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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS*, PAGE 3017.

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(Includes rules filed through November 25, 1985)

**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 **January 16, 1986**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

BANKING

DIVISION OF BANKING

The following proposals are authorized by Roger F. Wagner, Deputy Commissioner, Department of Banking.

Submit comments by January 16, 1986 to:
 Roger F. Wagner, Deputy Commissioner
 Department of Banking
 36 West State Street
 CN 040
 Trenton, NJ 08625

(a)

Savings Banks: Unsecured Days Funds Transactions

Proposed Readoption: N.J.A.C. 3:6-10.

Authority: N.J.S.A. 17:9A-182.1 and 182.2.

Proposal Number: PRN 1985-678.

The agency proposal follows.

Summary

N.J.A.C. 3:6-10 expires on December 31, 1985. In compliance with Executive Order No. 66(1978) these rules were reviewed by the Department of Banking and were found to

be necessary, adequate, reasonable, efficient, understandable, and responsive to the purposes for which they were originally promulgated. The Department of Banking proposes to re-adopt these rules without change.

These rules describe unsecured days fund transactions, which represent the sale of excess funds for a period longer than overnight or a weekend, and restrict such transactions to an insured bank, which is also defined. The rules also provide for a limitation on the total amount sold to any one insured bank which does not exceed 10 percent of the surplus of the savings bank as reported in the latest consolidated report of condition.

Social Impact

These rules are directed at State savings banks and provide these banks with the same authority that federally chartered savings and loan associations have. Through these rules State savings banks are placed on a substantial competitive parity with federal savings and loan associations with regard to the short-term sale of excess funds.

Economic Impact

State savings banks have gained an economic benefit by being able to more efficiently utilize excess funds through short-term investments when financially advantageous to do so. Such procedures reduce costs to bank customers. Cost to the Department is minimal, since monitoring of these investments are part of the agency's on-going bank examination procedure.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:6-10.

NEW JERSEY REGISTER

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(a)**Short-Term Investments for Trust Cash****Proposed Readoption: N.J.A.C. 3:6-11.**

Authority: N.J.S.A. 17:9A-43.

Proposal Number: PRN 1985-677.

The agency proposal follows:

Summary

N.J.A.C. 3:6-11 expires on December 31, 1985. In compliance with Executive Order No. 66(1978) these rules were reviewed by the Department of Banking and were found to be necessary, adequate, reasonable, efficient, understandable, and responsive to the purposes for which they were originally promulgated. The Department of Banking proposes to re-adopt these rules without change.

Under the power authorized by N.J.S.A. 17:9A-43, the Commissioner has provided for the short-term investment of fiduciary accounts utilizing the cost method in determining the value of property and investments of the common trust fund. The rules provide for limitations on investments; the valuation of principal; asset holding; and the composition of the assets of the fund.

Social Impact

These rules permit State banks to invest cash held in fiduciary accounts in a common trust fund on a short-term basis, utilizing the cost method of valuation, and thus place them on a competitive parity with national associations. The cost method of valuation is less burdensome than the market valuation method, which is required for longer-term investments.

Economic Impact

State banks and trust customers will gain a positive economic benefit through additional earnings capacity brought about by more efficient cash management of common trust funds. Cost to the Department is minimal, since review of these investments are part of the agency's usual examination procedure.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:6-11.

CIVIL SERVICE**(b)****CIVIL SERVICE COMMISSION****Noncompetitive and Labor Appointments
Allocation and Reallocation of Titles
Appointments and Promotions****Proposed Amendments: N.J.A.C. 4:1-10.1 and
10.2**

Authorized By: Civil Service Commission, Peter J.

Calderone, Assistant Commissioner, Department of Civil Service.

Authority: N.J.S.A. 11:1-7a, 11:5-1a, 11:5-1b, 11:7-1, 11:7-2, 11:7-11, 11:22-4, 11:22-45, 11:22-48.

Proposal Number: PRN 1985-675.

A public hearing will be held on January 8, 1986 at 9:15 A.M. in the Civil Service Commission Room, 215 East State Street, Trenton, New Jersey. Please contact Ms. Dolores Carvill at 609-292-6568 if you plan to attend and to be included on the list of speakers.

Submit comments by January 16, 1986 to:

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

The agency proposal follows:

Summary

N.J.A.C. 4:1-10.1 establishes the criteria for the Civil Service Commission to allocate titles between the competitive and noncompetitive divisions. The proposed amendment will clarify the definition of practicability of testing, one of the factors considered by the Commission in determining such allocation. N.J.A.C. 4:1-10.2 provides the rules for appointments and promotions in the noncompetitive and labor divisions. The amendment to N.J.A.C. 4:1-10.2(e) provides that an employee may be promoted from the labor or noncompetitive division to a related above entry level title in exceptional circumstances. This amendment will allow promotions to occur in situations where it is inappropriate for an employee to move to an entry level title.

Social Impact

The proposed amendments are beneficial to Civil Service employees in the noncompetitive and labor divisions. The proposed amendment to N.J.A.C. 4:1-10.2(a) will clarify an existing rule concerning the factors used by the Commission to allocate titles. N.J.A.C. 4:1-10.2(e) will allow employees in higher level titles in the noncompetitive or labor divisions to move to related above entry level positions in the competitive division when they have acquired the experience and prerequisites. Such a procedure is equitable.

Economic Impact

Proposed N.J.A.C. 4:1-10.1(a) will have no economic impact since it merely clarifies existing rule. The economic impact of N.J.A.C. 4:1-10.2(e) should be negligible since the mechanisms for such promotions should not be substantially different than present mechanisms for promotions.

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

SUBCHAPTER 10. NONCOMPETITIVE AND LABOR APPOINTMENTS

4:1-10.1 Allocation and reallocation of titles

(a) The Civil Service Commission may allocate or reallocate titles between the competitive and noncompetitive divisions. The following factors shall be considered in determining such allocations:

1. Salary;
2. Geographic location;
3. Working conditions;
4. Nature of the work;
5. Availability of candidates; and
6. Practicability of testing **due to job duties or special circumstances.**

(b) Unskilled labor jobs shall be in the labor division.

(c) The appointing authority shall be advised of any contemplated reallocation before it goes into effect and shall be given 20 days to state objections.

4:1-10.2 Appointments and promotions

(a) The President of the Civil Service Commission may authorize an appointing authority to appoint a qualified applicant to a title in the labor or noncompetitive division without examination.

(b) The President of the Civil Service Commission may order that a noncompetitive examination be held to determine the qualification of applicants for noncompetitive and labor division titles. Such examinations may be held after due notice. Public advertising shall not be required.

(c) Eligible lists shall not be ranked and any eligible may be appointed. Formal certification shall not be necessary.

(d) The duration, extension and termination of non-competitive and labor eligible lists shall be governed by the same rules as those applying to open competitive examinations.

(e) At the discretion of the President of the Civil Service Commission, an employee may be promoted from the labor or noncompetitive division to a related entry level title **or in exceptional circumstances a related above entry level title** in the competitive division through normal promotional examination procedures provided that he or she meets the open competitive requirements.

(f) A probationary employee who has permanent status in the noncompetitive or labor divisions and is appointed to a new title at the same salary range or is promoted, shall continue to accrue seniority in his or her permanent title until attaining permanent status in the new title.

COMMUNITY AFFAIRS

DIVISION OF HOUSING AND DEVELOPMENT

The following proposals are authorized by John P. Renna, Commissioner, Department of Community Affairs.

Submit comments by January 16, 1986 to:

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

(a)

**Relocation Assistance
 Uniform Fire Code Enforcement**

Proposed Amendment: N.J.A.C. 5:11-2.1.

Authority: N.J.A.C. 20:4-10 and 52:31B-10.
 Proposal Number: PRN 1985-664.

The agency proposal follows:

Summary

No relocation benefits shall be due to persons displaced when an imminent hazard to life safety necessitates the issuance of a vacate order pursuant to the Uniform Fire Safety Act. Such a provision now exists with regard to vacate orders under the State Uniform Construction Code Act. People should not have to be paid when a vacate order is issued for the purpose of safeguarding their lives and enforcing agencies should not be constrained by relocation assistance considerations from issuing vacate orders when such orders are necessary to protect human life in the face of an imminent hazard.

A reference to zoning that was inadvertently retained when other reference to zoning enforcement was deleted is now deleted.

Social Impact

Enforcing agencies will be in a position to better protect public safety through use of the power to vacate buildings that constitute imminent hazards.

Economic Impact

Enforcing agencies, and the governmental units which they serve, will have reduced exposure to relocation assistance claims. There will be a negative economic impact on persons who might otherwise have been able to collect relocation benefits.

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

5:11-2.1 Building, housing and health code enforcement

- (a) (No change.)
- (b) Whenever the displacement occurs because of an order to vacate issued by a State agency or unit of local government

as a direct result of a natural disaster, an imminent hazard to life safety necessitating the issuance of a vacate order pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) or the Uniform Fire Safety Act (N.J.S.A. 52:27D-192 et seq.) or fire, there shall, except as may otherwise be expressly provided by statute, be no relocation benefits due the displacees; provided, however, that a municipality may provide such benefits to fire victims but shall receive no reimbursement through any State grant-in-aid, except as may otherwise be expressly provided by statute, for the cost of doing so.

(c) An [owner/occupant] **owner-occupant** who is displaced by health, building[,] or housing [or zoning] code enforcement shall be entitled to the benefits applicable to tenants only.

(a)

Homelessness Prevention Program Eligibility and Priorities

Proposed Amendments: N.J.A.C. 5:12-2.4 and 2.5

Authority: N.J.S.A. 52:27C-24 and 52:27D-280.
 Proposal Number: PRN 1985-672.

The agency proposal follows:

Summary

The Homelessness Prevention Program is intended to provide assistance to persons who are homeless or face imminent loss of their homes by eviction or foreclosure because they are without adequate funds for reasons beyond their control. The Program and these rules are intended to assist homeless persons through a difficult period.

The proposed amendments are therefore intended to maximize the Program's ability to distribute funds to as many homeless persons as possible. To this end, eligibility for program assistance is limited to one time per household. Priorities for assistance are also being reordered and redefined in light of the experience of the Department in administering the program for nearly a year.

Social Impact

The proposed amendments are intended to spread out the availability of program funds to a greater number of eligibles. As a result of the amendments program aid will be distributed more equitably and priorities will better reflect actual need.

Economic Impact

Some applicants will benefit if aid is more readily available to them while some will be negatively affected if aid is less available to them as a result of their category being assigned a lower priority or if they cannot receive aid because they already received it once.

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

5:12-2.4 Period of assistance

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

(c) **No household shall be eligible for assistance under the Homelessness Prevention Program more than once.**

5:12-2.5 Priorities

(a) Priorities for assistance among otherwise qualified applicants in the same applicant pool shall be assigned in the following order:

1. Households with a person who is disabled or **handicapped**.
2. **Households with a person who is over [65] 62 years of age;**
 [2. Families in imminent danger of separation due to lack of adequate living accommodations;
3. Single parent households.
4. Individuals who are disabled or over 65;
5. Other households with children;
6. Other households or individuals.]
3. **Households victimized by domestic violence (A referral from the Division of Youth and Family Services, emergency shelter agency, county welfare agency, or other social agency will be required.);**
4. **Households with children which have broken up or face imminent breakup due to homelessness (A recommendation from the Division of Youth and Family Services, emergency shelter agency, county welfare agency or other social agency will be required.);**
5. Single parent households;
6. Other households with children;
7. All other households.

EDUCATION

STATE BOARD OF EDUCATION

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

Submit comments by January 16, 1986 to:

Joseph A. Vuono
 Director, Strategic Planning
 Department of Education
 225 West State Street
 Trenton, New Jersey 08625

(b)

Bookkeeping and Accounting in Local School Districts

Overexpenditure of Funds

Proposed New Rule: N.J.A.C. 6:20-2.13

Authority: N.J.S.A. 18A:4-14 and 18A:4-15.
 Proposal Number: PRN 1985-665.

The agency proposal follows:

Summary

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-14 and 18A:4-15, proposes a new rule pertaining to the Overexpenditure of Funds, N.J.A.C. 6:20-2.13. This new rule is being proposed to prohibit the expenditure of funds without appropriations and to establish the steps which must be taken when a potential deficit is anticipated by a district board of education.

District boards of education are not currently prohibited by statute from overexpending funds. When the criminal statute was amended, the penalty for overexpending budgets was deleted. Sound fiscal policy requires that district boards of education not be permitted to end the year with a deficit. The proposed new rule does not allow district boards of education to overexpend funds and create deficits. The proposal establishes the steps which must be taken to avoid deficits. The proposed new rule also provides for a penalty in the event that a deficit does occur.

Social Impact

Adoption of this proposed new rule will impact all district boards of education in this State because it requires that district boards of education appropriate funds before expenditures are incurred. District boards of education will no longer be permitted to transfer funds after expenditures have been made.

This proposal is intended to eliminate the impact on educational programs and services which occurs when a district board of education is forced to resolve a deficit problem, after the fact. The proposed new rule establishes the steps which must be taken to avoid deficits before the deficits occur.

In addition, the proposed new rule may disqualify a district board of education for certification under the state's monitoring procedure if an acceptable remedial plan is not in place to resolve a potential deficit and provides for a state aid penalty when a deficit actually occurs.

Economic Impact

While most school districts do not overexpend their budgets, a few school districts do overexpend their budgets and create a deficit. This proposal is intended to eliminate deficits by requiring district boards of education to appropriate funds before obligations are incurred and before payments are made as a matter of sound fiscal practice.

The proposed new rule would have a positive fiscal impact on district boards of education because it provides for a more sound economic footing for the district's fiscal activities. There would be no additional cost to district boards of education as a result of the adoption of this rule.

From an economic standpoint, the real impact of this new rule is the budgetary confusion and fiscal chaos which can result when deficits are allowed to occur. The rule is intended to avoid deficits and to provide a means for the Department of Education to become involved early to assist district boards of education with a potential deficit.

Experience has shown that once a deficit has occurred, it is extremely difficult to resolve the problem without having an adverse impact on programs, students or tax rates.

Taxpayers will benefit from this proposal because it helps to insure that only available funds are expended.

Full text of the proposed new rule follows:

6:10-20-2.13 Overexpenditure of funds

(a) A district board of education shall not incur any obligation or approve any payment in excess of the amount appropriated by the district board of education in the applicable line item pursuant to N.J.S.A. 18A:22-8 and 18A:22-8.1.

(b) Whenever a district board of education anticipates an overexpenditure of any major account designated in N.J.A.C. 6:20-2.2(b),

1. The district board of education shall direct the chief school administrator to immediately notify the county superintendent of schools, of the following:

- i. The projected amount of the overexpenditure;
- ii. The reason or reasons for the projected overexpenditure; and
- iii. The action being taken by the district board of education to avoid the projected overexpenditure.

2. The county superintendent shall immediately notify the commissioner, in writing, if the projected amount of the overexpenditure exceeds five percent of the district's current expense budget or \$100,000, whichever is lower.

3. The county superintendent shall immediately investigate to determine if the corrective action being taken by the district board of education is sufficient to avoid an overexpenditure. If necessary, the county superintendent shall assist the district board of education in determining what further corrective action can be taken, or request assistance from the Division of Finance.

The county superintendent shall immediately notify the commissioner in writing should it appear that an overexpenditure may occur and the district board of education is not taking adequate action to avoid an overexpenditure.

(c) A district board of education secretary shall report to the district board of education, at each regular meeting, the amounts appropriated, expended and transferred into or out of an item of appropriation, for each item of appropriation shown on the budget form prepared in accordance with N.J.S.A. 18A:22-8. This report shall be in addition to the report required by N.J.S.A. 18A:17-9.

(d) By August 15, the county superintendent shall report to the commissioner all overexpenditures as shown on the June report of the district board of education secretary filed pursuant to N.J.S.A. 18A:17-10.

(e) Should a district board of education fail to develop an acceptable remedial plan to eliminate the projected overexpenditure, the district may be disqualified for certification under the state's monitoring procedure. In those cases where the commissioner determines that the failure to develop an acceptable remedial plan to eliminate the projected overexpenditure impacts the district's ability to meet its goals and objectives, the commissioner shall recommend to the State Board of Education that the district's certification be rescinded.

(f) In the year following the year in which a deficit occurs, the net current expense budget and the maximum support budget of a district board of education shall be reduced by an amount equal to the deficit in any major account when calculating state aid entitlements for the second year following the year in which the deficit occurred.

(a)

Vocational and Technical Education Schools Designated As Other Than Full-Time Day Schools

Proposed New Rule: N.J.A.C. 6:43-1.3

Authority: N.J.S.A. 18A:4-15, 18A:54-9 and 18A:54-32.
Proposal Number: PRN 1985-666.

The agency proposal follows:

Summary

Schools established by district boards of education which are other than full-time day schools are eligible for state aid

under N.J.S.A. 18A:54-9 and 18A:54-32. Currently, neither statute nor code provide a definition of "other than full-time day schools." This has resulted in various interpretations at the local level which the State Board seeks to clarify through a definition. The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15, has proposed new rules pertaining to Schools Designated As Other Than Full-time Day Schools, N.J.A.C. 6:43-1.3, which will define "other than full-time day schools" to determine a school's eligibility for this state entitlement to ensure the equitable distribution of the monies appropriated.

In order to be eligible for this entitlement, a school must meet the criteria required by the proposed new rules. Some of the criteria are already required in other parts of the administrative code (N.J.A.C. 6:8-3.2, 6:8-4.3, and 6:8-4.8), but are incorporated herein to establish a complete definition of "other than full-time day schools."

Social Impact

The laws under N.J.S.A. 18A:54-9 and 18A:54-32 were enacted to provide state aid to financially help district boards of education establish and maintain schools that serve a population not served by full-time day schools.

These schools provide training, retraining or related instruction for shared-time students and adults to enable the individuals to adequately prepare for gainful employment as semi-skilled workers, technicians, or para-professionals, excluding any program leading to a baccalaureate or advanced degree.

The laws under N.J.S.A. 18A:54-9 and 18A:54-32 currently serve 112 district boards of education. The proposed new rules under N.J.A.C. 6:43-1.3 would allow a more equitable distribution of the monies.

Economic Impact

The proposed new rules will establish a standardization of the distribution of monies provided under N.J.S.A. 18A:54-9 and 18A:54-32 by creating the basis upon which an equitable distribution of these funds may be made by ensuring that only schools qualifying as "other than full-time day schools" receive funds. In previous years, district boards of education have interpreted the statutes differently in the absence of a definition.

The method for calculating new procedures for state aid for eligible schools remains the same as the method used over the past 10 years. However, the total amounts of money awarded will differ among participating districts due to the establishments of a definition for "other than full-time day schools."

Each participating district board of education will be guided by these proposed new rules when applying for monies. The new rules will aid the Division of Vocational Education, Department of Education in establishing the allocations to be distributed to each school.

No additional State funds will be required to meet the provisions of the proposed new rules.

Full text of the proposed new rule follows:

6:43-1.3 Schools designated as other than full-time day schools

(a) Schools designated as "other than full-time day schools" are defined as an entity which must meet the following criteria:

1. The school must be designated by the district board of education as an entity separate and distinct from any and all other schools within the district.

2. The school must have a curriculum approved by the district board of education and the county superintendent of schools for each program offered. Each program must have as its objective the preparation of shared-time secondary students or adults for gainful employment.

3. The school must maintain a separate register. The school may use either the Department of Education's New Jersey School Register or the New Jersey Adult High School Register format.

4. The building(s) must be approved by the New Jersey Department of Education, Bureau of Facility Planning Services. When the district board of education has designated a facility other than a school building approvable by the New Jersey Department of Education, Bureau of Facility Planning, the County Superintendent of Schools must approve the off-site facility for training.

5. Each school must have the services of a certificated supervisor or administrator who must be present while the school is in session.

(b) When an "other than full-time day school" meets the definition in (a) above it will be eligible for State aid pursuant to N.J.S.A. 18A:54-9 and 18A:54-32 provided that:

1. The program(s) provide for the preparation of individuals for gainful employment requiring other than a baccalaureate or advanced degree.

2. Buildings approved as either full-time or shared-time day schools are not subdivided within the same time frame for funding purposes.

3. The laboratory portion of an existing instructional program housed apart from the basic program is not designated as a separate school.

ENVIRONMENTAL PROTECTION

DIVISION OF WASTE MANAGEMENT

(a)

Hazardous Waste Management

Proposed Amendments: N.J.A.C. 7:26-8.1, 8.2, 9.3, 9.7, 12.2

Proposed New Rule: N.J.A.C. 7:26-8.19

Authorized By: Robert E. Hughey, Commissioner,
Department of Environmental Protection.
Authority: N.J.S.A. 13:1E-6, 13:1D-9 and 58:10A-4.
DEP Docket No. 064-85-11.
Proposal Number: PRN 1985-679.

Submit comments by January 16, 1986 to:
Ann Zeloof
Office of Regulatory Services
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection ("NJDEP") is proposing amendments for incorporation in the New Jersey Hazardous Waste Regulations, N.J.A.C. 7:26

("Regulations"). These proposed amendments are primarily the result of a Petition for Rule Making filed pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6 with the Department on April 29, 1982 by the Chemical Industry Council of New Jersey, ("CIC").

After receiving the CIC Petition, a NJDEP Task Force comprised of representatives from industry and government was created to evaluate the need for any changes to the Regulations. The proposed amendments represent the results of this process, including only those amendments deemed acceptable by NJDEP.

Copies of the CIC Petition and the report of the NJDEP Task Force may be obtained by contacting:

Dave Potts, Principal Planner
Bureau of Hazardous Waste Planning and
Classification
New Jersey Department of Environmental
Protection
Division of Waste Management
32 E. Hanover Street
CN 028
Trenton, N.J. 08625

The Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. hazardous waste regulations ("Federal Regulations") and the NJDEP Regulations are similar, but not identical. While New Jersey's Regulations cannot be less stringent than the Federal Regulations, NJDEP is permitted to be more stringent. The CIC requested that the Department consider amending certain sections of the Regulations to be identical to the less stringent Federal Regulations.

This proposal includes five of the originally petitioned rule changes and one other, at N.J.A.C. 7:26-12.(j) and (k), developed after internal Departmental discussions.

A brief summary of the changes to the Regulations contained within this proposal follows:

1. The exemption of certain mixtures of solid wastes from the presumption of hazardousness at N.J.A.C. 7:26-8.1(a)2iii. See also the November 17, 1981 Federal Register at 46 FR 56582.

2. The conditional exclusion of samples collected for the sole purpose of determining their characteristics or compositions from the definition of hazardous waste at N.J.A.C. 7:26-8.2(a)12. See also the September 25, 1981 Federal Register at 46 FR 47426.

3. The listing of references for analytical techniques for use by the regulated community in compliance with the Regulations at N.J.A.C. 7:26-8.19 (a), (b). See also the July 7, 1981 Federal Register at 46 FR 35247.

4. The provision of a potential 30 day emergency extension to the 90 day storage limit requirement at N.J.A.C. 7:26-9.3(b). See also the January 11, 1982 Federal Register at 47 FR 1248.

5. The correction of typographical errors in the contingency plan language at N.J.A.C. 7:26-9.7(d). See also the May 20, 1981 Federal Register at 46 FR 27976.

6. The regulatory authorization for signing of permit applications by responsible corporate officials at N.J.A.C. 7:26.12.2(j). See also the September 1, 1983 Federal Register at 48 FR 39611.

All of the above proposed rule changes have been adopted by the United States Environmental Protection Agency as part of the Federal Regulations. The NJDEP Task force determined that the Federal Regulations in these cases are adequate to protect human health and the environment and that more stringent State regulations were not necessary in the

areas described above. The NJDEP concurs in those determinations.

In response to CIC Petition Item 5, the on-site recycling exemption was separately adopted at N.J.A.C. 7:26-9.1(c) and 12.1(b) in the January 17, 1984 New Jersey Register at 16 N.J.R. 132(a). CIC Petition Items 3 and 25B, (concerning tank storage for 90 days without a storage facility permit), which would broaden the scope of the 90 day waste accumulation period to include storage in tanks, have been proposed separately for inclusion at N.J.A.C. 7:26-1.4, in the June 17, 1985 New Jersey Register at 17 N.J.R. 150(a).

Other CIC Petition items were also suggested for adoption by the NJDEP Task Force. Currently, the Department continues to develop regulatory proposals for the following areas covered by the CIC Petition:

CIC Petition Item 5, concerning NJDEP's definition of solid waste at N.J.A.C. 7:26-1.6 will be addressed in the State's new definition of solid waste, which will be proposed in response to the Federal rules that were published in the Federal Register on January 4, 1985 at 50 FR 614;

CIC Petition Item 11, concerning provisions to allow transporters to hold wastes at a transport facility for 10 storage days found in the June 29, 1981 Federal Register at 46 CFR 335507; and

CIC Petition Item 29, concerning the deferral of the effective date of financial requirements applicable to owners and operators of hazardous waste treatment storage and disposal facilities relating to self assurance located in the October 1, 1981 Federal Register at 46 CFR 48197.

A narrative section of the CIC Petition followed the numbered items mentioned above. The Department is considering some of CIC's suggestions from the narrative section of the CIC Petition concerning the definitions of solid and hazardous waste, and new amendments regarding recycling are currently under development. CIC's concerns about infectious waste have been addressed by the Department of Health in Section 306 of the Manual of Standards for Hospital Facilities. Copies of this Manual of Standards for Hospital Facilities may be obtained by writing to the following address:

Fred Hebel, Director
Department of Health Facilities Evaluations
New Jersey Department of Health
CN 367
Trenton, N.J. 08625

CIC Petition Item 16 regarding Federal Regulations in the November 6, 1981 Federal Register at 45 CFR 5112 concerning waste pile containment system requirements was rejected by the Task Force, and the Department continues the policy of prohibiting waste piles at N.J.A.C. 9.2(b)4.

The NJDEP Task Force report sets forth in detail the reasons for the Department's denial of the remaining items in the CIC petition.

Social Impact

The social impact of the proposed amendments would be favorable, although minimal. For example, the proposed change at N.J.A.C. 7:26-8.1(a)2iii shifts the disposal requirement of certain "de minimis" waste mixtures from regulation under the Federal Regulations to the Federal Clean Water Act, 33 U.S.C. 1251 et al, (and consequently the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.). This regulatory revision should provide a more effective means of managing these particular waste mixtures. The proposed 30 day storage extension amendment at N.J.A.C. 7:26-9.3(b) provides a means for generators to be granted temporary

storage extensions by the Department on a case-by-case basis and will facilitate industry compliance with the requirements of the Regulations in the event of unforeseen circumstances. The Department anticipates that this provision will also result in a positive social impact. The conditional exclusions of samples from the definition of hazardous waste at N.J.A.C. 7:26-8.2(a)12 will reduce paperwork on the part of the chemical industry. The listing of references for analytical techniques at N.J.A.C. 7:26-8.19 will greatly assist members of the regulated community by making this important information more easily available. The correction of a typographical error at N.J.A.C. 7:26-9.7(d) regarding the contingency plan will aid the industry's compliance with this provision. The signing of permit applications by a responsible corporate official at N.J.A.C. 7:26-12.2(j) and (k) will facilitate the submission of documents to NJDEP.

Economic Impact

The economic impact of the proposed amendments would be decidedly favorable. The wastes exempted from the presumption of hazardousness at N.J.A.C. 7:26-8.1(a)2iii can be more economically handled if regulated through the Clean Water Act (and the New Jersey Water Pollution Control Act), as opposed to the Federal Regulations. The segregation of the small quantities of hazardous waste needed in order to comply with the existing Regulations cannot be easily or inexpensively accomplished. The exclusion for samples under N.J.A.C. 7:26-8.2 would serve to reduce the overall costs and economic impact of the Regulations. The proposed 30 day extension to the 90 day storage requirement would provide a method for generators to store wastes at their own site in the event of an unforeseen emergency, including but not limited to refusal of a disposal facility to accept a waste shipment, transportation delays, or labor strikes. The proposed change at N.J.A.C. 7:26-12.2(j) would facilitate the permit application process by allowing additional responsible corporate officials to sign application submittals. The two remaining proposed amendments at N.J.A.C. 7:26-8.19 and 7:26-9.7 would clarify information used by the regulated community, and would result in a positive economic impact.

Environmental Impact

The environmental impact of these proposed rule changes would be minimal. The proposed change at N.J.A.C. 7:26-8.1(a)2iii addresses mixtures containing only small amounts of listed hazardous wastes which do not pose a substantial threat to human health or environment. Excluding samples from the definition of hazardous waste should pose no additional risk to the environmental or human health. The listing of references for analytical techniques at N.J.A.C. 7:26-8.19(a) and (b) will serve as guidance for the regulated community, and the correction of typographical errors in the contingency plan language at N.J.A.C. 7:26-9.7(d) will help to prevent any errors resulting from a misunderstanding which may cause adverse environmental effects. NJDEP has determined that adoption of the less stringent requirements of the Federal Regulations as specified in the proposed amendments would be adequate to protect the health, safety and welfare of the citizens of New Jersey.

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

7:26-8.1 Definition of hazardous waste

(a) A solid waste, as defined in N.J.A.C. 7:26-1.6, is a

hazardous waste if:

1. (No change.)

