hearings on the papers	16 N.J.R. 3339(a)		
1:10	Public welfare hearings	16 N.J.R. 3068(a)		
1:10-17.1	Division of Public Welfare cases	16 N.J.R. 945(a)		
1:11-1.1, 15.1	Insurance filing cases	16 N.J.R. 2866(a)		

(TRANSMITTAL 9, dated November 19, 1984)

#### AGRICULTURE—TITLE 2

2:24-1.1, 1.2	Bee diseases: acarine mite quarantine	Emergency	R.1984 d.592	17 N.J.R. 118(a)
2:32-2	Sire Stakes Program	17 N.J.R. 3(a)		
2:52-2.1, 3.1	Notice of intent to change milk supplier	16 N.J.R. 3071(a)		
2:52-6.1	Correction to adoption			16 N.J.R. 3306(b)
2:53-4.1	Notice of intent to change milk supplier	16 N.J.R. 3071(a)		
2:76-3.12	Farmland preservation: deed restrictions	16 N.J.R. 2867(a)	R.1984 d.596	17 N.J.R. 63(a)
2:76-4.11	Municipally-approved farmland preservation	16 N.J.R. 2869(a)	R.1984 d.597	17 N.J.R. 64(a)
2:76-6.15	Acquisition of development easements	16 N.J.R. 2871(a)	R.1984 d.595	17 N.J.R. 65(a)
2:90-3	Water conservation project cost sharing	17 N.J.R. 7(a)		

(TRANSMITTAL 26, dated November 19, 1984)

#### BANKING—TITLE 3

3:1-9.2-9.5	Home mortgage disclosure	16 N.J.R. 2872(a)		
3:6-7.1-7.8	Loss deferral accounting for mutual savings banks	16 N.J.R. 2712(a)	R.1984 d.577	16 N.J.R. 3427(a)
3:28-5.1-5.8	Loss deferral accounting for mutual savings and loan associations	16 N.J.R. 2713(a)	R.1984 d.576	16 N.J.R. 3428(a)

(TRANSMITTAL 24, dated September 17, 1984)

#### CIVIL SERVICE—TITLE 4

4:1-1.1-1.10	Purpose and application of rules	16 N.J.R. 1132(a)	R.1984 d.603	17 N.J.R. 66(a)
4:1-2.1	Words and phrases defined	16 N.J.R. 2187(a)	R.1984 d.604	17 N.J.R. 67(a)

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
4:1-9	Readopt Examination Scoring	16 N.J.R. 2873(a)		
4:1-12.15	Appointment of eligible certified	17 N.J.R. 10(a)		
4:1-14.6	Interim appointments and return to permanent titles	16 N.J.R. 1134(a)	R.1984 d.605	17 N.J.R. 69(a)
4:1-14.7	Emergency appointments	16 N.J.R. 2191(a)		
4:1-18.3	Compensation for holidays	16 N.J.R. 1421(a)		
4:1-20	Readopt Performance Evaluation and Employee Training	16 N.J.R. 2877(a)		
4:1-20.2	Certified Public Manager Program	16 N.J.R. 3072(a)		
4:2-9	Readopt Examination Scoring	16 N.J.R. 2873(a)		
4:2-14.1	Interim appointments and return to permanent titles	16 N.J.R. 1134(a)	R.1984 d.605	17 N.J.R. 69(a)
4:2-18.1, 18.2, 18.3	Compensation for holidays	16 N.J.R. 1421(a)		
4:2-20	Readopt Performance Evaluation and Employee Training	16 N.J.R. 2877(a)		
4:2-20.7	Certified Public Manager Program	16 N.J.R. 3072(a)		
4:3-9	Readopt Examination Scoring	16 N.J.R. 2873(a)		
4:3-14.2	Interim appointments and return to permanent titles	16 N.J.R. 1134(a)	R.1984 d.605	17 N.J.R. 69(a)
4:3-15.1	Repeal rule concerning transfer of county caseworkers	16 N.J.R. 3073(a)		
4:3-20	Readopt Performance Evaluation and Employee Training	16 N.J.R. 2877(a)		