2. It meets any of the following criteria:

i.-ii. (No change.)

iii. It is a mixture of solid waste and one or more hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14, or 8.15; however, the following mixtures of solid and hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14, and 8.15 are not hazardous (except by application of paragraphs 2i or ii above, or iv or v below) if the generator can demonstrate that the mixture consists of wastewater, the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act, 33 U.S.C. 1251 et al, (and consequently N.J.S.A. 58:10A-1 et seq. or N.J.S.A. 58:11.49 et seq.) including wastewater at facilities which have eliminated the discharge of wastewater:

(1) One or more of the following spent solvents listed in N.J.A.C. 7:26-8.13: carbon tetrachloride, tetrachloroethylene, trichloroethylene, provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed one part per million; or

(2) One or more of the following spent solvents listed in N.J.A.C. 7:26-8.13: methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater), divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million; or

(3) The following wastes listed in N.J.A.C. 7:26-8.14: heat exchanger bundle cleaning sludge from the petroleum refining industry (Hazardous Waste No. K050); or

(4) A discarded commercial chemical product, or chemical intermediate listed in N.J.A.C. 7:26-8.15, arising from "de minimis" losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph "de minimis" losses include those from normal material handling operations including but not limited to: spills from the unloading or transfer of materials from bins or other containers, leaks from valves or other devices used to transfer materials; minor leaks from process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinse from empty containers or from containers that are rendered empty by that rinsing; or

(5) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in N.J.A.C. 7:26-8.13, 8.14, 8.15, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes' combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation.

iv.-v. (No change.)

(b) (No change.)

7:26-8.2 Exclusions

(a) The following materials are not hazardous wastes for the purpose of this subchapter:

1.-11. (No change.)

12. Samples of solid waste or water, soil, or air, which are collected for the sole purpose of testing to determine their characteristics or composition.

i. This exemption is only applicable when:

(1) The sample is being transported to a laboratory for the purpose of testing;

(2) The sample is being transported back to the sample collector after testing;

(3) The sample is being stored by the sample collector before transport to a laboratory for testing;

(4) The sample is being stored in a laboratory before testing;

(5) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(6) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

ii. In order to qualify for this exemption, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(1) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(2) If these shipping requirements do not apply, include with the shipment the sample collector's name, mailing address, and telephone number; the laboratory's name, mailing address, and telephone number; a description of the sample and its quantity; the date of the shipment; and

(3) Package the sample so that it does not leak, spill, or vaporize from its packaging.

iii. This exemption does not apply if the laboratory determines that the waste is a hazardous waste pursuant to this chapter but the laboratory is no longer meeting any of the conditions of this paragraph.

(b) (No change.)

7:26-8.19 Incorporation by reference

(a) The most current versions of the following publications are incorporated by reference into this chapter whenever or wherever mentioned herein:

1. "ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester," ASTM Standard D-3278, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

2. "ASTM Standard Test Methods for Flash Point by Pensky-Martens Closed Tester," ASTM Standard D-93-79 or D-93-80, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

3. "Flammable and Combustible Liquids Code" available from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210.

4. "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 [Second Edition, 1982 as amended by Update I (April, 1984)]. The second edition of SW-846 and Update I are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238 on a subscription basis.

(b) The references listed in paragraph (a) of this section are also available for inspection at the New Jersey State Library, 185 West State Street, Trenton, New Jersey and the Newark Public Library, 5 Washington Street, Newark, New Jersey.

7:26-9.3 Accumulation of hazardous waste for 90 days or less

(a) (No change.)

(b) A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to all applicable standards and requirements of this subchapter, and the permit requirements of N.J.A.C. 7:26-12.1 et seq. unless the generator has been granted a temporary extension to the 90 day period.

i. An extension established in (b) above may be granted in writing by the Department's Division of Waste Management if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances.

ii. An extension of up to 30 days may be granted at the discretion of the Division Director on a case-by-case basis.

iii. Persons seeking such an extension shall contact in writing the Assistant Director for Enforcement and Field Operations prior to exceeding the 90 day storage period, in order to initiate the approval process.

7:26-9.7 Contingency plan and emergency procedures

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

(d) If the owner or operator has already prepared a Spill Prevention, Control and Countermeasures (SPCC) Plan in accordance with 40 CFR 112 or [1510] 40 CFR 300, or a Discharge Prevention, Containment and Countermeasure (DPCC) plan in accordance with N.J.A.C. 7:1E-4, the owner or operator needs only to amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this section.

(e)-(1) (No change.)

7:26-12.2 Permit application

(a)-(i) (No change.)

(j) All permit applications shall be signed as follows:

1. For a corporation, [by a principal executive officer of at least the level of vice president;] by a responsible corporate officer, and for the purpose of this section a responsible corporate officer shall mean:

i. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

ii. The manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

iii. The Department does not require specific assignments or delegations of authority to responsible corporate officials identified in i above. The Department will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Department to the contrary.

iv. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under ii above rather than to specific individuals.

2.-3. (No change.)

(k) Any person signing a permit application or report under (j) or (1) of this section shall make the following certification:

[I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the

information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.]

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(1) (No change.)

(a)

**Solid Waste Disposal
Exempt from Registration**

**Proposed New Rule: N.J.A.C. 7:26-1.8
Proposed Recodification: N.J.A.C. 7:26-1.8**

Authorized By: Robert E. Hughey, Commissioner,
Department of Environmental Protection.
Authority: N.J.S.A. 13:1E-4, 13:1E-6 and 58:10A-1 et
seq.
DEP Docket No. 065-85-11.
Proposal Number: PRN 1985-680.

Submit comments by January 16, 1986 to:
Barbara M. Greer
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.S.A. 13:1E-4 permits the Department of Environmental Protection (the Department) to exempt, in certain limited circumstances, the operation of solid waste disposal facilities or operations from registration and engineering design approval.

It is the Department's policy, wherever appropriate, to provide for the beneficial recovery of the energy or nutrient value found in wastes, including sludges. In order to provide for the disposal of non-hazardous sludge and other vegetative and food processing wastes, the Department has developed a program to permit the land application of such wastes so that they may benefit the public, and may be utilized in an environmentally sound manner.

Since the primary environmental concern in regard to the application of waste material on the land is its impact on groundwater, the land application program is being administered, pursuant to an Administrative Order, by the Department's Division of Water Resources. All land application operations are therefore required to obtain an emergency or

final New Jersey Pollutant Discharge Elimination System (NJPDES) permit. The technical requirements for receiving a NJPDES land application permit are essentially the same as those for receiving a Solid Waste Management certificate of approved registration and engineering design approval (permit). The Department proposes, therefore, formally to exempt land application operations from the registration requirements under the Solid Waste Management Act and to continue to issue NJPDES permits for these operations. This procedure avoids burdening applicants with duplicative filings and provides greater administrative efficiency within the Department. This rule does not invalidate any NJPDES permits which have heretofore been issued for land application operations and the storage facilities necessary for those operations. Nor does the rule in any manner change the existing sludge management planning process.

Social Impact

The social impact of the proposed new rule is expected to be positive. The public will continue to benefit from the permitting of operations which allow the beneficial application of wastes which otherwise would be disposed of without recovery of their nutrient value. The new rule permits the Department to continue to respond to the statutory mandate concerning sludge disposal (N.J.S.A. 13:1E-42) in an efficient manner which prevents disruption in wastewater treatment services.

Economic Impact

A positive economic impact results from the use of appropriate wastes for land application. The wastes provide a valuable source of fertilizer for crops and thereby reduces costs to the agricultural community and ultimately to consumers. In addition, use of wastes as a soil conditioner, rather than topsoil or other more expensive conditioners, is economically beneficial to the land owners.

Environmental Impact

No significant adverse environmental impact is expected to result from the adoption of the proposed new rule. The environmental impact of the operations is considered in the NJPDES permitting process to ensure that the land application of the wastes will not create nuisances or impair water quality.

Full text of the proposed new rule follows.

7:26-1.8 Exemption from registration—land application

(a) The following class of solid waste operations is hereby exempted from registration as required under N.J.S.A. 13:1E-4 and N.J.A.C. 7:26-2.2:

1. Operations for the land application of non-hazardous solid waste (including wastewater and potable water treatment sludges) and storage facilities for such non-hazardous solid waste which receive:

- i. A temporary emergency or final New Jersey Pollutant Discharge Elimination System (NJPDES) permit issued pursuant to N.J.A.C. 7:14A; and
- ii. An approval of the assessment of the environmental impact of the proposed operation which may be included in the NJPDES permit.

OAL NOTE: The current text of 7:26-1.8 is recodified as 7:26-1.9, without 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).

HOSPITAL REIMBURSEMENT

For proposals numbered PRN 1985-682 and 683, submit comments by January 16, 1986 to:

Christine M. Grant, Director Designate
Hospital Reimbursement Program, Room 601
New Jersey Department of Health
CN 360
Trenton, N.J. 08625

(a)

PROCEDURAL AND METHODOLOGICAL REGULATIONS

Proposed Amendments: N.J.A.C. 8:31B-3.5, 3.22 and 3.54.

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

Proposal Number: PRN 1985-682.

The agency proposal follows:

Summary

The proposed amendments would establish definitively that the term "Efficiency Standard" refers to the median cost per case where the median is determined by ranking all costs per case for all cases in a particular DRG for all hospitals in a peer group. The Procedural and Methodological Regulations, N.J.A.C. 8:31B-3.5, 3.22 and 3.54 currently define the term as the median hospital cost per case. This is not the correct meaning of the term and would be correctly defined in the future as a result of the proposed change.

Social Impact

In individual situations a hospital may determine that it should not consider rejecting its rates because it may find that correct application of the Efficiency Standard achieves the stringent payment constraints that it is intended to achieve. The entire system will be strengthened as clear, stringent definitions will encourage movement of all hospitals to the Certified Revenue Base.

Economic Impact

Individual hospitals may find that correct application of the Efficiency Standard would result in an estimated increase or decrease of not more than \$1,000 per case. Hospitals which reject all their rates would likely find significantly higher or lower total revenue depending on where their costs per case payments stand in the rank comparison with the median costs per case.

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

8:31B-3.5 Development of standards

(a) (No change.)

(b) The median [hospital] cost per case, the Efficiency Standard, shall be used to identify presumptively excess cost; however, supplementary standards including but not limited to the lowest cost per case at any institution which has treated more than ten patients in a given Diagnosis Related Group during the current cost base year, shall be used to identify potential areas for management review and action, and may be used by all parties in appeals. The Commissioner shall also calculate the mean cost per case, the Incentive Standard, which shall be used in developing the Proposed Schedule of Rates. Standards so developed shall remain unaffected during the rate period by any appeals and no adjustments, modifications or any other changes to the standards shall be made during a rate period, unless so ordered by the Commission. All standards developed herein may be used in evaluating effectiveness and efficiency with respect to the health care system taken as a whole.

8:31B-3.22 Standard costs per case

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

(d) Calculation of standards:

1. The calculation of standards will be based on the group of hospitals first receiving a PCB, or other appropriate sample of hospitals thereafter. The cost per case of each hospital's patients with UB-PS records categorized by inpatient DRG are multiplied by each hospital's equalization factor. (See N.J.A.C. 8:31B-3.24(c)). The mean equalized cost of all such records in teaching or non-teaching hospitals, respectively, is the incentive standard for each DRG. Other standards to be calculated shall be, but are not limited to, the Efficiency Standard (median [hospital] **cost per case**) or lowest cost per case in a hospital which has treated more than 10 patients (See N.J.A.C. 8:31B-3.5)

2. (No change.)

8:31B-3.54 Operating costs: Prospective exceptions

(a) Issues concerning intensity and management changes proposed for the initial rate period shall be grouped according to the subsections set forth below and evaluated as follows:

1.-2. (No change.)

3. All proposed management or intensity changes other than those considered in (a)1 above, and any other exceptions not considered in N.J.A.C. 8:31B-3.53 through 3.57, shall be justified by a full presentation of the dollar value of the cost, the dollar value of the benefits and a complete explanation of any benefits resulting from the program which cannot be given a dollar value. With respect to any detailed review, appeal or application arising under this paragraph, the entire Preliminary Cost Base shall be reviewed, and case-mix material developed in accordance with N.J.A.C. 8:31B-3.5, including but not limited to the lowest cost per case, Efficiency Standard (median [hospital] **cost per case**) and mean cost per case and shall be made available upon request to all parties directly affected by these regulations in order to, among other things: rebut or support presumptions of reasonableness set forth in these regulations; rebut or support an appellant's exceptions; and to judge effectiveness and efficiency with respect to the health care delivery system, taken as a whole. In all such cases the Commission shall determine whether or not it is appropriate that proposed management or intensity changes be financed out of an adjustment to the Schedule of Rates, or out of incentive monies in excess of cost, the development of potential efficiencies at the given institution, or from other sources.

(a)

GRADUATE MEDICAL EDUCATION**Proposed Amendments: N.J.A.C. 8:31B-3.31 and 3.51**

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

Proposal Number: PRN 1985-683.

The agency proposal follows:

Summary

The Department of Health proposes that the number of Graduate Medical Education (GME) positions to be approved for funding pursuant to any hospital's 1986 Schedule of Rates appeal shall not include any costs associated with a number of medical residents in excess of that hospital's July 1, 1984 through June 30, 1985 Commission-approved FTE number of residents. Moreover, the indirect costs in any hospital's 1986 mark-up factor associated with residents in excess of 1984 levels would be reduced to 1984 levels for all hospitals operative July 1, 1986.

The Department of Health intends to review 1985 Schedule of Rates appeals based on existing regulations regardless of when the appeal is sent to the Commission.

The Department gives notice that, beginning for the reporting for rate year 1985, expenses for the Graduate Medical Education Cost Center will be reported pursuant to N.J.A.C. 8:31B-4.117 through the addition of a GME line item on the C form. Expenses under the Research and Nursing and Allied Health Education Cost Centers will continue to be reported under the EDR Cost Center.

Social Impact

The proposed statewide reduction of medical resident positions back to the approved 1984-85 levels during calendar year 1986 is not expected to have any negative social impact on the public. The current report of the Advisory Graduate Medical Education Council (AGMEC) includes an explicit finding that the 1984-85 number of residents in New Jersey is adequate. There is, nationally, great concern that failure to curtail further increases in the number of residents will result in excessive cost of medical care for consumers and no demonstrated improvement in patient care.

The Department of Health intends to develop a long-term policy regarding physician supply needs for New Jersey in cooperation with the State Department of Higher Education and AGMEC during 1986. The proposed regulation, however, is consistent with AGMEC's August, 1984 report, *A Policy Prospectus for Graduate Medical Education in New Jersey*, which reported that the number of residency positions existing in the State in 1982 was more than sufficient to serve the State's interest. The proposed return to 1984 levels will bring the State Department of Health's Hospital Reimbursement regulations in line with AGMEC's suggestions. Advance notice to the State's hospitals that the number of residents are currently in excess of what has been recommended for the State will allow sufficient time for them to avoid commitments for the school year beginning July 1, 1986 in excess of their 1984 levels.

Moreover, recent Federal proposals would severely constrain Medicare financing of GME costs. There is a proposed

Health Care Financing Administration regulation and Congressional legislation pending which would freeze Medicare GME funding at 1984 levels.

A second Federal proposal would severely limit financing of the training of foreign medical graduates. Sixty percent of New Jersey medical residents are graduates of foreign medical schools. Therefore, prompt anticipatory regulation will allow individual hospitals to make necessary accommodations to their patient service and will discourage them from inappropriate expansion in view of the impending constraints on funding for medical residents.

Economic Impact

The New Jersey reimbursement system funds residency positions at a statewide cost in excess of \$100 million. There is currently no financial incentive not to expand the number of resident positions and faculty. The current regulation includes no criteria as to whether such residents or associated costs are actually required to improve patient care.

Prohibiting payment for number of residents in excess of the approved 1984 levels through hospital rates effective with the 1986 Schedule of Rates will save the State's hospital rate payers and public at least an estimated \$3.5 million annually. This is the estimate of 1985 appeals cost in excess of 1984. It does not include additional resident expansions contemplated for 1986.

New Jersey's current prospective payment system for resident costs in acute care hospitals consists of two approaches. First, regulations recognize three separate peer groups of hospitals defined by teaching status. These are: Major Teaching, Minor Teaching, and Community hospitals. Hospitals may charge DRG rates which are determined based on a proportion of their own costs to deliver care in 1982 as well as a proportion of other hospitals' for the same year and peer group. To the extent that one hospital in its peer group experienced costs associated with practice patterns of residents and other teaching programs in 1982, these are included in the payment rate.

The other approach to paying for GME costs is to pay the direct cost of additional resident salaries, fringe benefits, faculty salaries, and related supplies. Current regulations require funding for these additional GME costs assuming only that the hospital satisfies the appropriate appeal criteria and appeal option. Increases to these additional costs are appealable through the Commission and are paid via a change to the hospital's mark-up factor.

These costs do undergo a technical review for reasonableness, but there is currently no ability for the Department of Health to limit such costs based on basic criteria of whether the additional position is actually needed for patient care. This lack of control has contributed substantially to the historic growth in the number of State medical residents from 2,089 to 2,609 in four years. The proposed upper limit of residents will allow time to improve the payment system for GME. The proposed regulation changes apply only to the additional indirect costs approved by the Rate Setting Commission for additional residents subsequent to the current 1982 base year. It does not affect Direct Patient Care rates.

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

8:31B-3.31 Commission adjustments and approvals

(a) Any modifications including any statutory or regulatory changes or changes in patient care physician compensation

arrangements, made to the Preliminary Cost Base by the Commission shall be classified as direct or indirect and as to the financial elements affected and each element adjusted proportionately.

(b) **The Commission shall approve adjustments to hospitals' 1986 and subsequent years' mark-up factors as necessary to subtract approved costs associated with residents in excess of the number of residents approved by the Commission for reimbursement for period beginning July 1, 1984. This adjustment shall be operative July 1, 1986. These costs shall include, but not be limited to, resident salaries and fringes, faculty salaries, malpractice and supplies.**

8:31B-3.51 Notification appeal and review

(a) (No change.)

(b) Notification by hospitals: Within 45 working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing, of their decision to:

1.-3. (No change.)

4. Notwithstanding the above, effective with the 1986 Proposed Schedule of Rates, hospitals may not appeal under any appeal option for costs associated with numbers of graduate medical residents in excess of the total number of FTE residents approved by the Commission for reimbursement for the period beginning July 1, 1984.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Renal Disease Services Standards and General Criteria for the Planning and Certification of Need for Regional End- Stage Renal Disease Services

Proposed Amendments: N.J.A.C. 8:33F-1.2 and 1.6

Proposed Repeal: Appendix B

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

Proposal Number: PRN 1985-684.

Submit comments by January 16, 1986 to:
John A. Calabria, Coordinator
Health Planning Services
New Jersey Department of Health, Room 604
CN 360
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Current Department of Health policy, standards, and criteria, as reflected in the existing rules, were readopted by the Health Care Administration Board on January 10, 1985 in accordance with the provisions of Executive Order No. 66 (1978). In addition, N.J.A.C. 8:33F-1.4, Acute Hemodialysis Standards, was amended June 13, 1985 by the Health Care Administration Board in order to establish quality of care elements for the provision of acute hemodialysis.

The methodology for the determination of projected need for chronic renal dialysis services is currently contained in these regulations at Appendix B, and is referred to in N.J.A.C. 8:33F-1.6 under Planning Standards. As the rule currently stands, it is necessary to propose a formal amendment and adoption through the regulatory process in order to simply update station need projections on an annual basis by utilizing the most currently available patient data. In order to remedy this cumbersome and lengthy procedure, the dialysis station need methodology will be eliminated from N.J.A.C. 8:33F and will instead be contained in the End-Stage Renal Disease Services Element of the State Health Plan. This action is designed to facilitate future reprojection of station need in a timely fashion, and will not require regulatory processing in order to simply update through the standard reporting of data each year.

The State Health Plan is a document developed through an open and public process. Thus, there will be no significant diminution of the public's ability or opportunity to comment on the dialysis station need methodology.

This elimination of the updating of annual station need projections from regulatory processing enables various social and economic results which positively impact on the general public, the patient in need of services, the Department of Health and New Jersey Government.

Social Impact

The proposed amendment will have a variety of positive social impacts. First and most critically, end-stage renal disease patients who are in need of dialysis treatment services will have improved access to programs and services in a more timely manner. For example, if the reprojection of the dialysis station methodology indicates a need for additional stations in an area, certificate of need applications could be accepted in the batching cycle following review by the Statewide Health Coordinating Council. Patients, as well as providers, will not have to wait an additional five months for the reprojections to undergo an unnecessary regulatory review. Applications for stations could be accepted and processed without delay, which would improve eventual access for patients.

There is another critical social impact which will significantly affect the Department of Health, New Jersey Government, and the general public in a positive manner. That impact is improved efficiency resulting from the utilization of time to address those issues which truly require regulatory attention and processing.

Economic Impact

The removal of the station need methodology from N.J.A.C. 8:33F should also have economic savings in addition to the social benefits. The improved work efficiency which will result from the annual time savings of not preparing a renal amendment for regulatory processing has important cost savings implications. Many work days of Department of Health staff time will be saved because amendments will not have to be drafted and reviewed. In addition, the Office of Administrative Law staff time will also be saved because they will not have to analyze and publish the document each year. Ultimately the taxpaying public will benefit by the elimination of a regulatory procedure for a methodology which can quickly and competently be addressed outside of the regulatory process.

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

8:33F-1.2 Utilization standards

(a) The following minimum utilization rates shall apply for the initiation of new ESRD services:

1. (No change.)
2. Hospital ESRD dialysis center:
 - i-iv. (No change.)
 - v. When the dialysis station need methodology [described] referred to in N.J.A.C. 8:33F-1.6(a) of this regulation indicates a need in a health service area:
 - (1)-(2) (No change.)
 - vi. If any hospital ESRD dialysis center experiences less than 75% utilization for all its approved chronic stations (hemodialysis and peritoneal dialysis) for an entire 24 month period, it will automatically lose a sufficient number of stations to bring its utilization to at least 75%. Pediatric stations will not be included in the calculation of the utilization rate. Pediatric stations are those stations approved by the Department of Health to be used at least 75% of the time for those patients 16 years old or younger. Utilization is determined by the formula shown in Appendix [C] B.

3. ESRD dialysis facility:

- i-iv. (No change.)
- v. When the dialysis station need methodology [described] referred to in N.J.A.C. 8:33F-1.6(a) of this regulation indicates a need in a health service area:

(i) Preference will be given to presently approved hospital ESRD dialysis centers or ESRD dialysis facilities over non-approved applicants whenever the non-approved applicant is within a radius of 20 straight miles from the presently approved service.

vi. If an ESRD dialysis facility experience less than 75 percent utilization for all of its approved chronic stations (hemodialysis and peritoneal dialysis) for an entire 24 month period, it will automatically lose a sufficient number of stations to bring its utilization to at least 75 percent. Pediatric stations will not be included in the calculation of the utilization rate. Utilization is determined by the formula shown in Appendix [C] B.

- 4.-8. (No change.)
- (b) (No change.)

8:33F-1.6 Planning standards

(a) The Department of Health shall utilize the methodology for determination of projected need for chronic renal dialysis services, [herein attached as Appendix B] as contained in the **most current End-Stage Renal Disease Services Element of the State health Plan**. For planning and certificate of need review purposes, the Department will differentiate between chronic renal dialysis stations used for hemodialysis and peritoneal dialysis. Within these two categories, there will be no further differentiation, although the Department realizes that sub-categories will be at the discretion of the governing body of the facility. However, an approved hospital ESRD dialysis center is expected to have at least two machines available for acute hemodialysis.

APPENDIX A (No change.)

[APPENDIX B]

[Methodology for Determination of Projected Need for Chronic Renal Dialysis Services]

[To arrive at the total projected number of patients for 1985, the Department's Health Data Services utilized patient data for the 26 ESRD approved renal dialysis facilities which were recorded as the place of treatment by the New Jersey Renal

Network Council for six-month time periods from December 31, 1979 through December 31, 1982. It was felt that this time span sufficiently reflected the level growth of the chronic dialysis patient population that has been experienced in recent years, as compared to earlier periods. Four methods were used to project the possible future level of chronic dialysis patients. All projections were developed from a computer program that basically fits four separate curves or models to the actual data by the "least squares" method. The number of patients projected by the Constant Growth Model was chosen for the need methodology calculations. This methodology is based on the stable growth in the number of chronic dialysis patients experienced during the past several years and assumes (as did actually occur) a fixed amount of changes per time period. The resulting curve is simply that for a straight line. It is emphasized that both the actual and projected patient figures reflect the "net growth" of patients on chronic renal dialysis, which takes into account actual patient mortality and patients receiving kidney transplants who were removed from chronic dialysis.]

[For purposes of comparability, the actual number of chronic renal dialysis patients on home dialysis in December 1982, as reported by the New Jersey Renal Network Council, was converted to percentages of total patients by HSA. These percentages were then applied to the total projected number of chronic dialysis patients by HSA for December 1985 and the resulting products were subtracted from the total patients, providing the number of projected patients requiring facility-based chronic renal dialysis. The application of the current levels of home dialysis to the projected population was considered both fair and appropriate, as home dialysis is generally encouraged for cost savings and patient care considerations. However, in the case of HSA 3 (Hudson County) an exception was made and the current .01 percent home dialysis level (representing only one patient) was increased to 10 percent for application to the projected population, as this was considered a minimal level for future achievement which all HSAs should not fall below.]

[The resulting numbers of projected patients requiring facility-based chronic renal dialysis were then converted to the number of dialyses required by this population annually through multiplying the patient figures by 156 dialyses required for each patient or 3 dialyses per week, 52 weeks per year. This tends to skew the dialyses required total somewhat upwards as some patients only require 2 dialyses per week. The number of dialysis stations required to perform the number of dialysis treatments required was obtained by dividing the latter figure by 936, or the number of hemodialysis one station can perform annually operating at 3 dialysis shifts per day 6 days per week, 52 weeks per year (one patient hemodialysis shift is generally 5 hours long). No attempt was made to differentiate between hemodialysis and peritoneal dialysis patients at this time, as the latter number is actually quite low.]

[The total number of currently existing chronic dialysis stations, as counted in the Department's November 1982 on-site survey, was broken down by hemodialysis and peritoneal dialysis stations and then converted to annual dialysis capacity or optimal number of treatment capable. (The decision was made to include all chronic dialysis stations in all service categories, including back-up chronic inpatient, home and self-care training, and isolation, as these stations represent a significant number which are used to accommodate the total chronic dialysis patient population under different circumstances and are capable of being used interchangeably. In

addition, the total number of stations surveyed was utilized in the need methodology at this time, including those stations under review due to possible discrepancies with numbers of C/N approved stations, as they are apparently in current use and no decision has been made yet as to their final disposition). These dialysis capacity figures were obtained by multiplying the number of hemodialysis stations by 936 dialyses annually (based upon optimum performance of 3 hemodialysis shifts per day, 6 days per week, 52 weeks per year) and multiplying the number of peritoneal dialysis stations by 312 dialyses annually (based upon performance of 1 peritoneal dialysis shifts per day—such shifts can range between 8 to 10 hours long, 6 days per week, 52 per year). The combined optimal hemodialysis and peritoneal dialysis capacity totals were reduced by 15 percent, as 85 percent utilization is generally considered a desirable maximum performance level to allow for flexibility. The combined annual dialysis capacity totals at 85 percent utilization were converted to numbers of patients capable of being dialyzed by now dividing the reduced capacity by 156 dialyses required by each patient.]

[The number of chronic dialysis stations required to meet the projected patient need for 1985 was obtained by subtracting the current 1982 annual total dialysis capacity or number of treatments capable at 85 percent utilization from the projected 1985 dialysis treatments required. The resulting projected additional (or excess) dialysis capacity or treatments required then was divided by 795.6 dialysis performed by one station annually at 85 percent utilization ($936 \times .85 = 795.6$).]

[APPENDIX C]

APPENDIX B

Utilization is determined by the following formula:

$$\frac{\text{Total number of Chronic (hemodialysis + peritoneal dialysis) Renal Dialyses in 24 months} + \text{transplants}^\dagger}{(1872 \times \text{number of hemodialysis stations}) + (624 \times \text{number of peritoneal stations})} \times 100$$

Note: Based on optimum performance of 3 hemodialysis shifts per day, 6 days per week, 104 weeks in a two year period, each hemodialysis station capacity for that period = $3 \times 6 \times 104 = 1872$.

Based on the performance of 1 peritoneal dialysis shifts per day, 6 days per week, 104 weeks in a two year period, each peritoneal dialysis station capacity for that period = $1 \times 6 \times 104 = 624$.

†Hospitals having referred their patients for transplant will receive credit for these patients in their calculation of utilization.

(a)

CONTROLLED DANGEROUS SUBSTANCES

Temporary Placement of Two Analogs of Meperidine into Schedule I

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

Authority: N.J.S.A. 24:21-3.

Proposal Number: PRN 1985-685.

Submit comments by January 16, 1986 to:

Lucius A. Bowser, R.P., M.P.H.

Chief, Drug Control Program

CN 362

Trenton, NJ 08625

609-984-1308

The agency proposal follows:

Summary

The Department proposes to amend the schedules of controlled dangerous substances to add two substances to Schedule I on a temporary basis because the substances pose an imminent hazard to public safety. These two substances are 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP) and 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP), both are analogs of the schedule II narcotic meperidine. Both of these substances are produced only in clandestine laboratories. In the clandestine laboratory processes both produce contaminants which are not removed before the products are distributed. In the synthesis of MPPP, the contaminant is 1-methyl-4-phenyl-1,2,5,6-tetrahydropyridine (MTPP), a neurotoxin. The synthesis of PEPAP produces the contaminant 1-(2-phenylethyl)-4-phenyl-1,2,5,6-tetrahydropyridine (PEPTP).

The amendment will bring the State regulations into conformity with Federal regulations. These two substances were placed into Schedule I of the Controlled Substances Act as a final rule published in the Federal Register, cited as 50 FR 28098, dated July 10, 1985 which became effective August 12, 1985.

The controlling of chemical analogs or variations of existing controlled dangerous substances which have psychedelic, stimulant or depressant effects and which have a high potential for abuse is necessary because of the contamination of the products and because they have no valid medical use. Such chemical analogs or variations of existing controlled dangerous substances are called "designer drugs." Analgesic screening in test rats and mice indicate that MPPP and PEPAP are meperidine-like opiates ranging in potency from 5 to 30 times that of Meperidine and 12-72 times that of Meperidine for MPPP and PEPAP respectively. MPPP has a lethal dose range of one-fifth that of Meperidine. The contaminants listed above have been determined to produce a neurotoxin substance which induces a permanent Parkinsonian syndrome in man.

Cases of the Parkinsonian Syndrome from MPPP and PEPAP have been reported to the National Institute of Mental Health in drug abusers known to have been using these meperidine analogs. Six samples of these analogs have been analysed by the Drug Enforcement Administration's labora-

ories and found to contain the neurotoxin. Seven patients were treated by the Santa Clara Valley Medical Center for the Parkinsonian Syndrome after intervenous use of contaminated MPPP.

Social Impact

The controlling of these two substances as Schedule I substances having no known medical use in the United States would have a great social impact in that it would control the illicit production and distribution of these extremely potent meperdinine-like opiate drugs. These controls would lower the incidence of hospitalizations from Parkinsonian Syndromes resulting from the injection or ingestion of these preparations. There would be no social impact on practitioners or pharmacies as these products are not commercially available for use in modern medicine.

Economic Impact

Preventing the hospitalization or long term treatment of individuals with Parkinsonian Syndromes caused by the injection or ingestion of these two substances, MPPP and PEPAC, would have a great economic impact on the community and hospitals. It would be in the best interest of public safety to control the manufacturing and distributing of MPPP and PEPAP. There would be no economic impact on practitioners, pharmacists or other dispensers because it would make these substances Schedule I, non-narcotic substances.

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

8:65-10.1 Controlled dangerous substance; Schedule I

(a) (No change.)

(b) The following is Schedule I listing of the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substances code number.

1.-6. (No change.)

7. Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture, or preparation which contains any quantity of the following substances:

i. (No change.)

ii. (No change.)

(See proposal at 17 N.J.R. 2214(a).)

iii. **1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts and salts of isomers . . . 9661**

iv. **1-2-(2-phenylethyl)-4-4phenyl-4-acetyloxypipidine (PEPAP), its optical isomers, salts and salts of isomers . . . 9663**

HUMAN SERVICES

The following proposals are authorized by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Clinical Review Procedures For Special Status Patients

Proposed New Rule: N.J.A.C. 10:36-2.

Authority: N.J.S.A. 30:1-12.

Proposal Number: PRN 1985-686.

Submit comments by January 16, 1986 to:

Robert Rusciano

Assistant Director

Division of Mental Health and Hospitals

New Jersey Department of Human Services

CN 700

Trenton, NJ 08625

The agency proposal follows:

Summary

Geoffrey S. Perselay, Acting Commissioner, Department of Human Services, proposes guidelines for State psychiatric hospital staff to develop internal clinical review procedures for special status patients. This procedure will utilize a committee in each psychiatric hospital composed primarily of the directors of the major clinical disciplines represented within the psychiatric hospital system. This committee will review the clinical assessment and treatment planning for special status patients (i.e. patients charged with major crimes who have been acquitted by reason of insanity, patients charged with major crimes adjudged incompetent to stand trial and patients considered by treatment teams to possess the potential for serious violent behavior) whenever an increase in privilege, movement to less restrictive setting or discharge is proposed by the attending treatment team.

Social Impact

This rule provides for a "second clinical opinion" in the decision making proces whenever patients who have a history of serious criminal charges are considered for movement to a less restrictive setting, for an increase in privileges or discharge. It is based on the concept of individualized clinical decision-making by interdisciplinary treatment teams which balances the objectives of effective treatment, personal liberty and the prevention of harm. Since it operationalizes the legal principle of "treatment in the least restrictive conditions necessary to achieve the purposes of treatment" it will benefit patients, staff and the public.

Economic Impact

No additional costs, either to the public or any state agency, are expected to result from this rule as it is designed to structure a clinical decision-making process which has been in existence for some time.

Full text of the proposed new rule follows.

SUBCHAPTER 2. CLINICAL REVIEW PROCEDURES FOR SPECIAL STATUS PATIENTS

10:36-2.1 Statement, purpose and scope

(a) The Division of Mental Health and Hospitals of the Department of Human Services recognizes that the management of some patients within our hospital system requires a more comprehensive and complete evaluation of the clinical, judicial and administrative factors relevant to treatment plan development and implementation.

(b) The purpose of this procedure is to establish a mechanism which provides a comprehensive review of the clinical treatment and management of special status patients through insuring appropriate treatment interventions, levels of supervision and planning at the time of movement to less restrictive settings, decrease of structure and security, or discharge.

(c) Special status patients are those who:

1. Have been charged with or are convicted of one of the following offenses: murder, manslaughter, sexual assault, criminal sexual contact, 1st degree robbery, aggravated assault, aggravated arson, weapons offense or kidnapping.

2. Have been adjudicated "Not Guilty By Reason of Insanity" or "Incompetent To Stand Trial" for one of the above enumerated crimes.

3. Have been determined by their treatment team to be clinically and behaviorally appropriate for consideration of the clinical review process when behaviors indicated in 1. above are manifest or suspected.

10:36-2.2 Committee composition

(a) The composition of the Clinical Review Committee will minimally include: Medical Director or Chief of Psychiatry, the Director of Psychology, the Director of Nursing Services, the Director of Rehabilitation Services and the Director of Social Services.

(b) Committee members will be appointed by the Clinical Director who may at his discretion appoint additional members for special or permanent participation as necessary and appropriate. The Medical Director or Chief of Psychiatry will serve as Committee Chairperson.

10:36-2.3 Procedures

(a) The treatment team will notify the Chairperson of the Clinical Review Committee of a patient whose status requires/warrants clinical review.

(b) The treatment team will prepare information and forward it to the Committee Chairperson/designee within 10 working days.

(c) The Committee Chairperson will designate at least one committee member to interview the patient prior to the committee meeting.

(d) The committee will meet and review the team proposals within 3 working days of receipt of the information.

(e) The Committee Chairperson/designee will forward the committees recommendations in response to the team proposals to the Clinical Director within 2 working days.

(f) The Clinical Director will review the committee recommendations regarding endorsement of the team proposals and respond to the chairperson within 2 working days.

(g) All proposals regarding patients adjudged "Not Guilty By Reason Of Insanity" must be forwarded by the Clinical Director to the Division of Mental Health and Hospitals Chief Psychiatric Consultant for review as well as any others warranting such review in the opinion of the Clinical Director.

(h) The Division of Mental Health and Hospitals Chief Psychiatric Consultant will respond within 2 working days.

10:36-2.4 Clinical Review Committee Coordinator

(a) Each hospital will designate a staff person to be responsible for coordination of all activities relative to the functioning of the Clinical Review Committee. The responsibilities of the coordinator will include:

1. Consultation with treatment teams regarding preparation of information to be submitted to the Clinical Review Committee.

2. Maintaining files on all cases presented to the Clinical Review Committee.

3. Functioning as executive secretary to the Clinical Review Committee (i.e. recording, distributing and filing of minutes).

4. Responsible for the coordination of information flow between treatment teams, Clinical Review Committee, hospital administration and Central Office regarding special or extenuating circumstances, current or pending legislation, etc. relative to cases under consideration of the Clinical Review Committee.

10:36-2.5 Quality assurance activities

(a) The Clinical Director, Chief Psychiatric Consultant for the Division of Mental Health and Hospitals, and Central Office discipline leadership will periodically attend Clinical Review Committee meetings in each of the institutions in order to monitor the thoroughness and quality of clinical recommendations and compliance with this policy and procedure.

(b) The minutes of Clinical Review Committee meetings in each of the hospitals will be routinely forwarded to the Division of Mental Health and Hospitals Chief Psychiatric Consultant for review.

DIVISION OF PUBLIC WELFARE

For proposals numbered PRN 1985-667, 688 and 689, submit comments by January 16, 1986 to:

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

(a)

General Assistance Manual Disposal of Assets

Proposed Amendments: N.J.A.C. 10:85-3.4

Authority: N.J.S.A. 44:8-111(d).
Proposal Number: PRN 1985-688.

The agency proposal follows:

Summary

The proposed amendment would increase from one year to two years the time period during which an abandonment of a resource or disposal of a resource for less than adequate consideration would render a person ineligible for assistance if the abandonment or disposal was made for the purpose of qualifying for assistance or of avoiding repayment. The

amendment will align the time period with the analogous period specified in the regulations for the Medicaid program, thereby preventing any inappropriate "spillover" between programs.

Social Impact

Disposal or abandonment for the purpose of qualifying for assistance or of avoiding repayment is rare. There are no known cases which are presently ineligible because of the current regulation. Nor are there any known cases presently eligible which would become ineligible upon adoption of the proposed amendment. Hence, the expected social impact is minimal.

Economic Impact

If any person abandons a resource or disposes of a resource for less than adequate consideration for the purpose of qualifying for assistance or of avoiding repayment, that person will lose eligibility for assistance for two years instead of one. The value of the lost assistance will depend on the circumstances of the particular case and will represent an economic loss to the person with a corresponding gain to the municipality and the State. This measure is preventive, not corrective. Accordingly, the actual economic impact is expected to be imperceptible.

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

10:85-3.4 Resources

(a) (See proposal at 17 N.J.R. 2520(a).)

1. (No change.)

2. No person shall be eligible for assistance within [one] **two** years after having disposed of a resource for less than adequate consideration or after having abandoned a resource of value when such disposal or abandonment was made for the purpose of qualifying for assistance or of avoiding repayment of assistance. Any assistance granted by reason of nondisclosure during such [one] **two** year period represents an overpayment and is to be processed accordingly.

i.-ii. (See proposal at 17 N.J.R. 2339(a).)

3. (See proposal at 17 N.J.R. 2520(a).)

(c)-(f) (No change.)

(g) (See proposal at 17 N.J.R. 2339(a).)

(a)

**General Assistance Manual
 Nursing Home Bed-Hold Payments**

Proposed Amendment: N.J.A.C. 10:85-5.3

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

Proposal Number: PRN 1985-667.

The agency proposal follows:

Summary

Occasionally, nursing home patients find it necessary to leave the facility for short periods of time for hospitalization or therapeutic visits. In order for the patient to have a place to return to, the continuation of payments to the nursing home has been authorized for up to 14 days. A similar provision

has recently been instituted in the separately administered Medicaid program which authorizes such continuation of payments for up to 10 days only. Thus, in order to maintain alignment between the two programs, the proposed amendment serves to reduce from 14 to 10 days, the time allowed for continuation of payment. Moreover, in order to ensure uniform application of the rule, the word "may" is being changed to "shall".

Social Impact

Short term absences of nursing home patients for hospitalization or therapeutic visits are relatively rare and when they do occur, they are usually for 10 days or less. While there could technically be an adverse impact on patients who are away for an interval of between 10 and 14 days, such instances are likely to be extremely rare.

Economic Impact

If there is any economic impact as a result of this amendment, it will take the form of slightly reduced payments by municipal welfare departments to nursing home operators. As noted above, the incidence of such is expected to be so low that any economic impact will be imperceptible.

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

10:85-5.3 Other medical payments

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

(e) Care for the chronically ill: The director of welfare shall authorize payments for patient care and a personal incidental allowance in a skilled nursing home, intermediate care facility, or public medical institution when a physician certifies that a client has a defect, disease, or impairment (other than psychosis) which necessitates such care, the client is not eligible for Medicaid, and there is no person available who will provide such care without cost to the client.

1. (No change.)

2. Maximum fees: Payment to the facility shall not exceed the rates for such facility as established by Medicaid or, for non-Medicaid facilities by DPW/BMA. The MWD may contact the DPW/BMA to obtain the per diem rate for room, board and nursing care. A personal incidental allowance of \$25.00 per month shall be allowed to the patient.

i. In determining the amount the MWD will be authorized to pay the facility for room, board and nursing care, the Medicaid rate times the number of days of care less the payment by or on behalf of client shall be used. Each month the MWD will obtain a current bill for all services rendered during the previous month and will submit it to the DPW/BMA for costing prior to payment.

(1) The MWD [may] **shall** authorize per diem payments for periods of up to [14] **10** days during which the client is temporarily absent from the facility for hospitalization or therapeutic visits.

ii. (No change.)

(f)-(i) (No change.)

(a)**Medicaid Only Manual
Availability of Resources in Third-Party
Situations****Proposed Amendment: N.J.A.C. 10:94-4.1**

Authority: N.J.S.A. 44:7-87.

Proposal Number: PRN 1985-689.

The agency proposal follows.

Summary

As a result of meetings with county welfare agency (CWA) staff, the Department became aware of the need to clarify policy regarding the "availability of resources in third-party situations". Specifically at issue, in cases in which a Medicaid Only recipient has been awarded a settlement as a result of an action or claim against a third party, is the point in time at which those funds are to be considered available when a legal representative or other individual acting on the recipient's behalf has received such funds but has not released them to the recipient. The amended rule provides a definition to clarify that in such third-party situations, funds are considered available or countable at the moment of receipt by the recipient, his or her legal representative, guardian, relative or any person acting on the recipient's behalf.

In accordance with N.J.A.C. 10:94-4.5(a), resource eligibility is determined as of the first moment of the first day of the month. Therefore, those funds actually available to the recipient or any person acting on the recipient's behalf as of the first moment of the first day of the month subsequent to the month of receipt shall be considered a countable resource, unless otherwise excluded. Further, the amendments provide clarification as to treatment of such funds. If a bona fide lien or judgment exists against such funds, making all or some portion of the funds inaccessible to the recipient, CWAs are directed to deduct the encumbrances and consider the remaining amount as a countable resource. If between the date of receipt of such moneys and the first day of the subsequent month the recipient pays outstanding medical expenses and/or other expenses, the CWA is directed to consider only the funds remaining after such payment as a countable resource.

Social Impact

The proposed amendments will clarify existing policy for CWA staff as well as recipients and any persons acting on a recipient's behalf. Specific rules clearly stating the point in time at which such funds are to be considered available when a legal representative or other individual is acting on the recipient's behalf will result in equitable treatment of all recipients in such situations. Additionally, these amendments serve to facilitate administration of the program.

Economic Impact

Clarification of this resource policy will result in accurate and equitable resource eligibility determinations. Initially, these amendments may have an adverse economic impact on a small number of cases, namely those situations in which a legal representative or other individual acting on the recipient's behalf receives the funds but does not release them to the recipient, causing the recipient to be resource ineligible as

of the first moment of the first day of the month subsequent to the month of receipt. However, in most cases when the funds are released to the recipient, the recipient will expend some or all of those funds and will therefore be resource eligible as of the first of the month.

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

10:94-4.1 Financial eligibility standards; resources

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

(c) Availability of resources: In order to be considered in the determination of eligibility, a resource must be "available". A resource shall be considered available to an individual when:

1. The person has the right, authority, or power to liquidate real or personal property, or [his/her] **his or her** share of it; [or]

2. Resources have been deemed available to the applicant [.] ([S]see N.J.A.C. 10:94-4.6 regarding deeming of resources [.]); or

3. **Resources arising from a third-party claim or action are considered available from the date of receipt by the applicant/recipient, his or her legal representative or other individual acting on his or her behalf in accordance with the following definition and provisions:**

i. **Definition of "availability of resources in third-party situations": In third-party situations in which applicants/recipients have brought an action or made a claim against a third party who is or may be liable for payment of medical expenses related to the cause of the action or claim, funds are considered available or countable at the moment of receipt by the applicant/recipient, his or her legal representative, guardian, relative or any person acting on the applicant's/recipient's behalf. Such funds should be considered available or countable at the earliest date of receipt by any of the aforementioned entities.**

(1) **In determining resource eligibility in accordance with N.J.A.C. 10:94-4.5(a), those funds actually available to the applicant/recipient or any person acting on his or her behalf as of the first day of the month subsequent to the month of receipt shall be considered a countable resource, unless otherwise excluded (see N.J.A.C. 10:94-4.4).**

(2) **If a bona fide lien or judgment exists against such funds, making all or some portion of the funds inaccessible to the applicant/recipient, CWAs shall deduct the encumbrances and consider the remaining amount as a countable resource.**

(3) **If between the date of receipt of such moneys and the first day of the subsequent month the applicant/recipient pays outstanding medical expenses and/or other expenses, the CWA shall consider only the funds remaining after such payment as a countable resource.**

(d) (No change.)

(e) (See proposal at 17 N.J.R. 2524(a).)

(a)**DIVISION OF YOUTH AND FAMILY SERVICES****Social Services Program for Individuals and Families****Personal Needs Allowance: Residential Health Care Facilities and Boarding Homes****Proposed Amendment: N.J.A.C. 10:123-3.2.**

Authority: N.J.S.A. 44:7-87.

Proposal Number: PRN 1985-687.

Submit comments by January 16, 1986 to:

Steve Valli
Boarding Home Coordinator
Division of Youth and Family Services
1 South Montgomery Street
CN 717
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment makes one change in the existing text of N.J.A.C. 10:123-3.2. The amount of the personal needs allowance to be reserved by owners and operators of residential health care facilities and boarding homes for the use of Supplemental Social Security Income or General Public Assistance recipient residents is being increased by one dollar from \$52.00 to \$53.00.

Social Impact

The personal needs allowance increase will allow the residents' spending power to maintain an equilibrium with the cost of living.

Economic Impact

Recipients of the increased personal needs allowance will benefit by having additional resources for use in purchasing incidentals. There will be no negative impact on facility owners or operators.

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

10:123-3.2 Amount

The owner or operator of each residential health care facility or boarding house shall reserve to each Supplemental Security Income recipient residing therein, and the owner or operator of each residential health care facility shall reserve to each General Public Assistance recipient residing therein, a personal needs allowance in the amount of at least [\$52.00] **\$53.00** per month. No owner or operator or agency thereof shall interfere with the recipient's retention, use, or control of the personal needs allowance.

CORRECTIONS**(b)****DIVISION OF ADULT INSTITUTIONS****Adult County Correctional Facilities****Medical Examinations: N.J.A.C. 10A:31-3.12 and 3.15****Public Hearing**

Take notice that a public hearing will be held January 21, 1986 at 1:30 P.M. in the Correction Officers Training Academy (COTA), Stuyvesant Avenue and Whittlesey Road, Trenton, New Jersey 08628, concerning N.J.A.C. 10A:31-3.12 and 3.15 "Medical Screening" as proposed October 7, 1985 in the New Jersey Register at 17 N.J.R. 2343, which concerns provisions for the amendment of medical screening procedures of new inmates admitted into Adult County Correctional Facilities pursuant to the authority of N.J.S.A. 30:1-15 and 30:1B-10.

The public hearing will be conducted in a quasi-legislative rather than in a quasi-judicial manner and is opened to interested individuals, representatives of government bodies and companies and associations. This is a hearing prescribed by law. See N.J.S.A. 52:14B-1 et seq.

Interested persons are invited to participate through written comments or oral presentations or submit written comments on or before January 16, 1986 by notifying

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Office of the Deputy Commissioner
Department of Corrections
Whittlesey Road, P.O. Box 7387
Trenton, New Jersey 08628

INSURANCE

The following proposals are authorized by Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Submit comments by January 16, 1986 to:
Verice M. Mason, Director
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625

(a)

DIVISION OF ADMINISTRATION

Cancellation and Nonrenewal of Property and Casualty/Liability Insurance Policies

Proposed Amendments: N.J.A.C. 11:1-20

Proposed New Rules: N.J.A.C. 11:1-22

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22-6.14a1, 2 and 3, 17:29C-1 et seq., 17:29A-1 et seq., 17:29AA-1 et seq., and 17:29B-4.

Proposal Number: PRN 1985-681.

The agency proposal follows:

Summary

On September 16, 1985, new rules concerning the cancellation and nonrenewal of property and casualty/liability insurance policies (N.J.A.C. 11:1-20) were adopted by Commissioner Hazel Frank Gluck on an emergency basis, effective September 17, 1985. An emergency amendment to the scope section of the rule was promulgated eliminating its applicability to surplus lines insurance policies and certain selected commercial lines coverages. The rules were subsequently re-adopted on November 16, 1985, without change.

The Department is now proposing amendments to N.J.A.C. 11:1-20 and a new rule, N.J.A.C. 11:1-22 in accordance with ordinary rulemaking procedures. These proposals stem from public comments received on the concurrent proposal which accompanied the emergency adoption of N.J.A.C. 11:1-20, discussions with a committee composed of insurer representatives and internal review by Department personnel. The Summary of Public Comments and Agency Responses published in conjunction with the re-adoption of N.J.A.C. 11:1-20 contains a detailed discussion of the commentary on that rule (see Adoption Notice in this Register). The proposed amendments to N.J.A.C. 11:1-20 and new rule 11:1-22 set forth many substantive as well as technical and editorial modifications to the re-adopted rule.

Proposed amendments to N.J.A.C. 11:1-20.1 modify the scope of the subchapter. Pursuant to the emergency amendment of this provision, effective November 15, 1985, the applicability of the rule has been limited by excluding: (1) surplus lines policies; (2) employers liability policies; (3) fidelity, forgery, surety and performance bonds; (4) ocean marine and aviation insurance; and (5) policies issued in this State covering multi-state locations except with respect to locations within this State. The proposed amendments would additionally remove the applicability of this subchapter to personal

lines coverages, such as homeowners insurance.

A new subsection (c) has been added to 11:1-20.1 indicating that the Commissioner may establish a market assistance plan in order to aid insurers in the placement of specified commercial lines coverages.

Proposed amendments to N.J.A.C. 11:1-20.2 delete the text of that section which is concerned with the prior approval of insurer underwriting standards and reasons for nonrenewal and cancellation by the Commissioner. Termination notice requirements, formerly codified at N.J.A.C. 11:1-20.3, have been recodified to this section and have been modified both substantively and technically. For example, subsection (a) has been amended to clarify the status of policies having no fixed expiration date. Further, the subsection now provides that a policy may be renewed with differing limits and terms than the expiring policy if there is mutual agreement between the insurer and insured or if the changes are approved by the Commissioner. Also, paragraph 1 has been added to this subsection, in response to public comment, to clarify that the provision does not prohibit insurers from modifying rates upon renewal.

In response to other public comments concerning the Commercial Insurance Deregulation Act, subsection (c) has been added to this recodified section to provide that policy coverage exclusions implemented pursuant to the Deregulation Act may be used in connection with the writing of new business only on or after the effective date of this subchapter.

N.J.A.C. 11:1-20.2(d), formerly 11:1-20.3(c), has been modified in response to public comments, and in accordance with the Department's Bulletin #85-1 issued in connection with the emergency adoption of N.J.A.C. 11:1-20. As amended, the provisions specify that failure to send a notice of cancellation to any designated mortgagee or loss payee shall invalidate the cancellation only as to the mortgagee's or loss payee's interest.

N.J.A.C. 11:1-20.3(e) has been redrafted in recognition of the deletion of the prior approval requirements formerly set forth at N.J.A.C. 11:1-20.2 and has been recodified as subsection (f) of the proposed new section 11:1-20.2. This subsection has been substantively modified by restricting notice of the right to file a complaint with the Insurance Department to other than non-payment terminations. N.J.A.C. 11:1-20.3(f) requiring the provision of a consumer complaint form with all termination notices is proposed for deletion in its entirety in response to commentary.

N.J.A.C. 11:1-20.3(h) has been substantially revised and recodified at N.J.A.C. 11:1-20.2(h). This subsection provides that if an insurer fails to properly and timely notify the insured of a replacement policy or a notice of a policy extension, the insured may continue the expiring policy under the same terms and conditions until the insurer sends appropriate notice. Additionally, the paragraph allows an insurer to replace an existing policy with one issued by an insurer who is under its common management and control, provided that the insurer obtains the insured's consent and maintains records of the actions taken.

Proposed N.J.A.C. 11:1-20.3, formerly N.J.A.C. 11:1-20.4 concerning required policy provisions, has been substantively amended as recommended by the insurance industry committee as set forth in its "replacement regulation". For example, the required inclusion of policy provisions concerning termination have been restricted to cancellations deleting nonrenewal and additional reasons for cancellation have been delineated.

N.J.A.C. 11:1-20.3(b), which is comparable in part to former N.J.A.C. 11:1-20.2(d), has been added and provides that

an insurer may issue a notice of cancellation with respect to any policy which has been in effect for less than 60 days at the time the notice is mailed or delivered unless the policy is a renewal.

N.J.A.C. 11:1-20.4 is a complete new section relating to underwriting guidelines and is designed to replace the prior approval requirement of N.J.A.C. 11:1-20.2. Subsection (b) sets forth standards which are deemed approved by the Commissioner for cancelling or nonrenewing a policy based on underwriting standards or reasons. The provisions include those reasons previously approved pursuant to Bulletin 85-2. They include: non-payment of premium; material misrepresentation or non-disclosure to the company of a material fact; increased hazard or material change in the risk assumed which could not have been reasonably contemplated by the parties; substantial breaches of contractual duties affecting the nature and/or insurability of the risk; lack of cooperation from the insured on loss control matters; and fraudulent acts against the company which affect risks. Adverse loss experience has also been included as a basis with respect to nonrenewals only. A definition of adverse loss experience has been developed. Three exhibits have been incorporated into the rule which, when completed, will enable the companies to determine whether the policy qualifies for nonrenewal due to adverse loss experience.

Subsection (c) of this section which is also drawn from Bulletin 85-2 provides that only the specific language listed in (b) may be used by insurers, unless substitute language is approved by the Commissioner.

N.J.A.C. 11:1-20.4(d) requires that any underwriting reasons other than those approved in (b) to be used by the insurer must be filed with the Commissioner at least 30 days prior to their use. If the Commissioner does not approve these standards, the insurer will be notified of the disapproval within 20 days of the receipt of the standard by the Department.

The proposed new section N.J.A.C. 11:1-20.5 addresses policy provisions and provides that no policy shall contain provisions which are inconsistent with the requirements of the subchapter. The text of existing N.J.A.C. 11:1-20.5 which concerns prohibited practices with respect to cancellation and nonrenewal has been deleted from this subchapter. The substance of this section, with substantive modifications, has been recodified in proposed new rule N.J.A.C. 11:1-22.

The proposed new rule N.J.A.C. 11:1-22 substantially conforms to certain elements of a "replacement regulation" prepared by the Industry Working Committee. N.J.A.C. 11:1-22.1(a), like the Department's existing regulation (See N.J.A.C. 11:1-20.5(a)1), prohibits mid-term premium increases or reductions in the amount or type of policy. The new proposal modifies this requirement, however, by permitting such changes to be effected if there is mutual consent between the insured and insurer after good faith negotiations or if the changes are otherwise approved in writing by the Commissioner.

Proposed N.J.A.C. 11:1-22.1(b) and (c) are designed to replace requirements set forth at N.J.A.C. 11:1-20.5(a)2 pertaining to block cancellations and nonrenewals. The proposed subsections essentially track provisions contained in the regulation developed by the Industry Working Committee. Subsection (b) prohibits the block nonrenewal of entire lines or classes of insurance unless a plan regarding same is submitted to the Commissioner at least 60 days in advance of its implementation date, and is not disapproved by the Commissioner within 30 days. Provisions contained in N.J.A.C. 11:1-20.5(a)2 requiring that the insurer's plan must minimize

marketplace disruption and provide for alternate coverage at comparable rates and terms have not been carried forward into the proposed new rule. Block cancellations are also prohibited in subsection (c), however, there are no time constraints on the submission and approval of a plan.

Public comment on concurrent proposal N.J.A.C. 11:1-20 focused heavily on the effect of loss of or reduction in available reinsurance on an insurer's ability to continue providing coverage for subject risks. The Department's Bulletin 85-2 listed four reasons for cancellation or nonrenewal that may only be implemented subsequent to the Commissioner's approval of a plan submitted by the insurer. One of those reasons was loss of or substantial change in available reinsurance.