**(TRANSMITTAL 21, dated October 15, 1984)**

**COMMUNITY AFFAIRS—TITLE 5**

5:12	Homelessness Prevention Program	Emergency	R.1984 d.570	16 N.J.R. 3497(a)
5:18, 18A, 18B	Uniform Fire Code; Fire Code Enforcement; High Level Alarms	16 N.J.R. 3339(b)		
5:22	Readopt tax exemption rules for improvements to residential dwellings	16 N.J.R. 2191(b)	R.1984 d.590	17 N.J.R. 71(a)
5:23-2.4, 2.6, 2.17A	UCC: rooming and boarding houses	16 N.J.R. 3073(b)		
5:23-3.8A	UCC: products in violation	16 N.J.R. 3074(a)		
5:23-5.4	UCC: trainee suspension, fire protection trainees	16 N.J.R. 3372(a)		
5:27-1.5	UCC: rooming and boarding houses	16 N.J.R. 3073(b)		
5:27-5.1	Fire safety in rooming and boarding houses	16 N.J.R. 3242(a)		
5:27-5.3	Fire safety in rooming and boarding houses	16 N.J.R. 299(a)		
5:31	Local Finance Board: local authorities	16 N.J.R. 1835(a)	R.1984 d.601	17 N.J.R. 72(a)
5:80-6	Housing and Mortgage Finance Agency projects: Tenant Selection Standards	16 N.J.R. 954(a)		
5:80-7	Housing and Mortgage Finance Agency: housing sponsor's role	16 N.J.R. 2178(a)		

**(TRANSMITTAL 24, dated November 19, 1984)**

**EDUCATION—TITLE 6**

6:11-4.3	Emergency certification	16 N.J.R. 3075(a)		
6:20-3.1	Tuition public schools: determining rates	Emergency	R.1984 d.589	17 N.J.R. 119(a)
6:20-5	Business services: readopt State Aid rules	16 N.J.R. 2392(a)	R.1984 d.546	16 N.J.R. 3429(a)
6:20-7	Business services: readopt Contracting Qualification and Debarment rules	16 N.J.R. 2394(a)	R.1984 d.545	16 N.J.R. 3430(a)
6:20-8	Readopt rules on Public School Contracts	16 N.J.R. 3372(b)		
6:26-3	Readopt rules on Elementary School Summer Sessions	16 N.J.R. 2715(a)		
6:27-3	Readopt rules on Secondary School Summer Sessions	16 N.J.R. 2717(a)		
6:29-7.1	Readopt Family Life Education Programs	16 N.J.R. 3377(a)		
6:30-2.5	Adult high school graduation requirements	16 N.J.R. 2719(a)	R.1984 d.614	17 N.J.R. 188(a)
6:31	Readopt Bilingual Education rules	16 N.J.R. 2721(a)		
6:70	Library network services	16 N.J.R. 3076(a)		