The proposed new rule addresses public comment on the issue by providing a specific mechanism for nonrenewal or cancellation submissions based on the unavailability of reinsurance. N.J.A.C. 11:1-22.1(d) requires that the insurer's plan be filed with the Commissioner at least 10 days before issuance of any notice of termination. The Commissioner shall approve or deny the plan, with reasons in writing, within 10 days of receipt. The plan must contain a certification by a company officer setting forth various information pertaining to the loss of reinsurance and how the insurers terminations will be implemented. The criteria set forth for the certification contain many elements previously delineated in the Department's Bulletin.

The other three reasons for termination described in Bulletin 85-2, for which a plan must be submitted to the Commissioner, are captured in proposed subsections (e) and (f). Cancellations or nonrenewals for material increase in exposure arising out of changes in statutory or case law or loss of or reduction in available insurance capacity may be effected only by filing a plan with the Commissioner at least 10 days prior to the issuance of any termination notice. The Commissioner shall approve or disapprove the plan with reasons in writing within 10 days of receipt. Subsection (f) provides a similar requirement for nonrenewals based upon agency termination.

Proposed N.J.A.C. 11:1-22.3 provides a penalty provision.

Social Impact

The proposed amendments to N.J.A.C. 11:1-20 and proposed new rule N.J.A.C. 11:1-22 maintain the essential protections afforded to policyholders under N.J.A.C. 11:1-20, as clarified by the Department's Bulletins 85-1 and 85-2. The statutory standard for a termination requiring that it not be arbitrary, capricious or unfairly discriminatory is now explicitly set forth in the rule. Also, certain termination standards which are approved for use have been incorporated in response to comment calling for greater specificity in the rule. Essential notice requirements pertaining to offers of renewal coverage as well as cancellations and nonrenewals have been continued.

At the same time, the proposed amendments and new rule provide insurers with greater flexibility in responding to changes in available reinsurance and other conditions which may warrant termination activity. The applicable standards and requirements set forth in these proposals, certain of which are drawn from the aforementioned Bulletins, serve to ensure that the public will be adequately protected in such situations.

Proposed amendments also provide insurers with greater flexibility with respect to policy terminations by permitting the use of valid underwriting standards upon notice to the Commissioner. This notice requirement, however, will ensure that the Department is apprised of the standards which are being used by insurers for termination and will, therefore, enable

the Department to identify and disapprove the use of any standard found to be contrary to statutory or regulatory standards.

Insurers will also benefit from the proposed deletion of the provisions requiring the furnishing of a consumer complaint form with all notices of termination. It is not expected that this requirement will impact negatively on the public since notice of the insured's right to file a complaint with the Department is still required for all but non-payment terminations. The elimination of this notice requirement for non-payment terminations is expected to relieve both insurers and the Insurance Department from certain administrative burdens resulting from increased complaint activity.

With respect to the proposed deletion of personal lines coverages, the Department intends to promulgate regulations specifically tailored to such lines. Therefore, no negative impact on the public is anticipated.

Economic Impact

The proposed amendments and new rules are expected to have a positive economic impact on insurers. For example, the deletion of the furnishing of a consumer complaint form with each termination notice should reduce insurer costs. In addition, certain provisions of the rule providing insurers with greater flexibility on terminations and reductions in coverages will enable insurers to respond more quickly to market conditions.

The proposals are not expected to have a negative economic impact on the public since the essential protections afforded under N.J.A.C. 11:1-20 are maintained.

The proposals are expected to have some economic effect on the Department to the extent that modifications impact on the number of complaints received by the Department, the necessity of enforcement proceedings and the like.

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

SUBCHAPTER 20. CANCELLATION AND NONRENEWAL OF [PROPERTY AND CASUALTY/LIABILITY] COMMERCIAL INSURANCE POLICIES

11:1-20.1 Scope

(a) This subchapter shall apply to all **commercial** [property and casualty/liability] insurance policies **which are in force, issued or renewed on or after the effective date of this subchapter by companies licensed to do business in this State** except workers' compensation and employers' liability insurance, accident and health insurance, fidelity, surety, performance and forgery bonds, ocean marine and aviation insurance and any policy written by a surplus lines insurer. This subchapter shall not apply to any policy issued in this State covering risks with multi-state locations except with respect to coverages applicable to locations within this State. **[This subchapter shall apply to policies covering automobiles as defined at N.J.S.A. 39:6A-3, and its requirements are in addition to any imposed by other statutes or regulations.]**

(b) These rules are not exclusive, and the Commissioner may also consider other provisions of statutes and regulations to be applicable to the circumstances or situations addressed herein. Policies may provide terms more favorable to policyholders than are required by these rules. The rights provided by these rules are in addition to and do not prejudice

any other rights policyholders may have at common law, or under statutes or regulations.

(c) In addition to these rules, the Commissioner may implement a market assistance plan in order to aid insureds in obtaining commercial insurance coverages specified therein.

[11:1-20.2 Approval of nonrenewals and cancellations]

[(a) No insurer shall issue notice of nonrenewal or cancellation, unless the reason or standard upon which the termination is based has been submitted to the Commissioner for approval at least 90 days prior to the expiration date of the affected policy(s).]

(b) The Commissioner shall review the insurer's submission to determine compliance with applicable statutory or regulatory standards and shall advise the insurer, in writing, of the approval or disapproval of the use of the standard or reason within 30 days.

(c) No insurer shall issue notice of nonrenewal or cancellation unless approval has been granted by the Commissioner pursuant to this section.

(d) This section shall not apply to any notice of cancellation issued for nonpayment of premium or moral hazard as defined in this subchapter. This section shall also not apply to any notice of cancellation issued with respect to a policy which has been in effect for less than 60 days at the time the notice is mailed or delivered, unless the policy is a renewal policy.]

[11:1-20.3] 11:1-20.2 Nonrenewal and cancellation notice requirements

(a) No policy shall be nonrenewed upon its expiration date unless a valid notice of nonrenewal has been mailed or delivered to the insured in accordance with the provisions of this subchapter. **For purposes of this subchapter, policies not having a fixed expiration date shall be deemed to expire annually on the anniversary of their inception.** Each renewal shall offer coverage at least as favorable to the insured as the expiring policy and at the same limits and terms, subject to **any changes mutually agreed to by the insurer and insured after good faith negotiations and any changes otherwise** approved by the Commissioner [that had become effective since the commencement of the current policy period]. With respect to payment of the renewal premium, notice shall be given not more than 45 days nor less than 30 days prior to the due date of the premium and shall clearly state the effect of nonpayment of the premium by the due date.

1. Notwithstanding the provisions of (a) above, insurers may adjust premium rates upon the renewal of existing policies in conformance with applicable statutory requirements.

(b) No notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured not more than 45 nor less than 30 days prior to the expiration of the policy.

(c) Policy coverage exclusions implemented pursuant to the Commercial Insurance Deregulation Act may be used in connection with the writing of new business only on or after the effective date of this subchapter.

[(c)] (d) No cancellation, other than a cancellation based upon nonpayment of premium or for moral hazard as defined in paragraphs 1 and 2 below, shall be valid unless notice is mailed or delivered by the insurer to the insured, and to any [designated mortgagee not named in the policy as the insured] **person entitled to notice under the policy, not more than 45 nor less than 30 days prior to the effective date of such cancellation except, however, that failure to send such notice to any designated mortgagee or loss payee shall invalidate the cancellation only as to the mortgagee's or loss payee's interest.**

1. A policy shall not be cancelled for nonpayment of premium unless the insurer, at least 10 days prior to the effective cancellation date, has mailed or delivered to the insured notice as required in this subchapter of the amount of premium due and the due date. The notice shall clearly state the effect of nonpayment by the due date.

i. No cancellation for nonpayment of premium shall be effective if payment of the amount due is made prior to the effective date set forth in the notice.

2. A policy shall not be cancelled for moral hazard unless the insurer, at least 10 days prior to the effective termination date, has mailed or delivered to the insured notice as required in this subchapter and the basis for termination conforms to the following definitions of moral hazard:

i. The risk, danger or probability that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. Any change in the circumstances of an insured that will increase the probability of such a destruction may be considered a "moral hazard."

ii. The substantial risk, danger or probability that the personal habits of the insured may increase the possibility of loss or liability for which an insurer will be held responsible. Any change in the character or circumstances of an insured that will increase the probability of such a loss or liability may be considered a "moral hazard."

[(d)] (e) No nonrenewal or cancellation shall be valid unless the notice contains the standard or reason upon which the termination is premised and specifies in detail the factual basis applicable to the insured upon which the insurer relies.

[(e) Each notice of nonrenewal or cancellation, must contain a statement which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention advising the insured:

1. That the standard or reason used by the insurer for nonrenewal or cancellation, as applicable, has been approved by the Commissioner of Insurance pursuant to the provisions of this subchapter;

i. This paragraph shall not apply to any termination based upon moral hazard or nonpayment of premium; and

2. That the insured may contest the cancellation or nonrenewal by filing a written complaint with the New Jersey Department of Insurance, Division of Licensing and Enforcement, CN 325, Trenton, New Jersey 08625. The statement also shall advise the insured to contact the Insurance Department immediately, in the event he or she wishes to file a complaint, and that the consumer complaint form specified in (f) below may be used for this purpose.]

(f) All notices of cancellation or nonrenewal, except those for nonpayment of premium, must contain a statement which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention advising the insured that the insured may file a written complaint about the cancellation with the New Jersey Department of Insurance, Division of Licensing and Enforcement, CN 325, Trenton, New Jersey 08625. The statement also shall advise the insured to contact the Insurance Department immediately, in the event he or she wishes to file a complaint.

[(f) A copy of the New Jersey Department of Insurance Consumer Complaint Form shall also accompany each notice of nonrenewal or cancellation.]

(g) No nonrenewal or cancellation shall be valid unless notice thereof is sent:

1. [Notice sent by] By certified mail; or
2. By first class mail, if [A]at the time of mailing [of said

notice, by regular mail,] the insurer has obtained from the Post Office Department a date stamped proof of mailing showing the name and address of the insured, and the insurer has retained a duplicate copy of the mailed notice which is certified to be a true copy.

(h) [For the purposes of this subchapter, the failure by the insurer to issue and deliver a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term shall be deemed a nonrenewal.] **For the purposes of this subchapter, if an insurer fails to send a notice of nonrenewal as required by this subchapter or fails to issue and deliver a policy replacing at the end of the policy period a policy previously issued and delivered by the insurer, or fails to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, the insurer shall be entitled to continue the expiring policy at the same terms and premium until such time as the insurer shall send appropriate notice of termination under this subchapter. Nothing in this subchapter shall prohibit an insurer from replacing its policy with a policy issued by another insurer with which it is under common management and control, provided the insurer obtains its policyholder's consent to do so and maintains records of such actions.**

(i) An insurer shall not be required to provide notice of nonrenewal or cancellation as specified in this subchapter if the insurer has replaced coverage elsewhere or has otherwise specifically requested termination [and the insurer has complied with the requirements of this subsection. In any such case, the insurer shall, within five days of receipt of the termination request, issue to the insured a written acknowledgement]. The insurer must, however, maintain in its file properly documented proof that termination was made at the request of the insured [and such proof must include a copy of the written acknowledgement forwarded to the insured].

[11:1-20.4] 11:1-20.3 Policy provisions relating to cancellation

(a) [All property and casualty/liability insurance policy forms must contain provisions that clearly and specifically state the grounds upon which the insurer will cancel or nonrenew coverage and that describe the types of conditions or circumstances under which the insurer will initiate cancellation or nonrenewal. Such grounds shall include:

1. Nonpayment of premium;
2. Material misrepresentations;

3. Substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the contract; and

4. Substantial breaches of contractual duties, conditions or warranties.] All commercial insurance policy forms issued or renewed on or after 45 days of the effective date of this subchapter must contain provisions that clearly state the grounds upon which the insurer will cancel coverage and that generally describe the types of conditions or circumstances under which the insurer will initiate cancellation. Such grounds may include, but need not be limited to the following:

1. Nonpayment of premium;
2. Material misrepresentation or nondisclosure to the company of a material fact at the time of acceptance of the risk;
3. Increased hazard or material change in the risk assumed which could not have been reasonably contemplated by the parties at the time of assumption of the risk;
4. Substantial breaches of contractual duties, conditions or warranties that materially affect the nature and/or insurability of the risk;

5. Fraudulent acts against the company by the insured or its representatives that materially affect the nature of the risk insured.

6. Lack of cooperation from the insured on loss control matters materially affecting insurability of the risk;

7. Loss of or substantial changes in applicable reinsurance (subject to conditions imposed by the Commissioner);

8. Material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract (subject to conditions imposed by the Commissioner); and

9. Loss of or reduction in available insurance capacity (subject to conditions imposed by the Commissioner).

(b) Noting in this subject shall prohibit an insurer from issuing a notice of cancellation with respect to any policy which has been in effect for less than 60 days at the time the notice is mailed or delivered, unless the policy is a renewal policy.

11:1-20.4 Underwriting guidelines

(a) No insurer may cancel or nonrenew a policy based upon underwriting standards or reasons which are arbitrary, capricious or unfairly discriminatory.

(b) The following standards and/or reasons are approved for use by insurers:

- 1. Nonpayment of premiums;
2. Material misrepresentation or nondisclosure to the company of a material fact at the time of acceptance of the risk;
3. Increased hazard or material change in the risk assumed which could not have been reasonably contemplated by the parties at the time of assumption of the risk;

4. Substantial breaches of contractual duties, conditions and warranties that materially affect the nature and/or insurability of the risk;

5. Lack of cooperation from the insured on loss control matters materially affecting insurability of the risk;

6. Fraudulent acts against the company by the insured or its representatives that materially affect the nature of the risk insured; and

7. With respect to nonrenewals only, adverse loss experience.

i. Adverse loss experience is defined as loss experience of a risk which results in the answer "NO" to questions 14 and 15 in the formula for measurement of experience as set forth in Exhibits A, Exhibit B and Exhibit C concerning the determination of adverse loss experience, which are part of this rule. Any other standard(s) for adverse loss experience must be submitted for the Commissioner's approval pursuant to (d) and (e) below.

(c) Only the specific language set forth in (b)1 through 7 above is approved for use by insurers. The use of substitute language is prohibited except if approved by the Commissioner.

(d) Underwriting reasons or standards other than those approved in (b) above shall be filed with the Commissioner for review at least 30 days prior to their use.

(e) If the Commissioner determines, after review, that an underwriting standard or reason does not comply with the standards set forth in (a) above, the Commissioner shall notify the insurer in writing of the disapproval of such standard or reason, and the reasons therefor, within 20 days of its receipt by the Department.

[11:1-20.5 Prohibitions

(a) The following acts or practices are specifically prohibited:

1. Effecting or attempting to effect a mid-term premium increase and/or a reduction in the amount or type of coverage provided under the policy;

2. Block cancellation or nonrenewing entire lines of insurance and/or withdrawing from entire classes of business, except pursuant to a plan approved by the Commissioner which minimizes marketplace disruption and provides for alternate coverage at comparable rates and terms.

i. For the purposes of this paragraph, the termination or attempted termination of an appointed agent solely to achieve the block cancellation or nonrenewal of entire lines of insurance or such other instant reunderwriting of an agency book of business shall be deemed a nonrenewal or cancellation subject to 2 above.

(b) No policy shall contain provisions which are inconsistent with the requirements of this subchapter, and any such existing provisions are hereby deemed to be null and void.]

11:1-20.5 Policy provisions

No policy shall contain provisions which are inconsistent with the applicable requirements of this subchapter.

11:1-20.6 Separability

(No change in text.)

11:1-20.7 Penalties

(No change in text.)

EXHIBIT A

Adverse Loss Experience
Determination of Renewability or Non-renewability for Adverse Experience under Regulation N.J.A.C. 11:1-20

Table with 2 columns: Item, and a blank line for response. Items include: (1) Earned premium (B/L), (2) Incurred losses ex IBNR (B/L), (3) Number of claims incurred, (4) C.V. square, individual claims, (5) Expected loss ratio, ex IBNR, (6) Expected number of claims, (7) Expected average claim cost, (B/L), (8) C.V. square of loss ratio, (9) C.V. of loss ratio, (10) Critical loss ratio, (11) Actual loss ratio, (12) Std. dev. of no. of claims, (13) Critical claim count, (14) Loss ratio acceptable?, (15) No. of claims acceptable?

Experience is too adverse for renewal only if both (14) and (15) are "NO".

EXHIBIT B

Adverse Loss Experience
Determination of Renewability or Non-renewability For Exposure Under Regulation N.J.A.C. 11:1-20

Explanation of Items in Exhibit A

(1) Basis limits earned premium upon which experience is being judged; must include at least one full policy term.

of risks intended to be cancelled or nonrenewed;

iv. Identifying the total amount of the insurer's net retention for the risks intended to be cancelled or nonrenewed;

v. Identifying the total amount of risk ceded to each reinsurer and the portion of that total that is no longer available;

vi. Explaining how the loss of or reduction in reinsurance affects the company's risks throughout the entire line or category of insurance proposed for cancellation or nonrenewal;

vii. Explaining why cancellation and/or nonrenewal is necessary to cure the loss of or reduction in available reinsurance; and

viii. Explaining how the cancellations or nonrenewals, if approved, will be implemented with respect to individual risks and the steps that will be taken to ensure that the cancellation/nonrenewal decisions will not be applied in an arbitrary, capricious or unfairly discriminatory manner.

(e) Notwithstanding paragraphs (b) and (c) above, an insurer may cancel or nonrenew a line or class of insurance based upon a material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract or loss of or reduction in available insurance capacity by filing a plan with the Commissioner pursuant to the requirements of this subsection. The insurer's plan must be filed with the Commissioner at least 10 days prior to the issuance of any notice of cancellation or nonrenewal. The insurer may implement its plan upon the approval of the Commissioner which shall be granted or denied in writing, with reasons therefor, within 10 days of the Commissioner's receipt of the plan.

(f) Notwithstanding paragraphs (b) and (c) above, an insurer may nonrenew a line or class of insurance based upon agency termination by filing a plan with the Commissioner pursuant to the requirements of this subsection. The insurer's plan must be filed with the Commissioner at least 10 days prior to the issuance of any notice of nonrenewal. The insurer may implement its plan upon the approval of the Commissioner which shall be granted or denied in writing, with reasons therefor, within 10 days of the Commissioner's receipt of the plan.

11:1-22.3 Penalties

In addition to any other penalty authorized by law, the Commissioner may order the immediate reinstatement without lapse of any policy which has been terminated in violation of the provisions of this subchapter and may, after notice and a hearing, impose penalties as prescribed by N.J.S.A. 17:29A-1 et seq., 17:29AA-1 et seq., 17:29B-7 and 11, 17:30C-1 et seq., 17:32-1 et seq. and 17:33-2.

(a)

DIVISION OF LICENSING

Continuing Insurance Education Requirement as Precondition to License Renewal

Proposed New Rule: N.J.A.C. 11:2-20

Authority: N.J.A.C. 17:1-8.1; 17:1C-b(e); 17:22-6.12, as amended by P.L.1983, c.533, sec. 17; 17B:22-9(a), as amended by P.L.1983, c.533, sec. 6.

Proposal Number: PRN 1985-668.

The agency proposal follows:

Summary

The proposed new subchapter, N.J.A.C. 11:2-20, imposes a continuing insurance education requirement on all licensed insurance agents, brokers and solicitors pursuant to P.L.1983, c.533, sec. 6 (Life and Health) and sec. 17 (Property and Casualty). The subchapter was originally proposed in the November 5, 1984 New Jersey Register, 16 NJ.R. 2922.

In its effort to strike a balance between producing a higher quality agent and not overburdening the agent with excessive time demands, the Department has made several substantive changes in the reproposal.

A considerable amount of time was spent in reviewing the public comments on the original proposal, and the proposal has been revised numerous times. The Department believes that this reproposal will accomplish its goal of producing well-informed agents.

Among the most significant changes made in the reproposal is the recognition of professional designations. In an attempt to encourage all agents to attain a professional designation (such as CIC or CLU), the Department has reduced, and in some cases eliminated, the continuing education requirements for those agents who attain such a designation.

The Department has also decided to include correspondence courses as a source of continuing education. Certain other requirements have also been modified in the reproposal in response to public comments.

N.J.A.C. 11:2-20.1 imposes the continuing insurance education requirement on all insurance representatives, who must fulfill the requirement during every two-year license period as a prerequisite to license renewal. An applicant who is licensed in one authority must obtain 12 continuing insurance education credits, while an applicant licensed in more than one authority must obtain 18 continuing insurance education credits. Correspondence courses, in addition to college courses and seminars, are among the courses which may be completed to fulfill the continuing education requirement. Applicants for license renewal must comply with the requirements of this proposed new rule in addition to any existing requirements for license renewal found in N.J.S.A. 17:22-6.12 and 17B:22.25.

N.J.A.C. 11:2-20.2 outlines the scope of the subchapter.

N.J.A.C. 11:2-20.2(a) provides that the subchapter applies to all licensed agents, brokers and solicitors. Home office executives and retired agents who choose to retain their licenses are not exempt from the requirement, since the Department believes that all agents who are licensed should be kept informed of current developments in the insurance field.

N.J.A.C. 11:2-20.2(b) states that a non-resident agent, broker or solicitor who is subject to continuing education requirements in another state shall not have to meet the continuing education requirements in New Jersey.

N.J.A.C. 11:2-20.2(c) and (d) outline certain limited lines licenses whose holders are exempted from the continuing education requirement.

N.J.A.C. 11:2-20.3 is a definitions section, which has been added to the reproposal.

N.J.A.C. 11:2-20.4 is a general provisions section.

N.J.A.C. 11:2-20.4(a) describes the computerized file in which continuing education credits will be recorded. In commenting on the original proposal, several commentors suggested that they, or the Department itself, record the credits; however, after careful consideration, the Department has decided to keep the provision that an independent testing service record the credits at a nominal cost to each insurance representative.

N.J.A.C. 11:2-20.4(b) and (c) provide the procedures for notifying insurance representatives of their total credits and for the issuance of license renewal applications.

N.J.A.C. 11:2-20.4(c)1. outlines the procedure available to individuals who wish to contest erroneous notifications of failure to complete the continuing education requirement. N.J.A.C. 11:2-20.4(c)2. states that failure to receive any of the I.T.S. notices provided for in this subchapter shall not excuse the individual from complying with the continuing education requirements.

N.J.A.C. 11:2-20.4(d), (e) and (f) discuss course credit certificates.

N.J.A.C. 11:2-20.5 concerns the effects of non-compliance.

N.J.A.C. 11:2-20.5(a) states that the licenses of individuals who fail to fulfill the continuing insurance education requirement will expire unrenewed, unless a waiver is granted. N.J.A.C. 11:2-20.5(a)1. explains the procedure for reinstating a license once it has expired.

N.J.A.C. 11:2-20.5(b) provides that an individual may request a temporary waiver of the requirement and a conditional renewal of the license. N.J.A.C. 11:2-20.5(b)2. describes what information must be contained in a request for review. N.J.A.C. 11:2-20.5(b)3. lists factors to be considered by the Commissioner in the determination of whether or not to grant a waiver and issue a conditional license renewal.

N.J.A.C. 11:2-20.5(c) and (d) have been added to the reproposal as it was noted by one commentor that the original proposal failed to discuss the status of partnership and corporate licenses when a licensed partnership or officer fails to meet the continuing education requirements.

N.J.A.C. 11:2-20.6 addresses course approval.

N.J.A.C. 11:2-20.6(a) provides that the Commissioner of Insurance must approve all prospective continuing insurance education courses, and that approval must be renewed every two years.

N.J.A.C. 11:2-20.6(b) states that no entity offering continuing education courses may represent itself as an insurance school unless it meets the requirements set forth at N.J.A.C. 11:2-19, contained in the Department's rules concerning Approval of Insurance Schools and Company Training Programs (see proposal at 16 N.J.R. 2920(b) and adoption notice in the December 2, 1985 Register).

N.J.A.C. 11:2-20.6(c) lists course topics that are appropriate for continuing insurance education courses. Sales motivation courses are specifically excluded. In response to one commentor's suggestion that an outline of required material and a study guide be given to course providers, the Department will

provide such information if requested to do so.

N.J.A.C. 11:2-20.6(d) states that insurance schools, company training programs and other prospective course providers, including professional associations, must prepare a request for course approval and submit a list of pertinent information to help the Commissioner in determining whether to grant approval.

N.J.A.C. 11:2-20.7 discusses approved course credits.

N.J.A.C. 11:2-20.7(a) lists the schedule for assigning course credits.

N.J.A.C. 11:2-20.7(b) describes the amount of course credits to be assigned to correspondence courses. Several commentors were concerned with the exclusion of correspondence courses in the original proposal. After careful consideration, the Department has decided that correspondence courses should be considered for approval, since their inclusion in the list of approved courses will provide students with more options in fulfilling the continuing education requirement.

N.J.A.C. 11:2-20.7(c) states that instructors of continuing education courses shall receive the same credit as students who take the course.

N.J.A.C. 11:2-20.7(d) provides that continuing education credits are valid only for two years and may be used once for each license. The Department received several suggestions from the public that carryover credit be given. The Department has decided that no carryover credit will be given, primarily because the Department feels that it is important for agents to be knowledgeable about current insurance developments. To avoid the likelihood of carryover credit, the Department has changed the credit system (see N.J.A.C. 11:2-20.1).

N.J.A.C. 11:2-20.8 discusses credit completion requirements and the treatment of professional designations.

N.J.A.C. 11:2-20.8(a) provides a schedule that outlines the dates by which course credits must be earned. The schedule acknowledges different dates depending on the amount and types of licenses held by an individual.

N.J.A.C. 11:2-20.8(b) states that if an individual fails to earn the required credits by the credit completion date, the license will not be renewed.

N.J.A.C. 11:2-20.8(c) describes the situation in which an individual holds more than one license and fails to meet the requirements for the first license, but wants to renew the remaining licenses.

N.J.A.C. 11:2-20.8(d) states that an individual shall have two years from each credit completion date to complete the continuing education requirement.

N.J.A.C. 11:2-20.8(e) provides that an individual who is a member in good standing of a recognized professional designation that requires members to complete mandatory continuing education courses to remain in good standing will be exempted from the continuing education requirements set forth in this subchapter.

N.J.A.C. 11:2-20.8(f) states that an individual who is a member of a recognized professional designation that does not require mandatory continuing education will have to meet one-half of the continuing education requirements set forth in this subchapter.

N.J.A.C. 11:2-20.8(g) outlines the procedures available to associations and organizations to have their program of studies accepted as a recognized professional designation.

N.J.A.C. 11:2-20.9 states the effects of noncompliance with this subchapter.

N.J.A.C. 11:2-20.10 outlines the requirements to be met during the initial transition period. Such a transition period was not considered in the original proposal, but is included

in the reproposal because the Department recognizes that it will ease the burden on licensees by providing a staggered schedule of compliance for the first two years.

NOTE: The Department realizes that parts of this subchapter may be confusing, given the different renewal dates for various licenses. Therefore, the following examples have been provided to aid in the understanding of the provisions.

1. Two licenses—same authority

X holds a property/casualty agent's license and a property/casualty broker's license, which come up for renewal on 5/1/86 and 11/1/87, respectively. X must complete the continuing education requirement as follows:

3/1/86—credit completion date
(60 days prior to the 5/1/86 renewal date)
12 credits

5/1/86—renewal date for agent's license

9/1/87—credit completion date
(60 days prior to the 11/1/87 renewal date)
0 credits

11/1/87—renewal date for broker's license

No additional credits are needed by the 9/1/87 credit completion date since this license is in the same authority (property/casualty) as the agent's license.

2. Two licenses—different authorities

Y holds a property/casualty agent's license and a life/health broker's license, which come up for renewal on 5/1/86 and 11/1/86, respectively. Y must complete the continuing education requirement as follows:

3/1/86—credit completion date
(60 days prior to the 5/1/86 renewal date)
12 credits

5/1/86—renewal date for property/casualty agent's license

9/1/86—credit completion date
(60 days prior to the 11/1/86 renewal date)
6 credits

11/1/86—renewal date for life/health broker's license

Six additional credits, for a total of 18 credits, are needed by the 9/1/86 credit completion date since the two licenses are in different authorities. All 18 credits may be earned by the 3/1/86 credit completion date but the licensee has until the 9/1/86 credit completion date to earn the extra six credits.

Social Impact

The proposed new subchapter places an affirmative responsibility on insurance representatives to update their skills in order to obtain a renewal license. It also addresses a public need in protecting the interests of insurance consumers by helping them make informed insurance decisions with the assistance of knowledgeable insurance representatives. The insurance representatives should have a higher sense of self-esteem, and ultimately enjoy a better reputation in the community.

Economic Impact

In fulfilling the continuing education requirement, insurance representatives will incur costs for tuition and for the I.T.S. recordkeeping services.

Insurance consumers will experience a more efficient allocation of premium dollars, as their insurance needs will be

handled by professional, qualified advisors. The Department of Insurance will incur administrative costs in monitoring compliance with the requirements of the proposed new subchapter and in approving courses and instructors. The Department expects these costs to be absorbed in its existing budget.

Full text of the proposed new rule follows.

SUBCHAPTER 20. CONTINUING INSURANCE EDUCATION REQUIREMENT AS PRECONDITION TO LICENSE RENEWAL

11:2-20.1 Continuing education requirement

All applicants for renewal of an insurance agent's, broker's or solicitor's license must fulfill a continuing insurance education requirement to be eligible for license renewal. The continuing insurance education requirement may be fulfilled by completing approved continuing insurance education courses, including seminars, correspondence courses and college courses. An applicant who is licensed in one authority must obtain 12 continuing insurance education credits. An applicant who is licensed in more than one authority must obtain 18 continuing insurance education credits.

11:2-20.2 Scope

(a) This subchapter shall apply to all licensed agents, brokers and solicitors, except as provided in (b) and (c) below.

(b) Non-resident agents, brokers or solicitors who meet continuing education requirements in their own state shall not be required to meet the continuing education requirements in New Jersey.

(c) Individuals holding the following limited lines licenses are exempt from the continuing education requirement:

1. Property/casualty ticket agent;
2. Property/casualty salaried employee;
3. Property/casualty credit agent;
4. Life/health credit agent;
5. Health ticket agent;
6. Mortgage guarantee agent;
7. Mortgage cancellation agent;
8. Bailbond agent;
9. Investment company agent;
10. Title agent.

(d) Individuals holding the following limited licenses are exempt from additional continuing education requirements other than for the prerequisite license:

1. Surplus lines agent;
2. Surplus lines holder of a certificate of eligibility;
3. Variable annuity agent;
4. Variable annuity solicitor.

(e) If an individual fails to meet the continuing education requirement for the prerequisite license, the limited lines license shall not be renewed.

11:2-20.3 Definitions

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

"Authority" means the discipline in which the individual is licensed, and includes life/health and property/casualty.

"Course completion" means the student has an 80 percent class attendance record as verified by the instructor for approved seminars and courses, the student has submitted 80

percent of the assignments required in a correspondence course, or the student achieves a score of at least 70 percent on an approved proctored examination, as determined by the instructor.

"Correspondence course" means a program of study that does not require classroom attendance and which is a member of the National Home Study Council or which has been in existence for at least three years and is awaiting membership in the National Home Study Council.

"Credit completion date" means the date by which an individual must complete the continuing insurance education requirement. The credit completion date is 60 days prior to the renewal date for licenses in each authority.

"Independent proctored examination" means an examination administered by an entity other than the school itself, or one that is administered on a national basis.

"One day course" means a seminar or course that is completed in one day or less, and includes one-half day seminars.

"Recognized designation" means a professional designation from an association which has received a letter of recognition as described in N.J.A.C. 11:2-20.8(g).

"Renewal period" means the two-year period, marked by the credit completion date, in which the individual must complete the continuing insurance education requirements.

11:2-20.4 General provisions

(a) Continuing education credits will be recorded and compiled by an independent testing service, (I.T.S.) pursuant to N.J.S.A. 17:22-6.9a and 17B:22-9.1. The I.T.S. will maintain, at a nominal cost to each insurance representative, a computerized file in which continuing education credits will be recorded, and will monitor the file for fulfillment of the continuing insurance education requirement.

(b) The I.T.S. shall provide the insurance representative with a notice 180 days prior to the date of expiration of the affected license(s) that lists continuing insurance education credits on the licensee's record for the relevant license period.

(c) License renewal applications will be sent to insurance representatives only after the I.T.S. confirms that the required evidence of fulfillment of the continuing insurance education requirement has been submitted to the I.T.S. office on the insurance representative's behalf. If the I.T.S. does not receive this evidence by the credit completion date of the affected license, the individual will be notified immediately of his or her failure to comply with the requirements of this subchapter.

1. Individuals contending that they have completed the continuing insurance education requirement and that they have been erroneously notified of their failure to fulfill the requirement may submit copies of their course credit certificates along with a written explanation of the circumstances to the Commissioner. If the Commissioner determines that the requirement has in fact been met, the licensee will promptly receive a license renewal application.

2. Failure to receive any of the I.T.S. notices provided for in this subchapter shall not excuse an individual from complying with the continuing education requirement.

(d) Proof of continuing insurance education credits must be in the form of course credit certificates, which form is specified by the Commissioner.

(e) Upon satisfactory completion of each approved course, the instructor must promptly send the course credit certificate to the I.T.S. and issue a copy of the certificate to the student.

(f) Course credit certificates must be received by the I.T.S. no later than 60 days prior to expiration date of the affected license.

11:2-20.5 Effects of non-compliance

(a) The licenses of individuals who fail to fulfill the requirements of this subchapter will expire unrenewed, unless a temporary waiver is granted pursuant to (b) below.

1. To reinstate a license which has expired, an individual may reapply with an original application (N.J.S.A. 17:22-6.6 and 17B:22-9). The reapplication procedures are as follows:

i. For each authority, if the individual was not licensed in the previous two-year license period, the individual may reapply and shall complete the full continuing education requirement within the next license renewal period.

ii. For each authority, if the individual was licensed in the previous two year license period and the individual did not complete the continuing education requirement, the individual shall complete the unfinished continuing education requirement prior to reapplication.

(b) In extraordinary cases, an individual who fails to fulfill the continuing insurance education requirement may make a written request to the Commissioner for a temporary waiver of the continuing insurance education requirement and a conditional renewal of license.

1. To avoid the consequences in (a) above, the request must be made as soon as reasonably possible, and in no event later than 30 days prior to the expiration date of the affected license.

2. The request must include a detailed explanation of the circumstances surrounding the failure to fulfill the requirements of this subchapter. The Commissioner reserves the right to require other evidence that may be necessary in individual cases.

3. The Commissioner, in his or her discretion, will grant temporary waivers and conditional license renewals for good cause shown. The Commissioner's determination will be based on an evaluation of the following:

- i. Any negligence on the part of the individual;
- ii. The effect of the determination on the public (for example, hardship to customers of the licensee, etc.);
- iii. The effect of the determination on the integrity of the continuing insurance education requirement; and
- iv. The legitimacy of the reasons offered for non-compliance with the requirements of this subchapter.

(c) If the only licensed partner or officer of a licensed partnership or corporation fails to meet the continuing insurance education requirement, the partnership or corporate license shall not be renewed.

(d) If one of the licensed partners or active officers in a licensed partnership or corporation fails to meet the continuing insurance education requirement, the partnership or corporate license shall not be renewed unless:

1. The partner or active officer is granted a temporary waiver of the requirement; or
2. A licensed partner or active officer, on behalf of the partnership or corporation, files an amended license application that excludes the non-licensed partner or officer.

11:2-20.6 Course approval

(a) In order to be an acceptable course of continuing insurance education credits, prospective continuing insurance education courses must be approved by the Commissioner of Insurance. Approval must be renewed every two years.

(b) No entity offering continuing education courses may represent itself to the public as an insurance school unless it meets the requirements set forth at N.J.A.C. 11:2-19.

(c) Continuing insurance education courses must consist of insurance-related subjects. Sales motivation courses are specifically excluded from consideration for approval. Sample

topics include:

1. Accounting;
2. Finance;
3. Insurance topics;
4. Loss control;
5. New Jersey insurance laws and regulations;
6. New Jersey licensing procedures;
7. Policy content/benefits;
8. Professional ethics;
9. Rating;
10. Tax laws; and
11. Underwriting.

(d) Insurance schools or company training programs currently approved pursuant to N.J.A.C. 11:2-19 and other prospective course providers, including professional associations, must prepare and submit a separate request for continuing education approval to the Commissioner, along with outlines and supporting information concerning continuing insurance education courses (see: N.J.A.C. 11:2-19.1(a)7).

1. The request must be accompanied by:
 - i. The name and address of the school or program, including a business telephone number;
 - ii. The identification number of the school or program, if any;
 - iii. The insurance authority(s) within which the course falls;
 - iv. The title and a brief description of the course including whether or not a proctored examination will be given; and
 - v. The number of class hours.

2. The request and accompanying information must be submitted to the Commissioner at least 90 days prior to the beginning of the registration period for the course, at the following address:

Insurance Education Specialist
 Department of Insurance
 201 East State Street
 CN 325
 Trenton, NJ 08625

3. The Commissioner will review the submitted materials and respond with approval or disapproval within 30 days of receipt of the request. Prospective courses will be evaluated to determine whether they are insurance-related and reasonably calculated to improve the professional competence of the students. If the Commissioner determines that the prospective courses meet the aforementioned standards, they will be approved and assigned continuing insurance education credits.

11:2-20.7 Approved course credits

(a) Course credit shall be assigned according to the following schedule:

1. Three credits for an approved one-day seminar or course;
2. Four credits for an approved seminar or course that last more than one day; and
3. Six credits for an approved independent proctored examination, such as CPCU, CLU, LUTC, and ARM.

(b) A correspondence course shall receive three credits.

(c) For the courses they instruct, course instructors shall receive the same credit given to students who take the course.

(d) Continuing education course credits are valid only for two years, and may be used only once for each license.

11:2-20.8 Credit completion requirements; treatment of professional designations

(a) Credits shall be earned according to the following schedule:

1. If an individual has one license, the credit completion date is determined by the renewal date for that license. The

individual must obtain 12 credits by the credit completion date for the license to be renewed.

2. If an individual has more than one license in the same authority, the credit completion date is determined by the renewal date of the license whose renewal is first in time. When an individual obtains 12 credits by the credit completion date, all licenses in the authority may be renewed.

3. If an individual has more than one license in different authorities, the credit completion date is determined by the renewal date of the license whose renewal is first in time. The individual must obtain 12 credits by the credit completion date for all licenses to be renewed and 6 credits by the credit completion date of the license if the different authority.

(b) If an individual fails to earn the required continuing insurance education credits by the credit completion date, the license shall not be renewed, unless a temporary waiver is granted pursuant to N.J.A.C. 11:2-20.5(b).

(c) If an individual has more than one license and fails to earn the required continuing insurance education credits by the credit completion date, the first license shall not be renewed. If the individual earns the needed credits by the credit completion date of the next license, that license and each remaining license in the same authority whose renewal date has not passed shall be renewed. If the individual does not earn the credits by the credit completion date of the next license, that license will not be renewed. An individual may repeat this process until the credit completion date of the last license, at which time all credits must be completed to renew the final license.

(d) The individual shall have two years from each credit completion date to complete the continuing insurance education requirement.

(e) If an individual has attained a recognized professional designation from an association which has mandatory continuing education courses to remain a member in good standing, such membership in good standing will be deemed fulfillment of the continuing education requirement in N.J.A.C. 11:2-20.1

(f) If an individual has attained a recognized professional designation from an association which has no mandatory continuing education courses to remain a member in good standing, the individual must meet one-half of the continuing education requirements set forth in N.J.A.C. 11:2-20.1.

(g) An association or organization that sponsors a program of studies which culminates in the conferring of a professional title or designation on the license may file with the Commissioner to have its program of studies accepted as a recognized professional designation.

1. In order for a professional designation or its mandatory continuing education program to be recognized, the association must submit an outline of the course requirements necessary to achieve the designation or maintain membership in good standing ((e) and (f) above) to the Commissioner or authorized representative and receive a letter of recognition.

11:2-20.9 Nonrenewal of licenses

Failure to comply with the provisions of this subchapter will result in a violation of the statutes addressing the nonrenewal of licenses for property/casualty and life and health, N.J.S.A. 17:22-6.16 and 17B:22-27, respectively.

11:2-20.10 Transition requirements

(a) The continuing insurance education requirement will be introduced according to the following schedule:

1. If an individual, on or after the effective date of this subchapter, has:

- i. A full two-year period remaining, the individual must obtain all required continuing insurance education credits;
- ii. Less than two years but more than one year remaining in the license renewal period, the individual must obtain one-half of the required continuing insurance education credits;
- iii. Less than one year remaining in the license renewal period, the individual does not have to obtain any continuing insurance education credits.

TRANSPORTATION

TRANSPORTATION OPERATIONS

The following proposals are authorized by Roger A. Bodman, Commissioner, Department of Transportation.

Submit comments by January 16, 1986 to:

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

(a)

Restricted Parking and Stopping Route 67 in Bergen County

Proposed Amendment: N.J.A.C. 16:28A-1.71.

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

Proposal Number: PRN 1985-670.

The agency proposal follows:

Summary

The proposed amendment will establish "no parking" bus stop zones along Route 67 in Fort Lee Borough, Bergen County for the safe and efficient flow of traffic, the enhancement of safety, the safe on/off loading of passengers at established bus stops and the safety and well-being of the populace.

Based upon the request from the local officials the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no parking" bus stop zones was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.71 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish "no parking" bus stop zones along Route 67 in Fort Lee Borough, Bergen County for the safe and efficient flow of traffic, the enhancement of safety, the safe on/off loading of passengers at established bus stops and the safety and 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 local officials will bear the costs for the installation of signs. Motorists who violate the rules will be assessed the appropriate fines.

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

16:28A-1.71 Route 67

(a) The certain parts of State highway Route 67 described in the section shall be designed and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. Along the westerly (southbound) side in Fort Lee Borough, Bergen County:

i. (No change.)

ii. Far side bus stop:

(1) Along Palisade Avenue:

(A) Columbia Avenue—Beginning at the southerly curb line of Columbia Avenue and continuing to a point 120 feet south thereof.

2. (No change.)

3. Along the easterly (northbound) side in Fort Lee Borough, Bergen County:

i. Far side bus stops:

(1) (No change.)

(2) Along Palisade Avenue:

(A) Kensington Road—Beginning at the northerly curb line of Kensington Road and continuing to a point 120 feet north thereof.

ii. (No change.)

(b) (No change.)

(b)

No Passing

Routes 26 and 91 in Middlesex County and 35 in Ocean County

Proposed New Rules: N.J.A.C. 16:29-1.49, 1.50 and 1.51.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-201.1.
Proposal Number: PRN 1985-669.

The agency proposal follows:

Summary

The proposed new rules will establish "no passing" zones along Routes 26 and 91 in North Brunswick Township and the City of New Brunswick, Middlesex County and 35 in Berkeley Township, the Boroughs of Mantoloking, Bay Head and Point Pleasant, Ocean County for the safe and efficient flow of traffic, the enhancement of safety and the safety of 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 "no passing" zones were warranted.

The Department therefore proposes new rules N.J.A.C. 16:29-1.49, 1.50 and 1.51 based upon the requests from the local officials and the traffic investigations.

Social Impact

The proposed new rules will establish "no passing" zones along Routes 26 and 91 in North Brunswick Township and the City of New Brunswick, Middlesex County and 35 in Berkeley Township, the Boroughs of Mantoloking, Bay Head and Point Pleasant, Ocean County for the safe and efficient flow of traffic, the enhancement of safety and the safety of 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.

16:29-1.49 Route 91

(a) The following certain parts of State highway Route 91 shall be designated and established as "No Passing" zones:

1. That part within North Brunswick Township and City of New Brunswick, Middlesex County and described in drawing number HNPZ-082 dated December 18, 1984.

16:29-1.50 Route 26

(a) The following certain parts of State highway Route 26 shall be designated and established as "No Passing" zones:

1. That part within North Brunswick Township and City of New Brunswick, Middlesex County and described in drawing number HNPZ-083 dated January 22, 1985.

16:29-1.49 Route 35

(a) The following certain parts of State highway Route 35 shall be designated and established as "No Passing" zones:

1. That part within Berkeley Township, Mantoloking, Bay Head and Point Pleasant Boroughs, Ocean County and described in drawing number HNPZ-081 dated December 18, 1984.

EDITOR'S NOTE: Drawings are on file in the Department's Bureau of Traffic Engineering and Safety Programs, 25 Scotch Road, Trenton, New Jersey 08625 and the Office of Administrative Law.

TREASURY-GENERAL

(a)

STATE INVESTMENT COUNCIL

Covered Call Options

Limitations; South African Divestment

Proposed Amendment: N.J.A.C. 17:16-42.4.

Authorized by: State Investment Council, Roland M.

Machold, Director, Division of Investment.

Authority: N.J.S.A. 52-18A-91.

Proposal Number: PRN 1985-671.

Submit comments by January 16, 1986 to:

Roland M. Machold
Administrative Practice Officer
Division of Investment
349 West State Street
CN 290
Trenton, N.J. 08625

The agency proposal follows:

Summary

The proposed amendment codifies the existing guidelines for sales of covered call options to remove limitations on writing options only on stocks subject to divestment under P.L. 1985, c.308 (South African divestment), which will help facilitate such sales.

Social Impact

Chapter 308, P.L. 1985, requires divestment by the pension funds of South Africa related companies. Therefore, the covered call options regulation is amended to help implement the mandated selling programs.

Economic Impact

Chapter 308, P.L. 1985, limits investments by pension funds to companies having no South Africa relationships. The costs of divestment are estimated by the State Investment Council to be: 1. \$50 million for the sale of affected securities and the reinvestment of proceeds into other securities; and 2. \$25 million per year in ongoing loss of income. The increased ability to write calls on the affected stocks could help reduce slightly the costs under 1. above.

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

17:16-42.4 Limitations

Sales of covered call options shall not exceed 10 percent of any one common stock holding, **except in the case of holdings subject to divestment under the provisions of P.L. 1985, c.308.**

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 Casino Licensee's Organization

Proposed Amendment: 19:45-1.11

Authority: N.J.S.A. 5:12-63(c) and 5:12-69.

Proposal Number: PRN 1985-673.

Submit comments by January 16, 1986 to:
David C. Missimer, Esq.
Casino Control Commission
3131 Princeton Pike, Bldg. 5
CN 208
Trenton, N.J. 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:45-1.11 is intended to achieve the original purpose underlying the regulation rather than to effect a change in Commission policy. The proposed amendment makes clear that present or former surveillance department employees are restricted from accepting employment as casino key employees or casino employees with any casino hotel or prospective casino hotel in which they were previously employed or with any casino hotel or prospective casino hotel whose surveillance department is under the operational control of the same person who controlled the surveillance department in which they were previously employed.

Social Impact

The social impact of the proposed amendment to N.J.A.C. 19:45-1.11 will affect all surveillance personnel and prospectively those members of the public who may seek employment in a casino hotel's or applicant's surveillance department. The immediate effect of the proposed amendment is to codify the Commission's interpretation of the existing regulation so as to indicate that there is no restriction placed on surveillance personnel seeking to transfer to hotel positions within the same casino hotel so long as those positions do not relate to casino operations. In addition to providing a more accurate statement of the restriction for the benefit of interested persons, the amendment will decrease the regulatory burden placed on the Casino Control Commission and the Division of Gaming Enforcement in having to process requests for rulings under those circumstances.

In addition, the proposed amendment would have an effect on surveillance employees who seek positions requiring a casino key employee license or casino employee license with a casino hotel or prospective casino hotel whose surveillance department is under the operational control of the same person who controlled the surveillance department in which the surveillance department employee was previously employed. In such a case, the amended regulation will place a heavier

burden on certain surveillance department employees who will face restrictions with respect to employment not only by the casino hotel in whose surveillance department they worked but also by any other casino licensee with a commonly operated surveillance department. This aspect of the amendment may increase the regulatory burden placed on the Casino Control Commission and the Division of Gaming Enforcement in having to process additional waivers. The amendment could also place a heavier burden on some casino licensees or casino license applicants who choose to have their surveillance departments under the same operational control since the pool of applicants for positions within their respective surveillance departments may be diminished. However, this proposed change will continue to preserve the public confidence and trust in the integrity of casino operations by minimizing the harm which could be done by employees with knowledge of the methods and weaknesses of the surveillance program.

Economic Impact

As indicated above, the proposed amendment will reflect the Commission's interpretation that the employment restriction does not extend to surveillance employees seeking to transfer to hotel positions which do not relate to casino operations. Therefore, such employees will not have to incur any expense in seeking a waiver or interpretation of the employment restriction. However, if two surveillance departments are under the same operational control, employees of either department will have to incur the expense of seeking a waiver of the employment restriction before transferring to a casino-related position in the other casino hotel. However, it is not anticipated that the overall operating expenses of either the Casino Control Commission or the Division of Gaming Enforcement will increase or decrease appreciably as a result of this amendment. In addition, the proposed amendment may affect the operating expenses of those casino hotels or prospective casino hotels which may choose to have their surveillance departments under the same operational control. The amount of any increase, however, would be entirely speculative and incapable of estimation.

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

2. In addition to the restrictions contained in the Casino Control Act and the regulations promulgated thereunder, no [person] **present or former surveillance department employee** shall [transfer from the surveillance department to another department] **accept employment as a casino key employee or casino employee within the same casino [.] hotel or prospective casino hotel in which the surveillance department employee was previously employed or within any other casino hotel or prospective casino hotel whose surveillance department is under the operational control of the same person who controlled the surveillance department in which the surveillance department employee was previously employed.** However, the Commission upon being petitioned, may waive the restriction if:

i. One year has passed since the [person] **former surveillance department employee** worked in the surveillance department; **and**

ii. Casino surveillance and security systems will not be jeopardized or compromised by **the** [this person] **former**

surveillance department employee; and

iii. Errors, irregularities or illegal acts cannot be perpetrated and concealed by the [this person's] former surveillance department employee's knowledge of the surveillance system.

3.-9. (No change.)

(d)-(g) (No change.)

(a)

Accounting and Internal Controls Patron Credit

Proposed Amendment: 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 1985-674.

Submit comments by January 16, 1986 to:

Thomas N. Auriemma, Deputy Director
Legal Division
Casino Control Commission
3131 Princeton Pike, Bldg. 5
CN 208
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Casino Control Commission proposes to amend N.J.A.C. 19:45-1.27(p). These amendments are being proposed based upon the Commission's review and analysis of a petition for a declaratory ruling filing by the Atlantic City Casino Association and the comments received thereon from the Division of Gaming Enforcement.

Previously, the Commission had proposed and adopted a new rule, N.J.A.C. 19:45-1.27(p), which granted the casino industry a period of time in which to implement certain aspects of the Commission's new credit regulations, including re-verification of every casino credit patron's address, current casino credit limits, outstanding balances, outstanding indebtedness and personal checking account information. Subsection (p), as well as the remainder of N.J.A.C. 19:45-1.27, were originally scheduled to become operative on December 1, 1985. By separate action, the Commission has delayed the operative date of these rules until March 1, 1986. The instant proposed amendment to N.J.A.C. 19:45-1.27(p) expands the number of elements of N.J.A.C. 19:45-1.27 which may be gradually phased-in by the casino industry with respect to credit files in existence on the operative date of the regulations.

Each casino licensee is required to submit a plan providing for the phased application of the new credit regulations to existing patron credit files. If a plan is not timely submitted, no credit may be issued by a licensee after March 1, 1986, unless all the requirements of N.J.A.C. 19:45-1.27 are observed or until an appropriate plan is submitted and approved by the Commission.

Social Impact

The proposed amendment to N.J.A.C. 19:45-1.27(p) will provide the casino industry with additional time and flexibility in implementing the new and extensive credit regulations. Accordingly, the stricter credit application requirements of the new regulations will not affect existing credit patrons as quick-

ly as would have occurred under the original version of N.J.A.C. 19:45-1.27(p). The impact on the regulatory and enforcement agencies will be minimal, although these agencies will have to closely monitor the broader phased application of the credit regulations allowed by the proposed amendment.

Economic Impact

The proposed amendment to N.J.A.C. 19:45-1.27(p) only affects the timing, and not the substance, of the new credit regulatory requirements imposed by N.J.A.C. 19:45-1.27. Accordingly, the economic effect of the proposed amendment on the casino industry should be minimal. Similarly, the Commission and Division should not incur any additional costs over those anticipated pursuant to the original version of N.J.A.C. 19:45-1.27(p).

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

19:45-1.27 Procedures for granting credit and recording checks exchanged, redeemed or consolidated.

(a)-(o) (No change.)

OAL NOTE: The following current text may be found at 17 N.J.R. 2456(a).

(p) [Notwithstanding any other provisions of this section to the contrary, the requirements of (i)1.i, ii. and v. above shall not apply to the patron credit files of a casino licensee which are in existence on the operative date of (i)1.i, ii. and v. above if the casino licensee has submitted and the Commission has approved a plan for the re-verification of such files in accordance with this subsection. This submission must be filed with the Commission and Division at least 90 days prior to the operative date of (i)1.i, ii. and v. above and shall include, but not be limited to, provisions for the phased re-verification or suspension within one year of the operative date of (i)1.i, ii. and v. above all patron credit files in existence on such operative date.]

Notwithstanding any other provisions of this section to the contrary, the requirements of (a)1, 2, 3, 4, 5, 7, 8, 9, 10, 11 (b), and (i)1.i, ii. and v. above shall not apply to the patron credit files of a casino licensee which are in existence on the operative date of this section if the casino licensee has submitted a plan for the phased application of the above enumerated subsections to such files in accordance with this subsection. This plan must be filed with the Commission and Division at least 90 days prior to the operative date of this section and shall provide for the phased application of the above enumerated subsections to all patron credit files in existence on the operative date of this section within nine months of such operative date. Such plan shall further provide for the suspension of the credit privileges of any patron whose credit file has not been subject to the requirements of the above enumerated subsections in accordance with the terms of the approved plan. In addition, the plan shall provide that if any event takes place which would subject a patron credit file which was in existence on the operative date of this section to any requirement of subsections (g), (h), or (i)1.iii., or iv., then that credit file shall be subject to all the requirements of this section, including (a)1, 2, 3, 4, 5, 7, 8, 9, 10, 11, (b) and (i)1.i, ii. and v. above. Any plan which is not timely received pursuant to this subsection shall not be considered by the Commission until all timely received submissions have been finally reviewed and, unless and until such untimely plan is reviewed and approved, the submitting casino licensee shall not grant or issue any credit subsequent to the operative date of this section except in accordance with all the requirements of this section.

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Relocation Assistance

Workable Relocation Assistance Plans

Adopted Amendment: N.J.A.C. 5:11-6.1

Proposed: October 7, 1985 at 17 N.J.R. 2321(a).
Adopted: November 8, 1985, by John P. Renna,
Commissioner, Department of Community Affairs.
Filed: November 13, 1985, as R.1985 d.623, **without change.**

Authority: N.J.S.A. 52:31B-10 and 20:4-10.

Effective Date: December 16, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): March 1, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:11-6.1 Workable Relocation Assistance Plan (WRAP)

(a) In order to insure that the relocation benefits required are administered in a uniform manner, the displacing agency shall, except in cases involving displacement solely as a result of code enforcement in unsafe buildings or other imminent hazard situations, submit a Workable Relocation Assistance Plan (WRAP) to the Department for approval. No relocation activities may take place until the WRAP, where required, is approved.

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

ENVIRONMENTAL PROTECTION

(b)

Bureau of Shellfish Control

Shellfish-Growing Water Classification Relay Program

Adopted Amendment: N.J.A.C. 7:12-2.7

Proposed: September 16, 1985 at 17 N.J.R. 2185(a).
Adopted: November 23, 1985 as R.1985 d.634, **without change.**

Authority: N.J.S.A. 13:1D-1 et seq. and 58:24-1 et seq.
Effective Date: December 16, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): June 6, 1988.

DEP Docket No. 048-85-08.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

7:12-2.7 Relay program

(a) (No change.)

(b) Permits 5a and 5b shall be valid only under the following specific requirements or conditions. Violation may subject the holder to prosecution under N.J.S.A. 58:24-3. These rules must be read together with the Shellfisheries regulations which appear at N.J.A.C. 7:25-15.1.

1.-14. (No change.)

15. Shellfish taken from the designated relay section shall be bagged by the participant, three-quarter bushel to the bag, in bags available to the participant from the department. These bags will be provided, at cost, to the participant through the Leeds Point office of this Bureau. No unmarked bags will be allowed in the harvesters' or buyers' vehicles or boat except during reharvest. Each bag shall have a tag attached, marked with the harvester's and/or buyer's name and permit number. Shellfish not in compliance with the bagging requirements will be seized and returned to Condemned waters by the designated enforcement unit. Participants will place the shellfish in vehicles provided by them and approved by the department. The vehicles will be sealed by the department, or an agent designated by the department, at the harvest landing site and opened by the department or a designated agent at the off-loading site. The enforcement unit may specify the route to be taken from the harvest landing site to the planting off-loading site.

16.-21. (No change.)

DIVISION OF FISH, GAME AND WILDLIFE

(a)

Fish and Game Council 1986-87 Fish Code

Adopted Amendments: N.J.A.C. 7:25-6

Proposed: September 16, 1985 at 17 N.J.R. 2187(a).

Adopted: November 22, 1985 by Fish and Game Council, Anthony DiGiovanni, Chairman.

Filed: November 26, 1985 as R.1985 d.646, with **technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1B-30 et seq. and N.J.S.A. 23:1-1 et seq.

Effective Date: December 16, 1985.

Operative Date: January 1, 1986.

Expiration Date: December 31, 1986.

DEP Docket No. 045-85-08.

Summary of Public Comments and Agency Responses:

A public hearing concerning this proposal will be held on October 8, 1985 at 8:00 P.M. at the offices of the Division of Fish, Game and Wildlife, 363 Pennington Avenue, Trenton, New Jersey. The hearing was attended by four members of the public, two of whom made comments. Written comment on the proposed code was also solicited through news releases put out by the division and publication of the proposal in the September 16, 1985 New Jersey Register at 17 N.J.R. 2187(a). Five letters were received concerning the proposal, two of which were authored by members of the public present at the public hearing. The comment period on the proposal ended on October 16, 1985.