**(TRANSMITTAL 25, dated November 19, 1984)**

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
<b>ENVIRONMENTAL PROTECTION—TITLE 7</b>				
7:1C-1	90-day construction permits	16 N.J.R. 3243(a)		
7:7F-1, 3	Shore Protection Program; local government grants	16 N.J.R. 2881(a)		
7:9-4, 5	Surface water quality and treatment of wastewater discharges	16 N.J.R. 3080(a)		
7:10-14.7	Interim safe drinking water periodic testing requirements	16 N.J.R. 2396(a)	R.1984 d.582	16 N.J.R. 3431(a)
7:11-2.3, 2.5, 7:11-2.3, 2.5, 2.8-2.12	Delaware and Raritan Canal water supply system	17 N.J.R. 11(a)		
7:12	Shellfish-growing water classification	16 N.J.R. 3112(a)		
7:12-2.1, 2.2, 2, 3, 2.4	Correction: Shellfish-growing water classification	16 N.J.R. 3379(a)		
7:13-1.4, 4.7, 5.2, 5.4	Flood hazard area control	16 N.J.R. 2193(a)		
7:13-1.4, 4.7, 5.2, 5.4	Flood hazard area control: public hearing	16 N.J.R. 2476(a)		
7:13-1.11(c)27	Floodways along Pequest River in Sussex and Warren counties	16 N.J.R. 1306(a)		
7:13-1.11(d)49	Floodway delineations in Union County	16 N.J.R. 1146(a)		
7:13-1.11(d)51	Floodways along North Branch Raritan (Project U)	16 N.J.R. 1307(a)		
7:13-7.1(c)30	Floodway delineation along Paulins Kill	16 N.J.R. 2397(a)		
7:13-7.1	Paulins kill floodway delineation: public hearing	16 N.J.R. 2885(a)		
7:13-7.1(c)31	Project MR floodway delineations in Warren, Hunterdon, Sussex and Morris counties	16 N.J.R. 1863(a)	R.1984 d.542	16 N.J.R. 3307(a)
7:13-7.1(d)50	Floodway delineation along North Branch Foulerton's Brook	16 N.J.R. 2398(a)		
7:13-7.1(d)52	Supplemental Project I floodway delineations in the Passaic River Basin	16 N.J.R. 1865(b)		
7:14A-1.8	Fee schedule for NJPDES permits and applicants	17 N.J.R. 13(a)		
7:19-5	Small water company takeover	16 N.J.R. 3380(a)		
7:19-6	Water Supply Management Act Rules	16 N.J.R. 2399(a)		
7:19A	Emergency Water Supply Allocation Plan rules	16 N.J.R. 308(a)		
7:19B	Emergency Water Surcharge Schedule	16 N.J.R. 314(a)		
7:20	Dam Safety Standards	16 N.J.R. 790(a)		
7:25-2	Readopt rules on Use of Land and Water Areas under DEP control	16 N.J.R. 1309(a)		
7:25-4.19	Endangered and Nongame Species Advisory Committee	16 N.J.R. 2033(a)	R.1984 d.509	16 N.J.R. 3010(a)
7:25-6	1985-86 Fish Code	16 N.J.R. 2034(a)	R.1984 d.498	16 N.J.R. 3011(a)
7:25-7.10, 7.11	Taking of oysters and mussels	16 N.J.R. 3385(a)		
7:25-7.13	Crab dredging in Atlantic Coast section	Emergency	R.1984 d.537	16 N.J.R. 3216(a)
7:25-12.1	Preservation of sea clams	16 N.J.R. 2885(b)		
7:25-16.1	Readopt freshwater fishing license lines	16 N.J.R. 2044(a)		
7:25-18.4	Spearfishing in marine waters	16 N.J.R. 2478(a)	R.1984 d.609	17 N.J.R. 79(a)
7:25-22.2	Purse seine fishing of menhaden	16 N.J.R. 1668(a)		
7:26	Solid and hazardous waste collector-haulers: Disclosure Statement Forms	16 N.J.R. 1425(a)		
7:26-1.4, 2.6, 2.10, 2.13, 3.5	Disposal of asbestos waste	16 N.J.R. 440(a)		
7:26-10.7	Hazardous waste incinerators	16 N.J.R. 2046(a)	R.1984 d.581	16 N.J.R. 3432(a)
7:26-12.2	Hazardous waste rules: permit application	16 N.J.R. 2478(b)	R.1984 d.543	16 N.J.R. 3308(a)
7:26-14	Resource recovery grants and loons	16 N.J.R. 3385(b)		
7:26-16.3, 16.6, 16.13	Solid and hazardous waste industry licensing	16 N.J.R. 2480(a)	R.1984 d.541	16 N.J.R. 3310(a)
7:27	Air quality standards: State Implementation Plan for lead	16 N.J.R. 1669(a)		
7:27-8	Air pollution control: permits and Certificates	16 N.J.R. 1671(a)		

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7:27-13.1, 13.2, 13.5-13.8	Ambient air quality standards	16 N.J.R. 1676(a)		
7:27-14	Diesel-powered motor vehicles: air pollution control	16 N.J.R. 2887	R.1985 d.1	17 N.J.R. 188(b)
7:27-14.3	Diesel-powered motor vehicles: idle standard	16 N.J.R. 2887		
7:27-15	Gas-fueled motor vehicles: air pollution control	16 N.J.R. 2889	R.1985 d.2	17 N.J.R. 190(a)
7:27-15.6	Gas-fueled motor vehicle: idle standard	16 N.J.R. 2889		
7:27-18.1, 18.2, 18.3, 18.4, 18.7	Air pollution control: emission offset rules	16 N.J.R. 1679(a)		
7:27B-4	Air Test Method 4 for motor vehicles	16 N.J.R. 2894	R.1985 d.3	17 N.J.R. 194(a)
7:28-24	Readopt Nuclear Medicine Technology rules	17 N.J.R. 22(a)		
7:29-1.1-1.5	Noise control	16 N.J.R. 1682(a)		
7:29-1.1-1.5	Noise control: extension of comment period	16 N.J.R. 2405(a)		
7:36	Green Acres Program	16 N.J.R. 2405(b)		

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**HEALTH—TITLE 8**

8:20-1	Birth Defects Registry	16 N.J.R. 3118(a)		
8:21-2.40	Baby foods and ethylene dibromide level	16 N.J.R. 2897(a)		
8:21A	Good drug manufacturing practices	16 N.J.R. 3248(a)		
8:21A-2.55	Drug manufacturing: medical gas lot or control numbers	16 N.J.R. 1685(a)		
8:23-5	Animal control officer certification	16 N.J.R. 2725(a)	R.1984 d.575	16 N.J.R. 3432(a)
8:31-26.3, 26.4	Health care facilities: employee physicals; child abuse	16 N.J.R. 3249(a)		
8:31A	Readopt SHARE Guidelines	16 N.J.R. 2898(a)		
8:31A-7.3, 7.4	SHARE: 1985 Rate Review Guidelines	16 N.J.R. 2727(a)	R.1984 d.599	17 N.J.R. 80(a)
8:31B-2	1985 uniform bill-patient summary	16 N.J.R. 2728(a)	R.1984 d.610	17 N.J.R. 80(b)
8:31B-2, 3, 4	Hospital Rate Setting rules: temporary waiver of expiration	16 N.J.R. 2733(a)		
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	16 N.J.R. 2848(b)		
8:31B-3.23	Correction: Hospital reimbursement	16 N.J.R. 2733(b)		
8:31B-3.23, 3.24, 3.43, 3.75	Hospital rate setting; outpatient dialysis reimbursement hospital-based physician costs	16 N.J.R. 669(a)		
8:31B-3.45	Hospital rate setting	16 N.J.R. 2733(c)	R.1984 d.598	17 N.J.R. 83(a)
8:31B-5.2	Diagnosis Related Groups: outliers	16 N.J.R. 3119(a)		
8:33A-1.1	New and expanded surgical services: deferral of need applications	16 N.J.R. 2734(a)		
8:33E-2	Cardiac surgical centers	16 N.J.R. 3120(a)		
8:33E-2.1-2.5, 2.10, 2.12, 2.13	Cardiac surgical centers: need review	16 N.J.R. 2196(a)		
8:33F	Renal Disease Services: readopt Planning and Certification rules	16 N.J.R. 3124(a)		
8:39-2.1	All health care facilities: certificate of need approval letter	16 N.J.R. 3125(a)		
8:33I	Megavoltage oncology services: 1984 batching cycle deadline	_____	_____	16 N.J.R. 2310(b)
8:35	Repeal (see 8:43B-8)	16 N.J.R. 188(a)		
8:40-1.1	Licensure of invalid coach and ambulance services	16 N.J.R. 3127(a)		
8:42-1	Home health agencies: readopt licensure standards	16 N.J.R. 3250(a)		
8:42-1.2	Certificate of need approval letter	16 N.J.R. 3125(a)		
8:42A-2.1	Certificate of need approval letter	16 N.J.R. 3125(a)		
8:42B-2.1	Certificate of need approval letter	16 N.J.R. 3125(a)		
8:43-1.5	Certificate of need approval letter	16 N.J.R. 3125(a)		
8:43A	Licensure of ambulatory care facilities	16 N.J.R. 3254(a)		
8:43A-1.3	Certificate of need approval letter	16 N.J.R. 3125(a)		
8:43B-1	Licensure of hospital facilities	16 N.J.R. 3275(a)		

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8:43B-1.7	Certificate of need approval letter	16 N.J.R. 3125(a)		
8:43B-6	Hospital facilities: readopt Medical Staff rules	16 N.J.R. 3152(a)		
8:43B-8	Hospital licensure: obstetric and newborn services	16 N.J.R. 188(a)		
8:43F	Medical day care facilities: readopt licensure standards	16 N.J.R. 3277(a)		
8:43F-2.1	Certificate of need approval letter	16 N.J.R. 3125(a)		
8:59-1.3, 4.1, 5.1, 5.5, 6.1, 6.2, 6.3, 7.2, 7.5, 8.5	Worker and Community Right to Know Act	16 N.J.R. 2735(a)	R.1984 d.626	17 N.J.R. 196(a)
8:65-7	Prescription requirements for controlled dangerous substances	16 N.J.R. 2327(a)	R.1984 d.607	17 N.J.R. 83(b)
8:65-10.1, 10.2	Controlled dangerous substances: rescheduling of Sufentanil	16 N.J.R. 2900(a)		
8:65-10.4	Controlled dangerous substances: add Triazolam to Schedule IV	16 N.J.R. 2901(a)		
8:65-10.4	Controlled dangerous substances: additions to Schedule IV	16 N.J.R. 3390(a)		
8:65-10.8	Controlled dangerous substances: exempt chemicals	16 N.J.R. 3280(a)		
8:71	Additions to generic drug list (see 16 N.J.R. 1092(a), 1595(a), 1994(a)), 2673(a))	16 N.J.R. 202(a)	R.1984 d.613	17 N.J.R. 200(a)
8:71	Generic drug list additions (see 16 N.J.R. 2672(b))	16 N.J.R. 1436(a)	R.1984 d.612	17 N.J.R. 200(b)
8:71	Generic drug list additions	16 N.J.R. 2483(a)	R.1984 d.615	17 N.J.R. 201(a)