COMMENT: While generally in agreement with the proposal opening four lakes (Lake Hopatcong, Spruce Run Reservoir, Swartswood Lake, and Wawayanda Lake) to year-round angling, it was stated that the taking of trout from these lakes during the closed season for trout should not be allowed. The commenters stressed the popularity of having a specific opening day for trout fishing and the positive economic effect of this event on local commerce.

RESPONSE: The Fish and Game Council, with the support of the division, agreed with the commenter and has amended the proposal to prohibit the taking of trout from these four lakes during the normal closed season for trout.

COMMENT: Existing regulations governing the taking of bass are too liberal and are causing the deterioration of the bass fishery, especially in Lake Hopatcong. It was suggested that more restrictive regulations be promulgated including an increase in minimum size limit from nine inches to 12 inches and a closure of the bass fishery during spawning.

RESPONSE: Upon recommendation of the division, based upon the need for further evaluation of ongoing studies into this issue, the Fish and Game Council has decided to make no changes to the bass fishery regulation at this time and to reexamine the issue upon completion of the evaluation by the division.

The Fish and Game Council, upon the recommendation of the division, also amended the proposal to legalize the use of umbrella nets of a specific size for the taking of baitfish and to initiate specific provisions for the taking of baitfish from Deal Lake. Typographic error corrections were also made to the proposal as it appeared at 17 N.J.R. 2187(a).

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions indicated from proposal shown in brackets with asterisks ***[thus]***).

SUBCHAPTER 6. 1986-87 FISH CODE

7:25-6.1 General Provisions

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

(d) This Code, when adopted and when effective, shall supersede the provisions of the 1985-86 Fish Code.

7:25-6.2 Trout Season and Angling in Trout-Stocked Waters

(a) The trout season for 1986 shall commence 12:01 A.M. January 1, 1986 and extend to midnight March 16, 1986. The trout season shall re-open at 8:00 A.M. Saturday, April 5, 1986 and extend to include March 22, 1987. (See separate regulations for Greenwood Lake, the Delaware River between New Jersey and Pennsylvania, Round Valley Reservoir, ***[Lake Hopatcong, Spruce Run Reservoir, Swartswood Lake, Wawayanda Lake,]*** Musconetcong River "No Kill" area, and the Van Campens Brook Natural Trout Fishing Area.)

(b) It shall be unlawful to fish for any species of fish from midnight of the 16th of March to 8:00 A.M. on April 5, 1986^{*}, ^{*} in ponds, lakes or those portions of streams that are listed herein for stocking during 1986, except in those separately regulated areas as noted parenthetically at (a) above. ***(See separate regulations for Lake Hopatcong, Spruce Run Reservoir, Swartswood Lake and Wawayanda Lake at (j) below.)***

(c) (No change.)

(d) Trout stocked waters for which in-season closures will be in force are as follows (waters will be closed from 5:00 A.M. to 5:00 P.M. on dates indicated):

1. Big Flat Brook—100 ft. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April 11, 18, 25; May 2, 9, 16, 23;

2. Black River—Route 206, Chester to Dam at lower end of Hacklebarney State Park—April 10, 17, 24; May 1, 8, 15, 22;

3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April 7, 14, 21, 28; May 5, 12, 19;

4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April 7, 14, 21, 28; May 5, 12, 19;

5. Metedeconk River, S. Br.—Bennetts Mills dam to twin wooded foot bridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood—April 7, 14, 21, 28; May 5, 12, 19;

6. Musconetcong River—Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong,—April 11, 18, 25; May 2, 9, 16, 23;

7. Paulinskill River—Limecrest Railroad Spur Bridge, Sparta Township, to Columbia Lake dam—April 10, 17, 24; May 1, 8, 15, 22;

8. Pequest River—Source to Delaware River—April 11, 18, 25; May 2, 9, 16, 23;

9. Pohatcong Creek—Route 31 to Delaware River—April 8, 15, 22, 29; May 6, 13, 20;

10. Ramapo River—State line to Pompton Lake—April 10, 17, 24; May 1, ***[2,]*** 15, 22;

11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April 9, 16, 23, 30; May 7, 14, 21;

12. Raritan River, S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April 8, 15, 22, 29; May 6, 13, 20;

13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April 7, 14, 21, 28; May 5, 12, 19;

14. Toms River—Ocean County Route 528 Holmansville to confluence with Maple Root Branch and Route 70 to County Route 571—April 7, 14, 21, 28; May 5, 12, 19;

15. Walkkill River—W. Mt. Road to Route 23, Hamburg—April 7, 14, 21, 28; May 5, 12, 19; and

16. Wanaque River—Greenwood Lake dam to Jct. with Pequannock River, excluding Wanaque Reservoir and Lake Inez—April 11, 18, 25; May 2, 9, 16, 23.

(Note: The division reserves the right not to stock on the above dates when emergency situations prevail.)

(e) (No change.)

(f) Trout stocked waters for which no in-season closures will be in force are as follows: (figures in parentheses indicate the anticipated numbers of stockings to be carried out from April 14 through May 31; note: the division reserves the right to suspend stocking when emergency conditions prevail):

1.-9. (No change.)

10. Hunterdon County

Alexandria Brook—Milford, entire length—(2)

Alexauken Creek—Mt. Airy, entire length—(2)

Amwell Lake—Linvale—(4)

Beaver Brook—Annandale, entire length—(2)

Capoolong Creek—Pittstown, entire length—(6)

Delaware—Raritan Feeder Canal—Bulls Island to Hunterdon—Mercer County line—(6)

Everittstown Brook—Everittstown, entire length—(2)

Frenchtown Brook—Frenchtown, entire length—(1)

Hakihohake Creek—Milford, entire length—(2)

Little York Brook—Little York, entire length—(2)

Lockatong Creek—Opdyke Road Bridge, Kingwood Township to Delaware-Raritan Feeder Canal—(3)

Milford Brook—Milford, entire length—(1)

Mt. Pleasant Brook—Mt. Pleasant, entire length—(0)

Mulhockaway Creek—Pattenburg, source to Spruce Run Reservoir—(2)

Neshanic River—Kuhl Road to Hunterdon County Route 514—(1)

Prescott Brook—Clinton Township, entire length—(1)

Rockaway Creek, N/B—Tewksbury and Readington Township, entire length—(4)

Rockaway Creek, S/B—Lebanon to Whitehouse, entire length—(3)

Round Valley Reservoir—Lebanon—(1)

Spring Mills Brook—Spring Mills, entire length—(0)

Spruce Run—Glen Gardner and Lebanon Township, entire length—(3)

Spruce Run Reservoir—Clinton—(6)

Sydney Brook—Sydney, entire length—(0)

Tetertown Brook—Tetertown, entire length—(0)

Wickecheoke Creek—Covered Bridge, Sergeantsville to Delaware River—(1)

11. Mercer County

Assunpink Creek—Assunpink Site 5 dam upstream of Rt. 130 Bridge to Carnegie Road, Hamilton Township—(4)

Colonia Lake—Lawrence Township—(2)

Delaware—Raritan Canal—U.S. 1 to Alexander St., Princeton—(4)

Delaware—Raritan Feeder Canal—Hunterdon-Mercer County Line to Upper Ferry Road Bridge—(6)

Rosedale Lake—Rosedale—(4)

Stony Brook—Woodsville to Port Mercer—(4)

12. Middlesex County

Farrington Lake—North Brunswick—(4)

Hook's Creek Lake, Cheesequake State Park—(1)

Ireland Brook—Farrington Lake to point 500 ft. upstream of Riva Avenue—(0)

Lawrence Brook—Dam at Farrington Lake to 2nd RR Bridge (Raritan Railroad) below Main St. Milltown—(5)

Roosevelt Park Pond—Edison Township—(4)

13. (No change.)

14. Morris County

Beaver Brook—Rockaway, entire length—(3)

Burnett Brook—Ralston, entire length—(2)

Burnham Park Pond—Morristown—(1)

Den Brook—Union Hill, entire length—(1)

Drakes Brook—Flanders, entire length—(1)

Flanders Brook—Mt. Olive, entire length—(3)

Hibernia Brook—Hibernia, entire length—(4)

India Brook—Mt. Freedom to Rt. 24, Ralston, entire length—(2)

India Brook Impoundment—Colemans Hollow—(2)

Lake Hopatcong—Lake Hopatcong—(3)

Lake Musconetcong—Netcong—(2)

Ledgewood Brook—Ledgewood—(2)

Mill Brook—Center Grove, entire length—(2)

Mt. Hope Pond—Mt. Hope—(2)

Passaic River—White Bridge to Dead River—(6)

Pompton River—Pequannock Township (see Passaic Co.)—(6)

Reservoir Brook—Brookside, entire length—(1)

Rhinehart's Brook—Hacklebarney State Park, entire length—(2)

Russia Brook—Jefferson Township, Ridge Road to Lake Swannanoa—(2)

Speedwell Lake—Morristown—(2)

Trout Brook—Hacklebarney State Park, entire length—(2)

Washington Valley Brook—Morristown, entire length—(3)

15.-18. (No change.)

19. Sussex County

Alm's House Brook—Myrtle Grove, Hampton Township, entire length—(2)

Andover Junction Brook—Andover, entire length—(3)

Beaver Run Brook—Beaver Run, entire length—(1)

Bier's Kill—Shaytown, entire length—(2)

Big Flat Brook, Upper—Saw Mill Lake, High Point State Park to 100 ft. above Stream Mill Bridge on Crigger Road—(1)

Clove River—Junction of Route 23 and Mt. Salem Road to Route 565 bridge—(3)

Cranberry Lake—Byram Township—(2)

Culver's Lake Brook—Frankford Township, entire length—(2)

Dragon Brook—Cranberry Lake, Byram Township, entire length—(3)

Dry Brook—Branchville, entire length—(0)

Franklin Pond Creek—Hamburg Mt. W.M.A., entire length—(3)

Glenwood Brook—Lake Glenwood to Stateline—(1)

Hardystonville Brook—Hardystonville, entire length—(1)
 Iliff Lake—Andover Township—(3)
 Kymer's Brook—Andover, entire length—(2)
 Lake Musconetcong—Netcong—(2)
 Lake Hopatcong—Lake Hopatcong—(2)
 Lake Ocquittunk—Stokes State Forest—(6)
 Little Flat Brook—Sandyston Township, entire length—(3)
 Little Swartswood Lake—Swartswood—(2)
 Lubbers Run—Byram Township, entire length—(3)
 Neldon Brook—Swartswood, entire length—(2)
 North Church Brook—Monroe, entire length—(1)
 Papakating Creek—Plains Road bridge to Route 565 Lewisburg—(2)
 Papakating Creek, W. Br.—Libertyville, entire length—(2)
 Parker Brook—Stokes State Forest, entire length—(1)
 Pond Brook—Middleville, entire length—(2)
 Roy Spring Brook—Stillwater, entire length—(2)
 Saw Mill Lake—High Point State Park—(6)
 Shimers Brook—Montague Township, entire length—(1)
 Sparta Junction Brook—Sparta Junction, entire length—(3)
 Stony Brook—Stokes State Forest, entire length—(2)
 Stoney Lake—Stokes State Forest—(3)
 Swartswood Lake—Swartswood—(4)
 Trout Brook—Middleville, entire length—(2)
 Tuttle's Corner Brook—Tuttle's Corner, entire length—(2)
 Wawayanda Lake—Highland Lakes—(4)

20. Union County

Green Brook—Route 527, Berkely Heights to Route 22, Scotch Plains—(2)
 Lower Echo Park Pond—Mountainside—(2)
 Milton Lake—Madison Hill Road Bridge to Milton Lake Dam, Rahway—(2)
 Rahway River—Morris Ave. (Route 524 to St. George Ave. (Route 27), Rahway—(4)
 Seeleys Pond—Berkely Heights—(2)

21. (No change.)

(g) (No change.)

(h) No person shall take, kill, or have in possession in one day more than 6 in the aggregate of brook trout, brown trout, rainbow trout, or hybrids thereof, during the period extending from 8:00 A.M. April 5, 1986 until midnight May 31, 1986, or more than four of these species during the periods of January 1, 1986 to midnight March 16, 1986 and June 1, 1986 through midnight March 22, 1987 except as designated for Special Regulation Trout Fishing Areas and Round Valley Reservoir.

(i) (No change.)

(j) Lake Hopatcong in Morris County, Spruce Run Reservoir in Hunterdon County, and Swartswood Lake and Wawayanda Lake in Sussex County will remain open to angling year-round. *[There shall be no closed season for brook trout, brown trout, and rainbow trout in these waters.]* ***Trout, if taken during the period commencing at midnight, March 16, 1986, and extending to 8:00 A.M. April 5, 1986, must be returned to the water immediately and unharmed.***

7:25-6.3 Fly-fishing waters

(a) From and after 5:00 A.M. on Monday April 14, 1986 to and including November 30, 1986 the following stretches are open to fly-fishing only and closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:

1. Big Flat Brook, Sussex County—from the concrete bridge on Route 206 downstream to the Roy Bridge on Mountain Road, a distance of approximately four miles, except that portion known as the Blewett Tract, regulated below at (b)1.

2. (No change.)

(b) Beginning January 1, 1986 to midnight March 16, 1986 and from 8:00 A.M. on April 5, 1986 to midnight, March 22, 1987, the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 A.M. to 5:00 P.M. on days listed for stocking:

1. (No change.)

(c) (No change.)

(d) The following regulations shall apply to the above designated fly-fishing waters:

1. (No change.)

2. Not more than (6) six trout may be killed daily during the April 5 through May 31 portion of the season; at other times the limit is four.

i. Any number of trout in excess of the aforementioned daily limit of six may be caught provided that such excess trout are immediately returned to the water unharmed, except that the Musconetcong fly-fishing stretch is designated a "no kill" area and all trout caught in this stretch must be immediately returned to the water unharmed. Authority: N.J.S.A. 23:5-10.

3.-5. (No change.)

7:25-6.4 Natural Trout Fishing Areas

(No change.)

7:25-6.5 Round Valley Reservoir

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

(d) The season for lake trout shall extend from 12:01 A.M. January 1, 1986 to midnight September 30, 1986.

(e) The minimum size for lake trout shall be 24 inches and the daily bag and possession limit shall be one.

(f) (No change.)

7:25-6.6 Baitfish

(a) Except as provided for in trout-stocked waters listed in this code, up to 35 baitfish per person per day may be taken from the freshwaters of the *[state]* ***State*** with a seine not over 50 feet in length in all ponds and lakes which have an area of over 100 acres, and in all other waters with a seine not over 30 feet in length, year-round. Minnow traps not larger than 24 inches in length with a funnel mouth no greater than 2 inches in diameter ***or an umbrella net no greater than three and one-half feet square*** may be used in any of the fresh-water*s* of the *[state]* ***State (see exception for Deal Lake)***.

(b) In waters listed in this code to be stocked with trout, it is prohibited to net, trap or attempt to net or trap baitfish from March 16 to June 15 except where the taking is otherwise provided for. For the remainder of the year, up to 35 baitfish per person per day may be taken with a seine not over 10 feet in length and four feet in depth or a minnow trap not larger than 24 inches in length with a funnel mouth ***no*** greater than two inches in diameter ***or an umbrella net no greater than three and one-half feet square***.

*** (c) In Deal Lake, up to 35 per day of anadromous alewife or blueback herring, in the aggregate, may be taken per person with a dip net not more than 24 inches in diameter, or as otherwise provided for in (d) below. Possession limit is one day's limit.***

[(c)]** (d) (No change in text.)

7:25-6.7 Nets

(No change.)

7:25-6.8 Snagging prohibited

(a) The foul hooking of largemouth bass (*Micropterus salmoides*), small-mouth bass (*Micropterus dolomieu*),

striped bass (*Morone saxatilis*) or any hybrid thereof, chain pickerel (*Esox niger*), northern pike (*Esox lucius*), muskellunge (*Esox masquinongy*) or any hybrid thereof, walleye (*stizostedion vitreum vitreum*), and brook trout (*Salvelinus fontinalis*), lake trout (*Salvelinus namaycush*), brown trout (*Salmo trutta*), and rainbow trout (*Salmo gairdneri*), or any hybrids thereof, shall be prohibited in open waters. Any of the aforementioned fish so hooked must be immediately returned to the water. This shall not apply to fish so taken through the ice during the ice fishing season (see separate regulations for Greenwood Lake, and for the Delaware River between New Jersey and Pennsylvania).

7:35-6.9 Warmwater fish

(a) Except as noted for waters stocked with trout, closed seasons are hereby eliminated in open (unfrozen) waters on all freshwater fish of striped bass form all other fresh waters is March 1 to December 31 (see Delaware River between New Jersey and Pennsylvania, and ice fishing sections for separate regulations).

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

(k) The minimum length for striped bass (*Morone Saxatilis*) shall be 24 inches and the minimum length for their hybrids shall be 18 inches. Except for the Delaware River the daily bag and possession limit for either shall be two in waters upstream of dams. For the Delaware River and all other

freshwaters, tidal and non-tidal, the daily bag and possession limit shall be five.

7:25-6.10 Ice fishing
(No change.)

7:25-6.11 Bow and arrow fishing

It shall be legal to take any species of fish except brook trout (*Salvelinus fontinalis*), lake trout (*Salvelinus namaycush*), brown trout (*Salmo trutta*), rainbow trout (*Salmo gairdneri*), landlocked Atlantic salmon (*Salmo salar*), largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieu*), striped bass (*Morone saxatilis*) or any hybrid thereof, chain pickerel (*Esox niger*), northern pike (*Esox lucius*), muskellunge (*Esox masquinongy*) or any hybrid thereof, or walleye (*Stizostedion vitreum vitreum*), at any time by use of longbow and arrow with line attached, provided a person has a proper fishing license. (See separate regulations for Greenwood Lake, for the Delaware River between New Jersey and Pennsylvania, and for the waters listed for trout stocking during the current season.)

7:25-6.12 Closed waters
(No change.)

7:25-6.13 Emergency closure notice
(No change.)

7:25-6.14 Greenwood Lake

(a) In cooperation with the New York State Department of Environmental Conservation, Division of Fish and Wildlife, the following regulations for Greenwood Lake, which lies partly in Passaic County, New Jersey, and partly in Orange County, New York, are made a part of the New Jersey State Fish and Game Code and will be enforced on the whole lake by the conservation authorities of both states.

1.	Season	Size	Bag Limit
Trout	No closed season	No minimum	3
Largemouth bass & smallmouth bass	No closed season	9" minimum	5 singly or in aggregate
Chain pickerel	No closed season	No minimum	10
Muskellunge & any hybrid thereof	No closed season	30" minimum	1
All other species	No closed season	No minimum	No limit

2.-5. (No change.)

7:25-6.15 Delaware River between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, the following regulations for the Delaware River between New Jersey and Pennsylvania are made a part of the New Jersey State Fish and Game Code and will be enforced by the conservation authorities of each state.

1.	Season	Size Limit	Bag Limit
Trout	April 5-Sept. 30	No minimum	5
Largemouth bass & smallmouth bass	No closed season	9" minimum	5 in aggregate
Walleye	No closed season	15" minimum	5
Chain pickerel	No closed season	12" minimum	5
Muskellunge, & any hybrid thereof	No closed season	30" minimum	2
Northern pike	No closed season	24" minimum	2
Striped bass	March 1-Dec. 31	24" minimum	5
Baitfish, Fish bait	No closed season	No minimum	50
Shortnose sturgeon	Closed-endangered species		
All other freshwater species	No closed season	No minimum	No limit

2.-7. (No change.)

- 7:25-6.16 Fresh tidal tributaries of the Delaware River and Bay
(No change.)
- 7:25-6.17 Definitions
(No change.)

(a)

**Bureau of Shellfisheries
Clam Relay Program**

Adopted Amendment: N.J.A.C. 7:25-15.1

Proposed: September 16, 1985 at 17 N.J.R. 2191(a).
 Adopted: November 23, 1985 by Robert E. Hughey,
 Commissioner, Department of Environmental
 Protection.
 Filed: November 26, 1985 as R.1985 d.633, with
substantive and technical changes not requiring
 additional public notice and comments (see N.J.A.C.
 1:30-3.5).

Authority: N.J.S.A. 23:2B-14 and 50:1-5.
 Effective Date: December 16, 1985.
 Expiration Date pursuant to Executive Order No.
 66(1978): April 30, 1989.
 DEP Docket No. 047-85-08.

Summary of Public Comments and Agency Responses:
 A public hearing on the proposal was held on October 10,
 1985. Eight members of the public attended.

COMMENT: Buffer zones, wherein clam harvest would be prohibited, should be established around the leased relay lots to deter harvest in the leaseholds by those other than the lessee.

RESPONSE: The department adopts this suggestion by instituting such a 50-yard buffer zone where clam harvest is prohibited.

COMMENT: Relay clam bags should be marked only with the harvester's name and permit number.

RESPONSE: The department adopts this suggestion. The requirement that each bag shall be marked with the harvester's and/or buyers's name and permit number is changed to a requirement that each bag shall be marked with the harvester's name and permit number.

The department further clarifies the proposal by including language that the clammer's consent to inspection of his vehicle is a condition of his participation in the relay program.

No written comment was received during the comment period which closed on October 16, 1985.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposals shown in brackets with asterisks ***[thus]***).

- 7:25-15.1 Relay of hard clams
 - (a)-(d) (No change.)
 - (e) Any person who wishes to participate in this program must comply with the following conditions in order to be eligible for participation:
 - 1. (No change.)

2. Posses one of the following special permits issued by the Division of Water Resources (N.J.S.A. 58:24-3 and N.J.A.C. 7:12-2) to harvest and/or buy and/or sell hard clams from condemned waters:

- i. Permit 5a: SPECIAL PERMIT TO HARVEST, BUY, SELL AND RELAY HARD CLAMS FROM SPECIFIED SPECIAL RESTRICTED, SEASONAL SPECIAL RESTRICTED, OR CONDEMNED WATERS IN CONJUNCTION WITH A STATE APPROVED SHELLFISH RELAY PROGRAM; or
- ii. Permit 5b: SPECIAL PERMIT TO HARVEST HARD CLAMS FROM SPECIFIED SPECIAL RESTRICTED, SEASONAL SPECIAL RESTRICTED, OR CONDEMNED WATERS FOR SALE PURPOSES ONLY IN CONJUNCTION WITH A STATE APPROVED SHELLFISH RELAY PROGRAM; and

3. (No change.)
 (f) Any person applying for permit 5a must have acquired a special relay lease from the department for three one-half acre lots of shellfish cleansing grounds on which the relayed shellfish are to be planted by the means hereinafter set forth. No person shall hold more than one relay lease. Applications for leases must be made in person at the Nacote Creek Shellfish Office for the department. The lease shall be subject to the following additional conditions:

1. This special relay lease shall be issued for only one year and shall be reapplied for annually on or before December 31 for the following calendar year;

2. The annual fee for this lease, to be paid at the time of application, shall be \$5.00;

3.-8. (No change.)

9. Nonleased lots within designated relay lease areas are not open to harvest of shellfish at any time. ***No person shall harvest or attempt to harvest shellfish within 50 yards of any designated relay planting area except the lessee of any leased grounds that may exist within the prohibited area who may harvest on his own leasehold.***

10. ***As a condition precedent to participation in the relay program, participants consent to the following:*** The designated enforcement unit may stop and inspect any vehicles involved in the hard clam relay program from the time loading begins at the landing site until the off-loading at the planting site. All such stops and inspections shall be expressly for the purpose of ensuring compliance with the hard clam relay regulations and protection of the public's health.

(g) (No change.)

(h) All clams harvested by the participant shall be bagged, three-quarter bushel to the bag, in bags approved by the department. All bags shall be marked "RELAY CLAMS," with two-inch letters stenciled on the site. No unstenciled bags will be allowed in the harvester's or buyer's vehicle or boat at the harvest, landing, planting, off-loading, or transplant sites. Each bag shall be marked with the ***[harvesters]* *harvester's* *[and/or buyers]*** name and permit number.

(i)-(l) (No change.)

(m) Penalty:

1. Any participant violating this rule or the terms of the special relay permit issued by the Division of Water Resources may have his permits revoked or suspended. This participant may also be subject to prosecution, including fine, imprisonment, and forfeiture of vessel, vehicle, and all equipment.

2. Any lessee who is convicted of an offense which results in the revocation of a Shellfish Harvesting License or a Special Permit mentioned in (e)2 above shall have this lease terminated by the department; provided, however, that upon lessee's

giving notice to the division within 10 days of departmental notice of termination of said lease, the lessee shall be given the opportunity to show why his lease should not be terminated. Upon issuance of summons to lessee, any transfer of lease will be stayed pending final disposition of said summons. If notice is given within the aforementioned 10-day period, termination of the lease will be effective until the next regularly scheduled meeting of the Atlantic Coast Section of the Shell Fisheries Council. The Atlantic Coast Section of the Shell Fisheries Council shall have the authority to permanently suspend such termination for good cause shown.

3. Nothing in this section shall allow the termination of a lease because of a violation of N.J.S.A. 50:2-1 or N.J.S.A. 50:2-5. A violation of this rule is a violation of N.J.S.A. 50:1-5 and is subject to a penalty under N.J.S.A. 23:2B-14a (first offense \$100.00 to \$3,000.00; subsequent offense \$200.00 to \$5,000.00); except that anyone in violation of N.J.A.C. 7:25-15.1(d) and (h)1 (failure to complete report), (f)6 (failure to properly post lot), and (f)7 (failure to mark harvest boat) shall be subject to a penalty of \$20.00 for the first offense and \$40.00 for each subsequent offense.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medical Supplier Manual Billing Procedures

**Readoption: N.J.A.C. 10:59-2.1, 2.3 through
2.5, 2.7, 2.8, 2.10, 2.11**

**Readoption with Amendments: N.J.A.C.
10:59-2.2, 2.6, 2.9**

Proposed: October 7, 1985 at 17 N.J.R. 2326(b).
Adopted: November 18, 1985, by Geoffrey S. Perselay,
Acting Commissioner, Department of Human
Services.

Filed: November 19, 1985, as R.1985 d.628, **without
change.**

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

Effective Date of Readoption: November 19, 1985.
Effective Date of Amendments: December 16, 1985.
Expiration Date pursuant to Executive Order No.
66(1978): November 19, 1990.

**Summary of Public Comments and Agency Responses:
No comments received.**

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:59-2.

Full text of the adopted amendments follows.

10:59-2.2 General policy

(a) Billing should be done on a monthly basis. In all cases, claims must be submitted, and follow-up inquiries made, in accordance with the time frames for noninstitutional providers set forth at N.J.A.C. 10:49-1.12.

1. (No change.)

10:59-2.6 Combination, Medicare/Medicaid claims

All services allowable under Medicare which are provided to an individual eligible for both Medicare and Medicaid benefits should be billed on the Health Insurance Claim Form (HCFA-1500), and the claims are to be sent directly to the Medicare Intermediary Prudential Medicare Claims Division IV, P.O. Box 4000, Linwood, NJ 08221. Providers should understand that they are agreeing to accept assignment when billing in this manner. In order to obtain Medicaid consideration, the provider must record the correct New Jersey Health Services Program Case and Patient Person Number in item 8 in addition to the Health Insurance Claim Form in item 2 of form HCFA-1500 (A sample HCFA-1500 is shown as Exhibit I). Medicare will process the claim and forward it to the Medicaid Program.

10:59-2.9 Jurisdiction for authorization of services; directory of Medicaid District Offices (MDO)

(a) (No change.)

(b) Exceptions include the following:

1.-3. (No change.)

4. Patient from State institutions: For eligible Medicaid recipients from State institutions the first two digits of the Health Services Program Identification Number identify the institution. Specific Medicaid District Offices, which are identified at N.J.A.C. 10:49-1, Appendix A, have been assigned to handle prior authorization requests for patients from each institution:

IF PATIENT'S HSP IDENTIFICATION NUMBER BEGINS WITH	RESIDENCE IS IN:	CONTACT THE MEDICAID DISTRICT OFFICE BELOW:
31 Greystone Park Psychiatric Hospital		Morris
32 Trenton Psychiatric Hospital		Mercer
33 Marlboro Psychiatric Hospital		Monmouth
34 Ancora Psychiatric Hospital		Camden
35 N.J. Neuro-psychiatric Institute		Hunterdon
36 Arthur Brisbane Child Center		Monmouth
37 Bergen Pines		Bergen
38 Essex County Psychiatric Geriatric Center		Essex
41 Vineland State School		Cumberland
42 North Jersey Training School, Totowa		Passaic
44 Woodbine State School		Atlantic
45 New Lisbon State School Research Center		Burlington
47 Woodbridge State School		Middlesex
48 Hunterdon State School		Hunterdon
90 Family Care		Mercer

Delete the Directory of Medicaid District Offices which currently appears on page 59-14 of the New Jersey Administrative Code.

(a)

DIVISION OF PUBLIC WELFARE

**Food Stamp Program
Revised Income Deductions, Utility Allowances,
Uniform Telephone Allowance and Maximum
Coupon Allotments**

**Readopted Amendments: N.J.A.C. 10:87-12.1
and 12.2**

Proposed: October 21, 1985 at 17 N.J.R. 2564(a).
Adopted: November 25, 1985 by Geoffrey S. Perselay,
Acting Commissioner, Department of Human
Services.