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**HIGHER EDUCATION—TITLE 9**

9:2-1, 2, 3, 8, 9	Repeal (See 9:6)	16 N.J.R. 2209(a)		
9:2-4, 5, 6, 7, 12, 13	Readopt Administrative Policies for colleges and universities	16 N.J.R. 2216(a)		
9:2-11	Recodify as 9:7-7	16 N.J.R. 2218(a)		
9:2-12.2	Teacher education: curriculum	17 N.J.R. 22(b)		
9:2-14	Monitoring of violence and hazing on campus	16 N.J.R. 1930(a)	R.1984 d.548	16 N.J.R. 3433(a)
9:6	State College: policies and standards	16 N.J.R. 2209(a)		
9:7-3.1	Tuition Aid Grant Award Tables	17 N.J.R. 23(a)		
9:7-4.2	Garden State Scholars: award amounts	16 N.J.R. 3281(a)		
9:7-5.1, 5.4, 5.10	Public Tuition Benefits Program	17 N.J.R. 24(a)		
9:7-7	Readopt Veteran's Tuition Credit Program	16 N.J.R. 2218(a)		
9:9-1.6	Student loan applications: prohibited fee	16 N.J.R. 3281(b)		
9:9-1.16	Defaulted student loans: interest liability	16 N.J.R. 1012(a)		
9:9-9.2	PLUS Program: direct loan prerequisites	16 N.J.R. 1012(b)		
9:11-1.7	Educational Opportunity Fund: undergraduate grants	16 N.J.R. 1932(a)	R.1984 d.549	16 N.J.R. 3434(a)
9:14	Readopt Independent College and University Assistance rules	17 N.J.R. 25(a)		

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**HUMAN SERVICES—TITLE 10**

10:44A-1.1-1.5, 2.2, 2.4, 3.1, 3.3, 4.3, 5.2, 9	Community residences for developmentally disabled: Supportive Living Programs	16 N.J.R. 1438(a)		
10:47	Private Licensed Facilities for Developmentally Disabled	16 N.J.R. 2902(a)		
10:49-1.1	Medicaid eligibility	16 N.J.R. 2219(a)		
10:49-1.7	Administration Manual: utilization of insurance benefits	16 N.J.R. 1933(a)		
10:49-1.27	Long-term care facilities: completion of field audit	16 N.J.R. 2413(a)		
10:51-1, App.B, C, D, E	Pharmaceutical Services: appendix changes	16 N.J.R. 2739(a)	R.1984 d.583	16 N.J.R. 3435(a)

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10:51-1.17	Pharmacy Manual: legend drug dispensing fee add-ons	16 N.J.R. 2738(a)	R.1984 d.574	16 N.J.R. 3436(a)
10:52-1.1, 1.20	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:52-1.2, 1.3	Covered and non-covered inpatient hospital services	16 N.J.R. 483(a)		
10:52-2	Hospital Services: readopt Admission and Billing Procedures	16 N.J.R. 3159(a)		
10:53-1.1, 1.16	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:53-1.2, 1.3	Covered and non-covered inpatient hospital services	16 N.J.R. 483(a)		
10:54-1.3	Progress notes for mental health providers	16 N.J.R. 2333(a)		
10:54-3	Preproposal: radioimmunoassay laboratory fees	16 N.J.R. 677(a)		
10:55-1	Prosthetic and orthotic services	17 N.J.R. 26(a)		
10:56-1.11	Dental Services: utilization of insurance benefits	16 N.J.R. 1933(a)		
10:59-1.2, 1.4, 1.9, 1.12	Medical Supplier Manual: recycling of durable medical equipment	16 N.J.R. 2048(a)		
10:60	Readopt Home Care Services Manual	17 N.J.R. 28(a)		
10:60-3	Community Care Waiver Program for Elderly and Disabled	16 N.J.R. 3161(a)		
10:61-1.2	Medicaid participation by State, county and municipal labs	16 N.J.R. 3162(a)		
10:63-1.6	Changes in level of long-term care	16 N.J.R. 2049(a)		
10:63-1.22	Long-term care facilities: completion of field audit	16 N.J.R. 2413(a)		
10:63-1.23	Long-term care: final audited rate calculation	16 N.J.R. 2335(a)	R.1984 d.572	16 N.J.R. 3436(b)
10:63-3	Long-term care: readopt Cost and Rate Guideline rules	16 N.J.R. 2484(a)	R.1984 d.573	16 N.J.R. 3437(a)
10:66-1.1, 1.2, 1.3, 1.6, 1.7, 1.9	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:66-1.9	Progress notes for mental health providers	16 N.J.R. 2333(a)		
10:67-1, 2.6	Readopt Psychologist's Services Manual	16 N.J.R. 3163(a)		
10:67-1.6	Progress notes for mental health providers	16 N.J.R. 2333(a)		
10:69A-6.9	PAAD: authorization to release prescription information	16 N.J.R. 2050(a)	R.1984 d.617	17 N.J.R. 201(b)
10:69A-7.1	Pharmaceutical assistance: recovery of benefits correctly made	16 N.J.R. 2051(a)	R.1984 d.571	16 N.J.R. 3439(a)
10:81-1.6, -3, 4.10, 7.30, 7.32, 8.22	PAM: Federally-required AFDC revisions	16 N.J.R. 2833(a)	R.1984 d.569	16 N.J.R. 3439(b)
10:81-3.9, 3.17, 3.40	PAM: support rights; continued absence	16 N.J.R. 3282(a)		
10:81-8.22	PAM: eligibility for medical assistance	16 N.J.R. 2740(a)	R.1984 d.618	17 N.J.R. 202(a)
10:82-1.2, 1.3, -2, -3, -4	ASH: Federally-required AFDC revisions	16 N.J.R. 2837(a)	R.1984 d.568	16 N.J.R. 3442(b)
10:82-2.19	ASH: recovery of overpayments	16 N.J.R. 2055(a)		
10:82-3.1-3.7	ASH: resource eligibility in AFDC	16 N.J.R. 486(a)		
10:85-3.1	GAM: household size	17 N.J.R. 37(a)		
10:85-3.2, 10.6	GAM: willingness to work and penalty period	16 N.J.R. 2741(a)		
10:85-3.3	GAM: monthly assistance payment for residential health care	16 N.J.R. 2742(a)		
10:85-3.3, 12	GAM: medical care eligibility; repeal income standards rules	16 N.J.R. 3165(a)		
10:85-5.3	GAM: outpatient facility services	16 N.J.R. 2488(a)	R.1984 d.593	17 N.J.R. 90(a)
10:85-7	GAM: readopt Notices and Hearings rules	16 N.J.R. 2221(a)	R.1984 d.578	16 N.J.R. 3447(a)
10:85-8	GAM: readopt Referral to Other Agency Programs	16 N.J.R. 3166(a)		
10:87-2.19, 3.17-3.20	Food Stamp Program: work registration and voluntary quit	Emergency	R.1985 d.4	17 N.J.R. 215(a)
10:87-12.1, 12.2	Food Stamps: income deductions; coupon allotments	16 N.J.R. 2844(a)	R.1984 d.567	16 N.J.R. 3450(a)
10:94-3.16	Medicaid district offices	17 N.J.R. 38(a)		

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10:94-5.4-5.7	Medicaid Only: eligibility computation amounts	16 N.J.R. 2845(a)	R.1984 d.566	16 N.J.R. 3451(a)
10:94-5.6	Medicaid Only: health insurance premiums	17 N.J.R. 39(a)		
10:99	Commodities and Services Council: Rehabilitation Facilities	16 N.J.R. 2338(a)		
10:100-App. A	Supplemental Security Income payment levels	16 N.J.R. 2846(a)	R.1984 d.565	16 N.J.R. 3453(a)
10:123-3.2	Residential health care: personal needs allowance	17 N.J.R. 39(b)		
10:128	Residential Child Care rules	16 N.J.R. 10(b)	Expired	

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**CORRECTIONS—TITLE 10A**

10A:31	Adult county correctional facilities	16 N.J.R. 3284(a)		
10A:32	County juvenile detention centers	17 N.J.R. 40(a)		
10A:71	State Parole Board rules	16 N.J.R. 3391(a)		