Filed: November 26, 1985 as R.1985 d.647, **without
change.**

Authority: N.J.S.A. 30:4B-2; the Food Stamp Act of
1977 as amended; 7 CFR 273.9(d)(6), (7), and (8); and
7 CFR 273.10(e)(4).

Effective Date: November 26, 1985.
Expiration Date pursuant to Executive Order No.
66(1978): March 1, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption follows.

10:87-12.1 Income deduction table

TABLE I
Income Deductions

Standard Deduction	\$ 98.00
Dependent Care/Shelter Deduction	\$139.00
Uniform Telephone Allowance	\$ 12.40
Standard Utility Allowance	\$111.00
Heating Utility Allowance	\$186.00

10:87-12.2 Maximum coupon allotment table

TABLE II
Maximum Coupon Allotment (MCA)

Household Size	MCA
1	\$ 80
2	147
3	211
4	268
5	318
6	382
7	422
8	483
9	543
10	603
Each Additional Member	+60

INSURANCE

DIVISION OF ADMINISTRATION

(b)

**Cancellation and Nonrenewal of Property and
Casualty/Liability Insurance Policies**

Readoption: N.J.A.C. 11:1-20

Proposed: October 7, 1985 at 17 N.J.R. 2460(a).
Adopted: November 16, 1985 by Jasper J. Jackson,
Acting Commissioner, Department of Insurance.
Filed: November 16, 1985 as R.1985 d.627, **without
change.**

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22-6.14a 1,
2 and 3, 17:29C-1 et seq., 17:29A-1 et seq., 17:29AA-1
et seq., and 17:29B-4.

Effective Date: November 16, 1985.
Expiration Date pursuant to Executive Order No.
66(1978): November 16, 1990.

Summary of Public Comments and Agency Responses:

On September 17, 1985 the Department of Insurance adopted emergency regulations governing the manner in which property-casualty insurers operating in this state could lawfully terminate insurance coverages. The adoption of this emergency regulation met with immediate and widespread public response. The Department has received literally hundreds of complaints from policyholders alleging that their insurance policies have been cancelled or nonrenewed pursuant to insurance company practices that do not even meet the basic standards applicable under statutes and regulations existing prior to the enactment of the emergency rule. Many of these complaints contained copies of notices of cancellation and nonrenewal which, on their face, violated established cancellation and nonrenewal laws of this State. These violations occurred in both commercial and personal insurance lines. In view of this overwhelming response, it is clear that the regulations addressed a very real problem existing in the industry and that it is necessary to implement these emergency regulations on a permanent basis in order to prevent any lapse in the safeguards they provide.

In addition to these complaints, the Department of Insurance has received numerous comments concerning the proposed new rules, N.J.A.C. 11:1-20, which governs the cancellation and nonrenewal of property and casualty/liability policies. Letters were received from insurers, insurance industry trade associations, agents and brokers and members of the public. Also, the American Insurance Association, the National Association of Independent Insurers, and the Alliance of American Insurers submitted as a rule comment a copy of a brief filed with the Appellate Division in support of a petition for stay of the emergency rule pending appeal.

Many of the writers offered general observations concerning the rule. In addition, some commenters objected to or requested clarification of specific provisions. Certain commenters suggested amendments to various rule provisions and supplied amendatory language.

An industry group (the Industry Working Committee) submitted for the Department's consideration regulations which they suggested be implemented in place of the current proposal. Other commenters endorsed the "replacement regulations" in general or recommended substitution of certain of its provisions in lieu of the requirements set forth in proposed N.J.A.C. 11:1-20.

In conjunction with the Industry Working Committee's submission, it was suggested that the industry establish, under the auspices of the Insurance Department, a Comprehensive Commercial Lines Market Assistance Program. The program would be designed to assist in the placement of certain commercial liability insurance coverages which have been subject to availability and affordability problems.

COMMENT: Many of the comments submitted to the Department concerned the rule's purported impact on the insurance marketplace. Some writers argued that the adoption of this rule (in effect a continuation of the Department's emergency regulation), would cause market conditions to deteriorate and would exacerbate rather than alleviate the current insurance availability problem. Some insurance agents and brokers wrote indicating that certain of their carriers were refusing to write new policies in this State. One commenter argued that the situation could result in the monopolization of business by those few insurers that continue to provide coverage. Further, it could force insureds to obtain coverage at rates higher than the normal market rate.

Certain insurers and industry trade associations also complained that the regulation has had a "chilling" effect on their willingness to write new business in New Jersey. For example, one insurer indicated that its disposition to write business, particularly business which is difficult to underwrite or price, is heavily influenced by the underwriting and pricing prerogatives available to it. It viewed the regulation as supplanting the insurer's underwriting judgment with underwriting by regulation and regulators, resulting in the insurer being stuck with "perpetual policies." The commenter recommended that the rule be rescinded. It was also asserted that the restrictions imposed by the rule on an insurer's ability to cancel or nonrenew could adversely affect insurer solvency.

As indicated above, some commenters recommended that this proposal should be replaced by the Industry Working Committee regulation.

One commenter recommended that the rule be limited to cancellations and not apply to nonrenewals. Insureds, it argued, would be protected from midterm cancellation and would receive adequate notice of nonrenewal, while companies would be able to underwrite risks based on the changing insurance market.

The Department also received comments in support of the emergency rule. These writers felt that the rule would help to alleviate the insurance crisis in this State and foster a return to reasonable rates. The Governor and Commissioner were praised for taking decisive action.

RESPONSE: The concerns expressed by the commenters demonstrate a significant misunderstanding of the purpose of the rule. The rule is simply designed to provide policyholders in this State with the fundamental statutory protections afforded with respect to cancellations and nonrenewals. The regulations do not supplant the insurer's underwriting judgment nor do they require "perpetual policies". They merely require that the insurer's underwriting judgment be applied fairly, that it not be arbitrary, capricious or unfairly discriminatory. The Commissioner of Insurance has already approved for use many of the essential underwriting guidelines

generally in use in the insurance industry through the issuance of explanatory bulletins relating to the provisions of this regulation. The Department has also proposed amendments to the existing regulations which would incorporate these approved underwriting guidelines.

Additionally, proposed amendments provide insurers with greater flexibility with respect to policy terminations by permitting the use of valid underwriting guidelines upon notice to the Commissioner of Insurance. Accordingly, the assertion that restrictions imposed by the rule on an insurer's ability to cancel or nonrenew could adversely affect the insurer's solvency is inaccurate. Any cancellation or nonrenewal based on legitimate underwriting standards is permitted under the rule.

With respect to comments concerning the replacement of the regulation with the proposal by the Industry Working Committee, a number of the provisions of that proposal have been incorporated in amendments to the rule proposed by the Department of Insurance. Based on the complaints received from the public, it is clear that the protections afforded persons on cancellation of their policies are equally necessary on nonrenewal. Therefore, the request that the application of these rules be limited to cancellations only cannot be accepted.

COMMENT: An industry trade association claimed that the proposed rule is inconsistent and contrary to the Commercial Insurance Deregulation Act (N.J.S.A. 17:29AA-1 et seq.). It was argued, for example, that the statute permits the Commissioner to direct a change in policy forms only after a hearing and requires that insurers be allowed a reasonable time for implementation. N.J.A.C. 11:1-20.4, which directs immediate changes in policy forms is, therefore, contrary to law.

RESPONSE: This comment misperceives the Department's authority to implement policy by a variety of administrative methods. Individual adjudications with respect to each policy form filing is unnecessary where the Department finds a need to impose changes, by regulations, on an industry-wide basis. This, in fact, is the purpose of the rulemaking process.

COMMENT: A commenter contended that the concurrent proposal operates retroactively. It was asserted that because of the uncertainties surrounding the impact of the emergency regulation, discussions centering around its replacement, and the like, it could not be said with any degree of certainty that the concurrent proposal would be adopted in its present form. It was, accordingly, recommended that the requirements of the adopted rule be applied on a prospective basis, for example, 60 or 90 days after its effective date.

RESPONSE: There is no retroactivity problem with respect to the adoption of the rule. The rule only affects policies cancelled or nonrenewed after its effective date. Virtually every new regulation imposes some new restrictions on affected parties. Here, the affected parties are fully aware of the provisions of the new rule and, in fact, have been operating under those provisions for nearly two months. The rule merely continues the requirements already in effect and therefore has no retroactive application.

Finally, in light of the previously described Department experience with respect to the overwhelming number of complaints concerning arbitrary and capricious cancellations and nonrenewals, it has become obvious that the removal of these safeguards for even a limited period of time would have a severely adverse effect on policyholders in this State.

COMMENT: Commenters complained that the proposed rule does not suggest what standards the Commissioner would apply in determining whether to approve an insurer's under-

writing standard or reason. Clarification was requested as to whether the Department intends to incorporate into the rule the standards and clarifications set forth in Bulletins 85-1 and 85-2.

RESPONSE: As described fully in the clarifying bulletins issued by the Commissioner of Insurance, the standards governing the Commissioner's approval or disapproval of underwriting standards or reasons is established by statute. They cannot be arbitrary, capricious or unfairly discriminatory. The request that these standards be incorporated in the rule itself has been accommodated by the Department's proposed amendments to the regulation.

COMMENT: Several writers questioned the scope of the proposed new rule. Some commenters requested clarification as to whether the rule applied to particular classes of coverage or types of policies. For example, writers questioned whether the rule applied to a policy covering retailers' operations, a policy covering a New York domiciled company with New Jersey locations, and boiler and machinery policies with respect to contract provisions allowing for immediate suspension of coverage.

RESPONSE: The scope of the rule is clear. It applies to all property casualty/liability policies in this State except for those specifically exempted by the rule itself. Again, this comment has already been addressed by the Commissioner through the clarifying bulletins issued during the period of the emergency regulation.

COMMENT: Commenters complained that the rule ignores the importance of reinsurance to sound company functioning. With limited reinsurance availability, if insurers are forced to remain on risks they would otherwise terminate, their ratio of premium to surplus could increase in derogation of this and other states' requirements. Further, violation of N.J.S.A. 17:18-9, which prohibits an insurer from exposing itself on any one risk to more than 10 percent of its net assets, could result.

RESPONSE: These comments are based on a basic misunderstanding of the purpose and effect of the rule. Insurers are not forced to remain on risks that should be terminated based on the loss of reinsurance. The rule, as clarified in the Commissioner's explanatory bulletins, does not prohibit the termination of such policies but rather requires that the insurance company verify the legitimacy of these terminations based on the actual extent of the loss of reinsurance. Therefore, insurers are fully capable of avoiding any deterioration of their financial condition based on the loss of reinsurance.

COMMENT: A law firm representing surplus lines insurers questioned the applicability of the new rule to surplus lines. The commenter pointed to several statutory references which are cited as authority for the emergency rules and indicated that none of them are applicable to surplus lines carriers. The commenter offered several scenarios illustrating why compliance with the rule would be impossible for surplus lines insurers. For instance, surplus lines insurers' heavy reliance on reinsurance was cited as one important factor.

The commenter indicated that if cancellation of reinsurance were considered a valid ground for nonrenewal, many surplus lines carriers would accept the other provisions of the emergency rule.

Another commenter argued that the rule should not apply to surplus lines insurers since such carriers are non-admitted and are intended to operate on a more flexible basis.

RESPONSE: Emergency amendments to this regulation have removed surplus lines coverages from its applicability.

COMMENT: Several commenters suggested that various lines or types of insurance be specifically excluded from the

rule's scope. In justifying the exclusions, it was sometimes argued that the rules should not apply to lines of insurance for which no availability problem now exists. With respect to personal lines coverages, in particular, it was suggested that the rule would significantly impair the previously healthy personal property lines market in this State.

Some industry commenters recommended that the scope of the rule be restricted as provided in the Industry Working Committee's replacement draft. Exempted lines included:

1. employer's liability;
2. ocean marine;
3. aviation liability;
4. policies of insurance covering multi-state locations;
5. fidelity, surety, performance or forgery bonds;
6. policies subject to retrospective rating plans;
7. excess and umbrella policies;
8. personal lines coverages;
9. surplus lines; and
10. commercial auto.

An industry trade organization also recommended the exclusion of boiler and machinery insurance. It was also recommended that the rule be specifically limited to commercial liability lines and not extend to commercial property risks.

RESPONSE: A number of the coverages addressed by the comments have been removed from the application of the regulation by emergency amendments to that regulation. These include employer's liability, ocean marine and aviation insurance, fidelity, surety, performance or forgery bonds, and, with certain exceptions, policies of insurance covering multi-state locations. With respect to the comment regarding personal lines, complaints received by the Department of Insurance indicate that the types of protections afforded by this rule are necessary and must be extended. However, the Department does recognize that some additional considerations are necessary with respect to personal lines and therefore intends to adopt new regulations specifically tailored to personal lines coverages. As a result of that determination, the Department has proposed amendments eliminating personal lines from the regulation in order that additional comments may be received and considered by the Department prior to implementing these new regulations. Finally, it must be stressed that the regulation is designed not only to address problems associated with the unavailability of insurance coverages but, equally as important, the protection of basic policyholder rights with respect to cancellations and nonrenewals. Abuses of these rights must be prevented even if other insurance may be available.

COMMENT: One writer questioned the status of binders under the proposed rule, noting that N.J.A.C. 11:1-20.1(a) refers only to policies. The commenter indicated that if binders are deemed to be policies for the purpose of the rule, the likely result would be that insurers would withdraw binding authority from their agents. This would be to the detriment of insureds who need immediate coverage pending the issuance of a policy.

RESPONSE: It is the position of the Department of Insurance that, since binders are generally issued for periods less than 60 days in duration, the termination of these binders would not fall within the scope of the rule. If abuses occur in this area, the Department will undertake further corrective action.

COMMENT: There were several comments concerning N.J.A.C. 11:1-20.2 which requires insurers to obtain the Commissioner's prior approval of their underwriting standards or reasons for nonrenewal and cancellation, and which establish-

es procedures for obtaining same. One writer suggested eliminating the section entirely. Another commenter recommended that N.J.A.C. 11:1-20(b) be amended to provide that in the event the Commissioner has not rendered a determination within the required 30-day period, an insurer may apply the filed standard until action is taken by the Department.

RESPONSE: The Department has determined that this comment may have some merit and has therefore proposed an amendment providing for the use of underwriting guidelines after filing with the Commissioner of Insurance and the expiration of 20 days without the specific disapproval of that reason by the Commissioner.

COMMENT: An industry trade association recommended that the rule be amended to replace the prior approval requirement with a provision which would call for the submission of underwriting guidelines to the Commissioner within 45 days of the rule's effective date. The "Replacement Regulation" developed by the Industry Working Committee contains such a provision.

RESPONSE: As previously stated, in view of the substantial evidence of the existence of arbitrary and capricious nonrenewal and cancellation practices throughout all lines of the insurance industry, including personal lines, it is the Department's position that any gap in the protections of the rule would have a seriously adverse effect on the rights of policyholders in this State.

COMMENT: With regard to N.J.A.C. 11:1-20.2(d), which provides that the section does not apply to cancellations of new business issued within the first 60 days of coverage, a commenter suggested that the time frame be extended to 90 days. It was argued that while a 60-day period may be sufficient for personal lines, commercial insurers require additional time to examine a new insured's books of account, to complete inspections and to negotiate the amount of insurance to be provided.

RESPONSE: No evidence has been submitted in support of the proposition that an extended period of time, over 60 days, is necessary to complete inspections or to negotiate the terms of insurance coverage. In fact, the proposal submitted by the Industry Working Committee provides for a 60 day review period.

COMMENT: Commenters also questioned the procedure to be followed under N.J.A.C. 11:1-20.2 regarding approval of cancellations and nonrenewals. Specifically, clarification was requested as to whether approval on an individual risk basis was intended.

RESPONSE: The regulation does not require approval on an individual risk basis. This point has already been clarified by explanatory bulletins issued by the Department of Insurance. The pertinent rule provision only applies to general underwriting guidelines and not to the application of those guidelines to specific insureds. That function is achieved pursuant to the statutory and regulatory requirements that termination notices provide both the general underwriting standard and the facts specific to the individual risk that meet that standard.

COMMENT: Because insurance business is generally written through agents and brokers, it was recommended that notice of renewal premiums and terms as required at N.J.A.C. 11:1-20.3 should be directed either to the insured or the agent. Also, it was recommended that the minimum time frame for notice be reduced from 30 to 15 days.

RESPONSE: It is the Department's position that at least

30 days notice of renewal is necessary to adequately protect the insured. Additionally, in view of the importance of adequate prior notice to the continuity of essential insurance coverages, notice to the insured is superior to notice to an agent or broker.

COMMENT: The Department received many comments on N.J.A.C. 11:1-20.3(a), which sets forth various requirements pertaining to the offering of renewal coverage. Several writers objected to what they perceived to be a restriction on the insurer's ability to rate or price risks at renewal. Specifically, it was requested that the Department clarify that the provision requiring that insurers offer equivalent "terms" was not intended to include rates.

RESPONSE: This point has already been addressed in the clarifying bulletins issued by the Commissioner of Insurance. Lawful rate changes at the time of renewal are not precluded by the rule. Specific provisions addressing this comment have been incorporated by proposed amendments to the rule.

COMMENT: One writer recommended that the provisions in 11:1-20.3 requiring equivalent coverage, that is, coverage at the same "limits" and "terms", should be totally eliminated since many insurers no longer have reinsurance. Other commenters agreed with the deletion of the "equivalent coverage" provision.

RESPONSE: Both under the regulation (see interpretive bulletins) and proposed amendments to that regulation insurers are fully permitted to reduce the terms of coverage when such reduction is necessitated due to the loss of reinsurance. The rules only require that verification of the actual loss of reinsurance and the impact of that loss be articulated in a statement prepared by the insurer and submitted to the Commissioner of Insurance for approval. Additionally, the proposed amendments permit changes mutually agreed to by the insurer and the insured pursuant to good faith negotiations and other changes approved by the Commissioner.

COMMENT: One writer questioned the restriction of not more than 45 days of advance notice to the insured of premium due. The commenter argued that this requirement would be difficult for companies that process on a monthly basis. It was recommended that no maximum period be stated in the rule or, as an alternative, that the maximum period be extended to 60 days.

Another writer also expressed concern regarding the quotation of renewal premiums, noting that in some instances renewal quotes may not be received until well into the new policy period and recommended amendments accommodating renewal quotes **after** the issuance of the renewal policy.

RESPONSE: It is the position of the Department that, in order for notice to be of any real value to the insured, it must be proximate in time to the effective date of the policy termination. No evidence has been provided to the Department that would support the proposition that the 45 day limitation will impose any undue burden on insurers. Additionally, the Department feels that it is a legitimate obligation of an insurer to provide its insured with a renewal premium quote **prior** to the termination of the policy period.

COMMENT: With regard to N.J.A.C. 11:1-20.3(b) and (c), concerning prior notice of cancellation or nonrenewal, commenters suggested the deletion of "more than 45 nor." One commenter stated that this requirement only reduces the insured's opportunity to know of the nonrenewal and secure alternate coverage.

RESPONSE: As previously stated, it is the Department's position that, in order to maximize the effectiveness of notice to the insured, it is absolutely essential that the notice be

proximate in time to the effective date of the termination. Without the "cap", it is possible that notice could be issued several months prior to the expiration date and may be lost or forgotten by the insured.

COMMENT: An industry trade association recommended that the section be amended as provided in the industry's "Replacement Regulation" to specify that a failure to send timely notice of cancellation to any designated mortgagee or loss payee would invalidate the cancellation only as to the mortgagee's or loss payee's interest.

RESPONSE: As provided in the clarifying bulletins issued by the Department of Insurance, the Commissioner has already interpreted the regulation in a manner consistent with the comment. Specific language has been incorporated in proposed amendments to the regulation.

COMMENT: It was suggested by one commenter that N.J.A.C. 11:1-20.3(d) be amended by adding the sentence: "Such notice shall clearly and prominently set out the reasons or standards in bold face type or other manner." It was also recommended that the provision be inapplicable to any termination based upon moral hazard, nonpayment, substantial change of hazard or loss of reinsurance capacity.

RESPONSE: The Department believes that the proposed requirement of boldface type is not warranted at this time. However, the Department strongly believes that an insured is entitled by law to know the specific basis for termination of an insurance policy.

COMMENTS: Several comments were received regarding N.J.A.C. 11:1-20.3(e) and (f) which provide, in part, that an insured be notified of his or her right to file a complaint with the Department and be furnished with a complaint form. One commenter indicated that the requirements will only serve to invite more complaints and recommended that both subsections be deleted. Other commenters felt that a complaint form should be furnished only for other than nonpayment terminations. It was also recommended that this requirement be implemented on a prospective basis, that is 90 days after the rule's effective date.

RESPONSE: The Department agrees that this comment may have some merit and has proposed an amendment to the regulation which would delete the requirement that insurers provide a copy of the consumer complaint form with termination notices. The proposed amendment, however, retains the requirement that the insured be notified of his right to file a complaint with the Department, except in cases where the termination is based on non-payment of premium.

COMMENT: N.J.A.C. 11:1-20.3(g) provides that notice must be by certified mail or other proof of mailing that must be retained by the insurer. Commenter stated that this method is too expensive. Commenters suggested that this provision be left optional with the company; alternatively, it should be reworded to provide that the insurer may only assert that timely and proper notice of cancellation has been sent if proofs of mailing have been obtained. This change would not affect the insured's rights, because the only time it can be at issue is if the insured claims to not have received notice. When this does become an issue, the company must prove the mailing.

RESPONSE: The Department believes that the cost of maintaining the proof of mailing required by the regulation is negligible. In any event, these costs are far outweighed by the benefits derived, both by the insured and the insurer, from maintaining definitive evidence of the provision of timely notice.

COMMENT: It was recommended that N.J.A.C. 11:1-20.3(h) concerning renewal of expiring policies be

amended as provided in the industry Replacement Regulation to require that in the event an insurer failed to either issue notice of nonrenewal or issue a replacement policy or certificate or notice extending coverage, the insured would be entitled to continue the expiring policy at the same terms and premium until the insurer forwards appropriate notice of termination.

RESPONSE: The Department agrees that this comment has merit and has therefore proposed amendments to the regulation incorporating this provision.

COMMENT: N.J.A.C. 11:1-20.3(i) states that a nonrenewal can be effected at the insured's request. One commenter questioned whether a request via an agent would apply to this situation. The commenter stated that such a request should apply since most insureds communicate with the agents rather than with the company.

Also, with respect to 11:1-20.3(i), commenters suggested that the five-day notice be eliminated. It was claimed that an onerous administrative difficulty is created by the requirement with no benefit to the insured. If an issue arises as to whether an insured has requested termination, the burden will fall on the insurer to document the request.

RESPONSE: Where an insured has specifically authorized a licensee to act as his agent to convey a request to terminate an insurance policy, the agent's request must be considered as that of the insured and would therefore be in compliance with this provision.

With respect to the comment regarding the elimination of the five day notice, the Department has determined that it merits further consideration and has incorporated it into its proposed amendments to the rule.

COMMENT: Several comments were received concerning N.J.A.C. 11:1-20.4 pertaining to required policy provisions. One commenter suggested that this section be amended to provide that existing policies be interpreted according to the rule.

Another writer recommended that the provision requiring that all policies contain terms of cancellation and nonrenewal be deleted. It was argued that, since insurers can only terminate coverage for approved reasons and the notice of termination must set forth the reason and advise the insured of his or her right to file a complaint, inclusion of the standards in the policy is redundant. At the same time, the requirement imposes substantial administrative costs and burdens on insurers.

An industry trade association recommended that the provisions be amended to track the Industry Working Committee draft "Replacement Regulation." The amendment would limit the requirements of the sections to cancellations and would include additional permissible grounds for cancellation, such as adverse loss experience and loss or substantial changes in applicable reinsurance.

RESPONSE: The Department believes that the substance of this comment has already been addressed under the provisions of the rule (N.J.A.C. 11:1-20.5(b)) and the Department has proposed amendments which would require that all policies contain provisions which are consistent with the applicable requirements of the rule.

The Department feels that the argument that the reasons for termination need not be contained in the policy because they will be provided in termination notices issued to the insured is without merit. An insured has a right to know the reasons why the policy may be cancelled or nonrenewed at the time he purchases the contract, in order that he may avoid those situations which will result in the termination of that

contract. No evidence has been submitted to support the contention that this requirement imposes substantial costs or burdens on insurers.

The Department agrees that some of the provisions in the replacement regulation offered by the Industry Working Committee have merit and have proposed amendments which would limit the requirements of this section to cancellations and permit the listing of additional grounds for cancellation.

COMMENT: N.J.A.C. 11:1-20.5 concerns prohibited practices such as mid-term premium increases and block cancellations and nonrenewals. One commenter suggested that this provision be deleted arguing that it would place a handicap and a serious restraint on trade of all companies.

Other comments focused specifically on N.J.A.C. 11:1-20.5(a)2 which requires that block cancellations and nonrenewals may be effected only pursuant to a plan approved by the Commissioner, which minimizes market disruption and provides for alternate coverage at comparable rates and terms. It was recommended that this provision be modified as set forth in the industry "Replacement Regulation". This provides, with respect to nonrenewals, for submission of a plan to the Commissioner 60 days prior to implementation with a 30 day deemer. Plans for block cancellation must also be approved by the Commissioner without the aforementioned time constraints. Nonrenewals and cancellations due to loss or substantial changes in reinsurance are exempted; however notice to the Commissioner must be given together with a certification from a company officer concerning the reinsurance situation.

RESPONSE: The Department strongly disagrees with the contention that the prohibition of practices such as mid-term premium increases and block cancellations and nonrenewals should be deleted from the regulation. These practices, when applied arbitrarily or capriciously, are the exact evil intended to be remedied by the regulation. Mass cancellations and nonrenewals for legitimate reasons are permitted under the rule. However, given the serious impact of these practices on insureds, they will be subject to the reasonable supervision of the Commission of Insurance. No serious restraint on trade should result.

With respect to the remainder of this comment, the Department has incorporated amendments which substantially track the basic concepts contained in the industry proposal.

The following comments were submitted in the form of a brief and appendix submitted on behalf of the American Insurance Association, the National Association of Independent Insurers, and the Alliance of American Insurers.

COMMENT: The rule is unreasonable and arbitrary for the following reasons:

It compels insurers to face exposure to uninsurable and un-reinsurable risks, thus exceeding statutory limits and violating sound underwriting practices. It is manifestly unjust because it abrogates cancellation and nonrenewal notices issued prior to the adoption of the rule in accordance with established law. The Department of Insurance is unable to conduct the proceedings which the rule authorizes. Insurers are required to give notice of an intention to nonrenew a policy prior to the time when the insurer will know if the risk can be reinsured. The rule restricts rather than expands the availability of insurance by eating away at the scarce capital upon which insurers may write policies and it encourages the cancellation of policies, rather than modification of coverage, by preventing the renegotiation of policies in light of changed circumstances.

RESPONSE: The rules are neither arbitrary nor unreasonable for the reasons stated by the commenter above because the rules primarily require notice of termination of a policy of insurance based on reasons which are not arbitrary, capricious or unfairly discriminatory. Although there was a short period of time following the adoption of the emergency rules in which terminations were delayed in order to permit compliance with the rules, that period is passed. Insurers have had ample time during the period of the emergency rules to obtain approval of sound underwriting reasons for terminations of policies. Any insurer which complies with the rules in good faith is not obligated to insure any risk which is "uninsurable" or for which reinsurance does not exist. The Department has not experienced, to this date, any problem in conducting the "proceedings", such as responding to insurer requests for approval of underwriting reasons, which are required by the rules. The time periods for notice to insureds are fixed by statute, and the fact that some insurers find the statutory time periods burdensome is not a reason to rescind the regulations implementing the statutes. Finally, the rules do not prevent "renegotiation" of insurance policies; only unilateral reductions in coverage which are imposed by the insurer without the consent of the insured are prevented.

COMMENT: The acts of the Commissioner to be taken under the rules are ultra vires, because the rules violate the Commercial Deregulation Act of 1982. Furthermore, the rules violate constitutional due process by investing adjudicatory authority in the Commissioner without the articulation of standards for decision making. The rules also constitute an improper taking of property without compensation by compelling insurers to use their assets to insure unwanted and "open ended" risks. Finally, the rules effect an unconstitutional impairment of contract because they apply to in force policies, and because they apply to contracts of insurance held by the State and its political subdivisions.

RESPONSE: Arguments that the rules violate statutory and constitutional provisions are without merit. The rules prescribe standards for policy form language for both commercial and noncommercial policies, and nothing in the Commercial Deregulation Act of 1982 inhibits the Commissioner's rule making authority in this area. The adjudicatory authority of the Commissioner to review underwriting guidelines is granted by N.J.S.A. 17:22-6.14(a)1, which contains the appropriate standards for reviewing such guidelines. As noted in the previous response, no insurer is required to use its assets to continue insuring "unwanted" risks. The rules prohibit only arbitrary and capricious underwriting guidelines used to define "unwanted" risks. The impairment of contracts argument is simply not a legitimate reason for rescinding the rules. First, the rule applies only to cancellations and nonrenewals which take place after the effective date of the rule itself. Since it does not apply to policies cancelled or nonrenewed prior to the effective date, the rule does not impair terminated contracts. Secondly, the constitutional provision prohibits only "substantial" impairments of contracts. State regulations which are authorized by the exercise of the police power of the state have been held not to violate the contract clause even where a "substantial" impairment has been effectuated. The effect of these rules is not so substantial as to violate the contract clause, and the public interest advanced by the rules is significant enough to counterbalance any perceived impairment of contracts. Finally, the fact that State or municipal insurance policies are incidentally effected by a rule of general applicability such as this is not sufficient reason to warrant a different standard of contract clause review.