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**INSURANCE—TITLE 11**

11:1-2.5-2.8	Property-liability: rate counsel participation	16 N.J.R. 2918(a)		
11:1-10	Repeal rules on Licensing of Financial Institutions, Subsidiaries and Affiliates	16 N.J.R. 2919(a)		
11:1-15	Petitions for rulemaking	16 N.J.R. 2224(b)	R.1984 d.511	16 N.J.R. 3033(b)
11:1-16	Request for rate decrease	16 N.J.R. 3169(a)		
11:1-18	Approval of business names	17 N.J.R. 41(a)		
11:1-19	Uniform registration of branch offices	17 N.J.R. 42(a)		
11:2-1.1	Required courses for licensees in property and casualty field	16 N.J.R. 1940(a)	R.1984 d.515	16 N.J.R. 3034(a)
11:2-1.3	Required courses for licensees in life and health field	16 N.J.R. 1943(a)	R.1984 d.477	16 N.J.R. 3036(a)
11:2-10.1	Repeal Personal Lines Insurance rule	16 N.J.R. 2920(a)		
11:2-18, Exh. B	Readable policies: Affidavit of Compliance	16 N.J.R. 1945(a)	R.1984 d.514	16 N.J.R. 3037(a)
11:2-19	Approval of insurance schools and company training programs	16 N.J.R. 2920(b)		
11:2-20	License renewal: continuing education requirement	16 N.J.R. 2922(a)		
11:2-21	Property and casualty coverage: underwriting guidelines	16 N.J.R. 2924(a)		
11:2-23	Advertisement of life insurance and annuities	16 N.J.R. 2926(a)		
11:3-7	Automobile Reparation Reform Act rules: 90-day waiver of expiration	16 N.J.R. 2414(a)		
11:3-7	Automobile Reparation Reform Act rules	16 N.J.R. 3417(a)		
11:3-7	Readopt Automobile Reparation Reform Act rules	17 N.J.R. 43(a)		
11:3-7.8, 7.9	PIP premium on additional automobiles	16 N.J.R. 488(a)		
11:3-8	Nonrenewal of auto insurance policies	16 N.J.R. 2930(a)		
11:3-10	Auto physical damage claims	16 N.J.R. 3170(a)		
11:3-11.1	Moped insurance	16 N.J.R. 3285(a)		
11:3-14.3, 14.4, 14.5	Auto insurance: Personal Injury Protection (PIP) options	16 N.J.R. 1692(a)	R.1984 d.480	16 N.J.R. 3037(b)
11:3-15.6	Auto insurance: Buyer's Guide and Written Notice requirements for PIP deductibles	16 N.J.R. 1693(a)	R.1984 d.479	16 N.J.R. 3038(a)
11:3-16	Private passenger automobile rate filings	16 N.J.R. 2934(a)		
11:3-17	Automobile rate filings	16 N.J.R. 2936(a)		
11:3-18	Filing review procedures	16 N.J.R. 2937(a)		
11:3-21	Reduced PIP premium charges	16 N.J.R. 3286(a)		
11:4-6	Reserve standards for individual health insurance policies	16 N.J.R. 2225(a)	R.1984 d.512	16 N.J.R. 3039(a)
11:4-8	Charitable annuities	16 N.J.R. 3172(a)		
11:4-9	Annuity and deposit fund disclosure	16 N.J.R. 2939(a)		
11:4-16.8	Medicare Supplement Coverage: disclosure standards	16 N.J.R. 2944(a)		
11:4-22	Individual life insurance: Use of Gender Blended Mortality Tables	16 N.J.R. 1452(a)	R.1984 d.478	16 N.J.R. 3040(a)

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11:4-22	Correction: Gender Blended Mortality Tables	16 N.J.R. 1946(a)	R.1984 d.478	16 N.J.R. 3040(a)
11:4-23	Medicare Supplement Policies and Contracts	16 N.J.R. 2945(a)		
11:4-25	Social security disability offset	16 N.J.R. 3287(a)		
11:5-1.19	Real estate branch offices	16 N.J.R. 2228(a)		
11:5-1.24	Closing or transfer of real estate brokerage	16 N.J.R. 2228(b)		
11:5-1.32	Residential rental referral agencies	16 N.J.R. 2952(a)		
11:10-1	Dental plan organizations	16 N.J.R. 2230(a)		
11:10-2	Employees' dental benefit plans	17 N.J.R. 45(a)		
11:14-1.3, 2.1, 2.4, 3.1, 3.3, 4.1, 4.2	Auto body repair facilities	16 N.J.R. 2235(a)		
11:14-1.3	Correction: auto body repair facilities	16 N.J.R. 3453(b)		
11:15-2	Joint insurance funds for local government units	16 N.J.R. 1164(a)	R.1984 d.540	16 N.J.R. 3310(b)
11:15-2.15	Payment of joint fund assessments by local governments	Emergency	R.1984 d.616	17 N.J.R. 218(a)
11:16	Provider verification of services	17 N.J.R. 47(a)		
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<b>LABOR—TITLE 12</b>				
12:15-1.1	Unemployment Compensation: contributions, records and reports	16 N.J.R. 2488(b)		
12:16	Contributions, records, reports	16 N.J.R. 2488(b)		
12:19	Contributions, records, reports	16 N.J.R. 2488(b)		
12:90	Boilers, pressure vessels and refrigeration systems: safe operation	16 N.J.R. 1172(a)	R.1984 d.557	16 N.J.R. 3454(a)
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<b>COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A</b>				
12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1984 d.421	16 N.J.R. 2683(a)
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13:2-17	ABC: readopt rules on Appeals	16 N.J.R. 2954(a)	R.1984 d.608	17 N.J.R. 91(a)
13:2-19	ABC: readopt rules on Disciplinary Proceedings	16 N.J.R. 2957(a)	R.1984 d.606	17 N.J.R. 92(a)
13:2-23.16, -24, -35	ABC proposal: industry marketing and sales practices	16 N.J.R. 3292(a)		
13:2-31	ABC: readopt rules on Seizure Hearings	16 N.J.R. 2959(a)	R.1984 d.602	17 N.J.R. 92(b)
13:13	Discrimination against handicapped persons	16 N.J.R. 838(a)		
13:18-6.1	DMV: notification of liability coverage termination	16 N.J.R. 3174(a)		
13:19-10	Point System and Driving During Suspension: 25-day waiver of expiration of rules	16 N.J.R. 502(a)		
13:20-12	Motor Vehicles: readopt Accident Prevention Clinic rules	16 N.J.R. 2347(a)	R.1984 d.492	16 N.J.R. 3054(b)
13:20-28	New car inspection	16 N.J.R. 2500(a)	R.1984 d.622	17 N.J.R. 203(a)
13:20-32.14	Reinspection centers: mechanic certification	16 N.J.R. 3175(a)	R.1984 d.619	17 N.J.R. 204(a)
13:20-33.1, 33.50	Licensed reinspection centers	16 N.J.R. 3288(a)		
13:20-34	Motor vehicle registration identifying marks	16 N.J.R. 2743(a)		
13:20-37	Motor vehicles with modified chassis height	16 N.J.R. 2501(a)		
13:20-38	Maximum length for auto transporters	16 N.J.R. 3176(a)		
13:21-1.3, 1.4, 1.5	Driver's licenses and social security numbers	16 N.J.R. 2746(a)		
13:22	Motor vehicle race tracks	16 N.J.R. 2503(a)	R.1984 d.591	17 N.J.R. 93(a)
13:24-2	Motor Vehicles: readopt Emergency Vehicle Equipment rules	16 N.J.R. 2347(b)	R.1984 d.491	16 N.J.R. 3054(c)
13:25-3.15, 3.16, 3.17	Motorized bicycle operator license	17 N.J.R. 48(a)		
13:27-3.13	Certification of landscape architects: fee schedule	16 N.J.R. 3176(b)		
13:28-1	Readopt Beauty Culture Industry rules	17 N.J.R. 49(a)		
13:29-3	Accountancy: readopt rules of professional conduct	16 N.J.R. 3418(a)		

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13:33-1.38	Eyeglass standards and tolerances	16 N.J.R. 3288(b)		
13:33-4.1	Readopt Dispensing of Contact Lenses rule	16 N.J.R. 2513(a)		
13:35-2.4	Chiropractic licensure	16 N.J.R. 3177(a)		
13:35-2.13	Graduate physician pending licensure: privileges and conditions	16 N.J.R. 216(a)		
13:35-6.1	Medical practice identification	16 N.J.R. 3178(a)		
13:35-6.6	Requirement for issuing prescriptions	16 N.J.R. 2415(a)	R.1984 d.600	17 N.J.R. 102(a)
13:35-6.14	Therapeutic treatment by unlicensed Medical aides	16 N.J.R. 2065(a)		
13:35-7.1	Chiropractic practice: standards and scope	16 N.J.R. 686(a)	R.1984 d.533	16 N.J.R. 3208(a)
13:36-1.6	Mortuary Board fees and charges	17 N.J.R. 50(a)		
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13:40-9	Supervision of engineering and land surveying projects	16 N.J.R. 2067(b)		
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14A:20-1	Energy conservation planning and evaluation	16 N.J.R. 3293(a)		

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