COMMENT: The rules purport to supersede the specific legislative and regulatory enactments governing automobile insurance.

RESPONSE: This comment is simply inaccurate, since the regulations, by their terms, do not apply to auto insurance to the extent they are inconsistent with existing statutes and regulations applicable to auto insurance. See N.J.A.C. 11:1-20.1(a).

COMMENT: N.J.A.C. 11:1-20.2 bars an insurer from cancelling or nonrenewing a policy of insurance unless the insurer requests permission to do so from the Commissioner at least 90 days prior to the expiration date of the policy. Thus, the effect of the rules is to freeze in place all policies for ninety days from September 17, 1985. Furthermore, no statutory authority exists which allows the Commissioner to approve or disapprove the decision of an insured to cancel or nonrenew a policy. Nor is there statutory authority which permits the Commissioner to demand a notice that a policy is about to be cancelled or nonrenewed.

RESPONSE: As noted in interpretative Bulletin 85-1, the 90-day period prescribed in the rules is advisory only, and the Department is willing to review submitted underwriting guidelines on less than 90 days notice. The commenter's characteristic of the effect of the rules is therefore incorrect. As noted above, the statutory authority for reviewing underwriting guidelines is in N.J.S.A. 17:22-6.14a1. and the Department's position is that the various provisions of the rules are fully authorized by statute.

COMMENT: An insured may appeal each cancellation or nonrenewal of a policy to the Department of Insurance by using a consumer complaint form which must accompany the notice of nonrenewal or cancellation. The Commissioner has given herself adjudicatory authority over each policy termination without applicable standards of review. Since there is no time limit for submitting a complaint form, there is no period after which an insurer is assured that it has properly cancelled or nonrenewed a policy.

RESPONSE: The provision of a consumer complaint form does not create any additional rights for an insured. The Commissioner already had authority to review complaints alleging violations of law, and the regulation does not extend the Commissioner's authority in this area. The comment concerning the applicable time limit for a complaint is valid, but court decisions have not appeared to limit the time period during which an insured can claim coverage exists when notice of termination of a policy was improperly issued by an insurer. It is presumed a rule of reasonableness will apply in these situations. In any event, any such action by the Commissioner in reinstating a policy is subject to a hearing and is reviewable on appeal.

COMMENT: There is no statutory authority for any of the provisions of N.J.A.C. 11:1-20.3, 11:1-20.4, 11:1-20.5 and 11:1-20.7. All current policies are in violation of the provisions of these rules.

RESPONSE: The statutory authority for the cancellation and nonrenewal requirements appears at N.J.S.A. 17:22-6.14(a)1 and N.J.S.A. 17:29C-1. and in other statutes. It is incorrect to state that all current policies are in violation of the rules, since insurers have been notified that endorsements to existing policies are permissible. See Bulletin No. 85-1. In addition, all policy forms are deemed to include any and all provisions required by law. The provisions regarding mass cancellations and nonrenewals are authorized by the same statutes which govern individual cancellations and nonrenewals. It is simply inconsistent to assert that the Com-

missioner is authorized to regulate with respect to individual policy cancellations and nonrenewals but may not address the greater problem of mass cancellations and nonrenewals. All of the statutes cited as authority for the imposition of penalties are valid, and the assessment of monetary fines as well as reinstatement of improperly-terminated policies are reasonable responses to the problems addressed by the rules. An agency is deemed to have all authority reasonably necessary to accomplish the tasks delegated to it.

COMMENT: The rules obligate insurers to institute administrative procedures which their current record-keeping systems do not facilitate, and thus administrative costs will increase. For example, certain insurers do not keep a separate log of New Jersey policies which are cancelled.

RESPONSE: Existing statutes already require specific provisions to be included in nonrenewal notices, and require specific time periods for cancellation and nonrenewal of policies. Any insurer which is able to comply with the statutory requirements which preceded the rule should be able to comply with the rule itself.

COMMENT: Underwriting standards are general and the decision to cancel or nonrenew a policy is fact specific, and an insurer will not be willing to risk that the reason approved by the Commissioner for one nonrenewal will be applicable to another situation. Therefore, insurers will necessarily submit a specific ground for cancellation for each policy, resulting in increased administrative proceedings which the Department cannot accommodate. This will result in substantial delays and prejudice to insurers.

RESPONSE: This comment merely reflects the existing state of affairs prior to the adoption of the rule. N.J.S.A. 17:22-6.14(a)2 prescribes specific information which must be included in a notice of nonrenewal, and the statutory standard against underwriting guidelines must be measured is set out in N.J.S.A. 17:22-6.14(a)1. Existing case law establishes that policies may be reinstated if notices are given to insureds which do not comply with these statutes. The regulations in and of themselves do not create any greater cause for alarm than existed under prior law.

COMMENT: The amount of lawsuits brought with regard to the validity of cancellations will increase as a result of the rules.

RESPONSE: This comment is completely speculative and neither the commenter nor the Department can realistically assess its impact.

COMMENT: The rules should be stayed pending appeal to avoid irreparable harm to the insurance industry and to the public and because the rules are contrary to law.

RESPONSE: Two appeals filed on behalf of the insurance industry requested stays of the rules pending appeal. Both the Appellate Division of the Superior Court and the Supreme Court of New Jersey rejected the motions for stays pending appeal. The Department does not consider this comment to have any merit.

The explanatory Bulletins No. 85-1 and 85-2 mentioned throughout this summary of public comments and agency responses were published by the Department in response to comments and questions concerning the interpretation of the emergency rule. In as much as the Department had continuing contact with commenters throughout the period of the emergency rule and response on an immediate basis through the issuance of these clarifying bulletins, copies of same as published here and are part of this summary.

DEPARTMENT OF INSURANCE

BULLETIN #85-1

To: All Property & Casualty Insurance And Agents' Associations

From: Hazel Frank Gluck, Commissioner of Insurance

Re: Emergency Rule N.J.A.C. 11:1-20 Concerning Cancellation and Nonrenewal Of Property and Casualty/Liability Policies

Recently this Department has received an influx of inquiries concerning the interpretation of N.J.A.C. 11:1-20 which became effective on September 17, 1985. In light of the increasing number of inquiries, the Department has decided to issue this Bulletin to clarify its interpretation of the rule.

Please note that following points of clarification regarding N.J.A.C. 11:1-20:

1. The provisions of Section 11:1-20.3(a) requiring insurers to offer "coverage at least as favorable . . . as the expiring policy . . . at the same limits and terms" do not affect the ability of companies to price risks on renewals. Insurers may adjust their rates upon renewal of existing policies; however, any rate changes must be implemented pursuant to the provisions of the Commercial Insurance Deregulation Act and the Insurance Rating Law, N.J.S.A. 17:29AA-1 et seq. and N.J.S.A. 17:29A-1 et seq., respectively.
2. Pursuant to Section 11:1-20.3(a) insurers are required to offer "equivalent coverage", "limits" and "terms" on existing policies "subject to changes approved by the Commissioner that had become effective since the commencement of the current policy period." Some insurers have interpreted these provisions to permit reductions in coverage pursuant to "policy coverage exclusions" that have been implemented in accordance with the Commercial Insurance Deregulation Act and the Insurance Rating Law upon renewal of existing policies. Approved "policy coverage exclusions" may be used in connection with the writing of new business only. Existing policies must be renewed with "equivalent coverage" and "limits" unless the insurer involved receives the Commissioner's prior approval not to do so.

This provision does not preclude changes in coverage (including reductions in coverage and limits) that are mutually agreed upon between an insurer and policyholder. However, the insurer must make full disclosure to the policyholder that he or she is entitled to coverage and limits equivalent to that contained in the expiring policy unless the Department permits the policy to be renewed with a reduction in coverage or at lower limits. Moreover, the insurer and/or producer must retain evidence of the policyholder's acceptance and consent to reduce coverage and/or lower limits after full disclosure.

3. N.J.A.C. 11:1-20 does apply to all property and casualty/liability lines, including all personal lines coverages and all surplus lines coverages. The only exceptions are the workers' compensation and accident and health coverages.
4. The provisions of Section 11:1-20.2(a) only requires the submission of the underwriting standards which an insurer desires to utilize to effect cancellations and

nonrenewals 90 days in advance of their use. Once the underwriting guideline(s) and/or standard(s) have been approved their use can continue uninterrupted until an insurer desires to amend or modify them. Section 11:1-20.2(a) does not require the prior approval of each individual policy that an insurer desires to cancel or nonrenew pursuant to its underwriting guidelines and/or standards.

We understand there are instances in which producers may be responsible for developing and/or applying the underwriting guidelines and/or standards utilized by insurers to effect policy cancellations and/or renewals. In those instances where producers are responsible for the development of underwriting guidelines and/or standards which are utilized in an insurer's behalf, they also must comply with Section 11:1-20.2.

The 90 day notice requirement contained within Section 11:1-20.2 is advisory and provided to ensure sufficient time for the Department's review and evaluation of the underwriting guidelines, reasons and/or standards submitted and sufficient time for insurers to notice affected policyholders of cancellations and nonrenewals. An insurer's failure to submit the standards, guidelines and/or reasons upon which it relies for the termination of a policy 90 days in advance of the expiration date of the policy does not require automatic renewal of the policy. The Department will accept underwriting guidelines, standards and/or reasons filed later than the 90 day notice requirement contained within Section 11:1-20.2; however, it may be necessary for the insurer to extend coverage to insureds beyond the termination dates contained in notices of cancellation and/or nonrenewal already issued to insure that policyholders receive the required 30 days notice after the Department has approved the insurer's underwriting guidelines, standards and/or reasons.

With respect to those policies that were in the process of being cancelled and/or nonrenewed (notices of cancellation and nonrenewal already issued) at the time N.J.A.C. 11:1-20 became effective, the Department will attempt to expediate its processing of the standards and/or reasons submitted to support the action taken. However, to assist the Department in this endeavor, insurers should specially note or mark the standards or reasons relied upon for such action.

The Department expects to receive clear information on why the proposed standards and/or reasons utilized to effect cancellations or nonrenewals are appropriate and applicable. If the Department requires additional information to enable it to evaluate any standard(s) and/or reasons(s) submitted, the 30 day time period contained within Section 11:1-20.2(b) will be tolled until the additional information requested is provided.

5. N.J.A.C. 11:1-20 does apply to all policies that were "in-force" on September 17, 1985, including those on which notices of cancellation and nonrenewal were issued but which had not yet become effective. The Department, therefore, expects all affected insurers and/or producers to immediately issue rescissions on those notices of cancellation or nonrenewal issued, but not effective, prior to the effective date of N.J.A.C. 11:1-20.

6. Section 11:1-20.4 which requires that all policy forms contain provisions that "clear and specifically state the grounds upon which the insurer will cancel or nonrenew coverage" and "describe the types of conditions or circumstances" that will trigger cancellation and nonrenewal applies to all "in-force" policies. All property and casualty/liability insurers, therefore, must attach endorsements to existing policies that comply with the regulation.
7. The provisions of Sections 11:1-20.3(e)(2) and 20.3(f) require that all policyholders be advised of their right to file a complaint with the Department of Insurance upon notice of cancellation or nonrenewal and that a copy of the Department's consumer complaint form must accompany the notice of cancellation or nonrenewal. In instances where policyholders were properly noticed of cancellation for nonpayment of premium prior to the effective date of N.J.A.C. 11:1-20 and the insurer had not received a copy of the Department's consumer complaint form, the Department will consider such notices to be valid even though they were not accompanied by a consumer complaint form. However, all companies will be presumed to have received notice of N.J.A.C. 11:1-20 and a copy of the Department's consumer complaint form on or about September 25, 1985. Thereafter, all notices of cancellation or nonrenewal must be accompanied by the Department's consumer complaint form to be considered valid.
8. Section 11:1-20.3(c) requires that no cancellation shall be valid unless notice is provided to "any designated mortgagee" as well as to the insured. Failure to send such notice to any designated mortgagee, however, shall invalidate the cancellation only as to the mortgagee's or loss payee's interest.

Proper handling of the matters delineated above are the responsibility of insurance companies. Thus, insurance companies are expected to make sure that their procedures are proper and that company staffs as well as appointed agents are advised.

This Department will pursue all legal remedies available to deal appropriately with any insurer or producer which is found not to be in compliance with N.J.A.C. 11:1-20 or the provisions of this Bulletin.

Lastly, another bulletin will be forthcoming shortly which will deal with preapproved underwriting guidelines, standards, reasons and other matters.

BULLETIN #85-2

To: All Property & Casualty Insurance Companies And Agents' and Brokers' Associations

From: Hazel Frank Gluck, Commissioner of Insurance

Re: Emergency Rule N.J.A.C. 11:1-20 Concerning Cancellation And Nonrenewal Of Property and Casualty/Liability Policies

Emergency regulation N.J.A.C. 11:1-20, promulgated on September 17, 1985, mandates that insurers cannot cancel or nonrenew policies governed by this regulation until the reason for such action has been approved by the Commissioner. Numerous companies have submitted underwriting standards, guidelines, and/or reasons pursuant to this regulation. The Department's review of these submissions indicates that cer-

tain standards, guidelines, and/or reasons have been common to all filers.

The following standards and/or reasons are deemed approved by the Commissioner pursuant to N.J.A.C. 11:1-20.2:

1. Nonpayment of premiums;
2. Material misrepresentation or nondisclosure to the company of a material fact at the time of acceptance of the risk;
3. Increased hazard or material change in the risk assumed which could not have been reasonably contemplated by the parties at the time of assumption of the risk;
4. Substantial breaches of contractual duties, conditions and warranties that materially affect the nature and/or insurability of the risk;
5. Lack of cooperation from the insured on loss control matters materially affecting insurability of the risk;
6. Fraudulent acts against the company by the insured or its representatives that materially affect the nature of the risk insured.

Only the specific language contained in the standards set forth above is approved for use by insurers. The use of substitute language is prohibited except if approved by the Commissioner. All other reasons must be submitted to the Commissioner in the manner prescribed by the regulation.

Cancellations or nonrenewals due to the following circumstances may only be implemented subsequent to the Commissioner's approval of a plan submitted by the company pursuant to N.J.A.C. 11:1-20.5:

1. agency termination;
2. material increase in exposure arising out of changes in statutory or case law issued subsequent to issuance of the insurance contract;
3. loss of or substantial change in available reinsurance;
4. loss of or reduction in available insurance capacity;

Any plan submitted pursuant to #3 above should set forth the following information:

- a. name of insurance company
- b. identification of category of risks, the total number of risks written by the company in that category, and the number of risks intended to be cancelled or nonrenewed;
- c. date of intended cancellation and/or nonrenewal;
- d. identification of the total amount of the insurer's net retention for the risks intended to be cancelled or nonrenewed;
- e. identification of each reinsurer and description of each reinsurance treaty (include documentation);
- f. identification of the total amount of risk ceded to each reinsurer and the portion of that total that is no longer available;
- g. if proposed reason for cancellation or nonrenewal is unavailability of reinsurance, provide a statement explaining all efforts to obtain replacement reinsurance (include names, addresses and telephone numbers of at least three contacts made);
- h. statement explaining the nature of any reinsurance problem other than unavailability (include pertinent documentation);
 - i. explanation of how the loss of or reduction in reinsurance affects the company's risks throughout the entire line or category of insurance proposed for cancellation or nonrenewal;
 - j. explanation of why cancellation and/or nonrenewal is necessary to cure the loss of or reduction in available reinsurance;

- k. statement explaining how the cancellations or nonrenewals, if approved, will be implemented with respect to individual risks and the steps that will be taken to ensure that the cancellation/nonrenewal decisions will not be applied in an arbitrary, capricious or unfairly discriminatory manner.

The Department has also received requests for approval of "adverse loss experience" as a basis for nonrenewals. A more specific explanation of the manner of the adverse loss experience is necessary before the Department makes a decision in this regard. The Department is currently developing standards and invites the suggestions of insurance companies. Any pertinent information from companies to aid us in establishing these standards would be appreciated.

Further, some companies have requested that "failure to meet applicable underwriting guidelines" should be approved as an approved reason for cancelling or nonrenewing insurance policies. This reason is too vague to serve as a standard and is therefore disapproved.

The Commissioner's approval of the reasons set forth above is effective immediately and shall remain in effect until further notice. These reasons may be used in notices of cancellation and nonrenewal issued after the date of this bulletin.

Full text of the adoption follows.

SUBCHAPTER 20. CANCELLATION AND NONRENEWAL OF PROPERTY AND CASUALTY/LIABILITY INSURANCE POLICIES

11:1-20.1 Scope

(a) This subchapter shall apply to all property and casualty/liability insurance policies except workers' compensation insurance, accident and health insurance and, to the extent this subchapter may be inconsistent with applicable statutes and regulations, policies covering automobiles as defined at N.J.S.A. 39:6A-3.

(b) These rules are not exclusive, and the Commissioner may also consider other provisions of statutes and regulations to be applicable to the circumstances or situations addressed herein. Policies may provide terms more favorable to policyholders than are required by these rules. The rights provided by these rules are in addition to and do not prejudice any other rights policyholders may have at common law, or under statutes or regulations.

11:20.2 Approval of nonrenewals and cancellations

(a) No insurer shall issue notice of nonrenewal or cancellation, unless the reason or standard upon which the termination is based has been submitted to the Commissioner for approval at least 90 days prior to the expiration date of the affected policy(s).

(b) The Commissioner shall review the insurer's submission to determine compliance with applicable statutory or regulatory standards and shall advise the insurer, in writing, of the approval or disapproval of the use of the standard or reason within 30 days.

(c) No insurer shall issue notice of renewal or cancellation unless approval has been granted by the Commissioner pursuant to this section.

(d) This section shall not apply to any notice of cancellation issued for nonpayment of premium or moral hazard as defined in this subchapter. This section shall also not apply to any notice of cancellation issued with respect to a policy which

has been in effect for less than 60 days at the time the notice is mailed or delivered, unless the policy is a renewal policy.

11:1-20.3 Nonrenewal and cancellation notice requirements

(a) No policy shall be nonrenewed upon its expiration date unless a void notice of nonrenewal has been mailed or delivered to the insured in accordance with the provisions of this subchapter. Each renewal shall offer coverage at least as favorable to the insured as the expiring policy and at the same limits and terms, subject to changes approved by the Commissioner that had become effective since the commencement of the current policy period. With respect to payment of the renewal premium, notice shall be given not more than 45 days nor less than 30 days prior to the due date of the premium and shall clearly state the effect of nonpayment of the premium by the due date.

(b) No notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured not more than 45 nor less than 30 days prior to the expiration of the policy.

(c) No cancellation, other than a cancellation based upon nonpayment of premium or for moral hazard as defined in paragraphs 1 and 2 below, shall be valid unless notice is mailed or delivered by the insurer to the insured, and to any designated mortgagee not named in the policy as the insured, not more than 45 nor less than 30 days prior to the effective date of such cancellation.

1. A policy shall not be cancelled for nonpayment of premium unless the insurer, at least 10 days prior to the effective cancellation date, has mailed or delivered to the insured notice as required in this subchapter of the amount of premium due and the due date. The notice shall clearly state the effect of nonpayment by the due date.

i. No cancellation for nonpayment of premium shall be effective if payment of the amount due is made prior to the effective date set forth in the notice.

2. A policy shall not be cancelled for moral hazard unless the insurer, at least 10 days prior to the effective termination date, has mailed or delivered to the insured notice as required in this subchapter and the basis for termination conforms to the following definition of moral hazard:

i. The risk, danger or probability that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. Any change in the circumstances of an insured that will increase the probability of such a destruction may be considered a "moral hazard."

ii. The substantial risk, danger or probability that the personal habits of the insured may increase the possibility of loss or liability for which an insurer will be held responsible. Any change in the character or circumstances of an insured that will increase the probability of such a loss or liability may be considered a "moral hazard."

(d) No renewal or cancellation shall be valid unless the notice contains the standard or reason upon which the termination is premised and specifies in detail the factual basis applicable to the insured upon which the insurer relies.

(e) Each notice of nonrenewal or cancellation, must contain a statement which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention advising the insured:

1. That the standard or reason used by the insurer for nonrenewal or cancellation, as applicable, has been approved by the Commissioner of Insurance pursuant to the provisions of this subchapter;

i. This paragraph shall not apply to any termination based

upon moral hazard or nonpayment of premium; and

2. That the insured may contest the cancellation or nonrenewal by filing a written complaint with the New Jersey Department of Insurance, Division of Licensing and Enforcement, CN 325, Trenton, New Jersey 08625. The statement also shall advise the insured to contact the Insurance Department immediately, in the event he or she wishes to file a complaint, and that the consumer complaint form specified in (f) below may be used for this purpose.

(f) A copy of the New Jersey Department of Insurance Consumer Complaint Form shall also accompany each notice of renewal or cancellation.

(g) No nonrenewal or cancellation shall be valid unless:

1. Notice sent by certified mail; or

2. At the time of mailing of said notice, by regular mail, the insurer has obtained from the Post Office Department a date stamped proof of mailing showing the name and address of the insured, and the insurer has retained a duplicate copy of the mailed notice which is certified to be a true copy.

(h) For the purposes of this subchapter, the failure by the insurer to issue and deliver a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term shall be deemed a nonrenewal.

(i) An insurer shall not be required to provide notice of nonrenewal or cancellation as specified in this subchapter if the insured has replaced coverage elsewhere or has otherwise specifically requested termination and the insurer has complied with the requirements of this subsection. In any such case, the insurer shall, within five days of receipt of the termination request, issue to the insured a written acknowledgement. The insurer must maintain in its file properly documented proof that termination was at the request of the insured and such proof must include a copy of the written acknowledgement forwarded to the insured.

11:1-20.4 Policy provisions

(a) All property and casualty/liability insurance policy forms must contain provisions that clearly and specifically state the grounds upon which the insurer will cancel or nonrenew coverage and that describe the types of conditions or circumstances under which the insurer will initiate cancellation or nonrenewal. Such grounds shall include:

1. Nonpayment of premium;

2. Material misrepresentation;

3. Substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the contract; and

4. Substantial breaches of contractual duties, conditions or warranties.

11:1-20.5 Prohibitions

(a) The following acts or practices are specifically prohibited:

1. Effecting or attempting to effect a mid-term premium increase and/or a reduction in the amount or type of coverage provided under the policy;

2. Block cancelling or nonrenewing entire lines of insurance and/or withdrawing from entire classes of business, except pursuant to a plan approved by the Commissioner which minimizes marketplace disruption and provides for alternate coverage at comparable rates and terms.

i. For the purposes of this paragraph, the termination or attempted termination of an appointed agent solely to achieve the block cancellation or nonrenewal or entire lines of in-

surance or such other instant reunderwriting of an agency book of business shall be deemed a nonrenewal or cancellation subject to 2 above.

(b) No policy shall contain provisions which are inconsistent with the requirements of this subchapter, and any such existing provisions are hereby deemed to be null and void.

11:1-20.6 Separability

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

11:1-20.7 Penalties

In addition to any other penalty authorized by law, the Commissioner may order the immediate reinstatement without lapse of any policy which has been terminated in violation of the provisions of this subchapter and may, after notice and a hearing, impose penalties as prescribed by N.J.S.A. 17:29A-1 et seq., 17:29AA-1 et seq., 17:29B-7 and 11, 17:30C-1 et seq., 17:32-1 et seq. and 17:33-2.

(a)

Automobile Insurance Auto Physical Damage Claims

Adopted Amendments: N.J.A.C. 11:3-10

Proposed: November 19, 1984, at 16 N.J.R. 3170(a).

Adopted: November 18, 1985, by Jasper J. Jackson,
Acting Commissioner, Department of Insurance.

Filed: November 19, 1985, as R.1985 d.629, **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. 17:1-8.1, 17:1C-6(e) and 17:29B-4.

Effective Date: December 16, 1985.

Expiration Date pursuant to Executive Order No.
66(1978): December 16, 1990.

Summary of Public Comments and Agency Responses:

The Department of Insurance received five public comments on the proposed amendments to N.J.A.C. 11:3-10.

Comment: Two commenters expressed concern that the revised depreciation schedule in N.J.A.C. 11:3-10.4(c)2 would increase settlement amounts. This increase in settlement amounts would concomitantly increase claim costs which, in turn, would be reflected in the premiums in the state.

Response: The Department disagrees. The modifications to the depreciation schedule will have a minimal effect on rates since the schedule only applies to vehicles of the current model year. Moreover, for vehicles costing \$12,001 or more, the depreciation actually increases from \$0.20 to a range \$0.21 to \$0.29 per mile while for vehicles costing \$6,501 to \$10,000, the depreciation only decreases from \$0.16 and one-half to a range of \$0.15 to \$0.12 per mile. This increase in depreciation for vehicles costing \$12,001 or more should offset any increase in claims settlement caused by the decrease in depreciation for vehicles costing \$6,501 and \$10,000.

Comment: Four respondents expressed concern that the proposed wording of N.J.A.C. 11:3-10.4(a)1ii would result in claimants receiving overpayments for their damaged vehicles. N.J.A.C. 11:3-10.4(a)1ii states that if one manual lists a value for an option found in the damaged vehicle, but the other manual does not, the value of the option is carried over to the other manual so the insured received full value of the option. Respondents noted that under the two authorized valuation manuals, NADA and the Red Book, the Red Book lists the base price of the car and adds options while NADA includes the options in the base price. Respondents felt that a literal interpretation of N.J.A.C. 11:3-10.4(a)1ii would cause insurers to increase the NADA price thereby giving claimants more than the full value for the option. Respondents suggested that N.J.A.C. 11:3-10.4(a)1ii should not be applicable in cases where the manual which does not provide a separate listing for the value of the option nevertheless incorporates the value of the option into the base price of the vehicle.

Response: The Department of Insurance agrees with the respondents' comments. N.J.A.C. 11:3-10.4(a)1ii is amended according to the respondents' suggestion.

The Department has made one technical change to N.J.A.C. 11:3-10.5(d). In the November 19, 1984 proposal, Consumer Services Division was changed to Marketplace Regulation and Consumer Assistance Division. The name of this division is now changed to the Division of Licensing and Enforcement.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

SUBCHAPTER 10. AUTO PHYSICAL DAMAGE CLAIMS

11:3-10.1 Scope

This subchapter applies to claims arising under motor vehicle collision and comprehensive coverages.

11:3-10.2 Definitions

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

"Actual cash value", unless otherwise specifically defined by law or policy, means the lesser of the amounts for which the insured or the designated representative can reasonably be expected to:

1. Repair the motor vehicle to its condition immediately prior to the loss; or
2. Replace the motor vehicle with a substantially similar vehicle. The amount shall include all moneys paid or payable as sales taxes on the motor vehicle repaired or replaced. This paragraph shall not be construed to prevent an insurer from issuing a policy where the amount of damages to be paid in the event of a total loss is a specified dollar amount.

...

"Designated representative" means a person designated by the insured to represent the insured in negotiations with the insurer in an attempt to settle the claim. The designated representative may be any person authorized by the insured who may act legally in his or her behalf.

11:3-10.3 Adjustment of partial losses

(a) If the insurer intends to exercise its right to inspect, or cause to be inspected by an independent appraiser, damages prior to repair, the insurer shall have seven working days

following receipt of notice of loss to inspect the insured's damaged vehicle which is available for inspection, at a place and time reasonably convenient to the insured; commence negotiations; and make a good faith offer of settlement.

(b) (No change.)

(c) If the insured inspects the damaged vehicle or causes it to be inspected, the insurer shall promptly upon completing the inspection furnish the insured or the designated representative of the insured with a detailed written estimate of the cost of repairing the damage resulting from the loss, specifying all appropriate deductions.

(d) The insured may use any repairer of his or her own choice. The insurer must make all reasonable efforts to obtain an agreed price with this shop. The insurer may recommend, and if the insured requests, must recommend a qualified repairer at a location reasonably convenient to the insured motor vehicle who will repair the damaged motor vehicle at the insurer's estimated cost of repairs, but in either event the provisions of (f) below apply.

(e) (No change.)

(f) If the insured's vehicle is repaired at a repair shop whose name is required to be furnished by the insurer under (d) above for a sum estimated by the insurer as the reasonable cost to repair the vehicle, the insurer:

1.-2. (No change.)

(g) (No change.)

(h) Deductions for betterment and depreciation are permitted only for parts normally subject to repair and replacement during the useful life of the insured motor vehicle. Deductions for betterment and depreciation shall be limited to the lesser of an amount equal to the proportion that the expired life of the part to be repaired or replaced bears to the normal useful life of that part, or the amount which the resale value of the vehicle is increased by the repair or replacement. Calculations for betterment, depreciation and normal useful life must be included in the insurer's claim file.

(i) Deductions for previous damage or prior condition of the vehicle must be measurable, discernible, itemized and specific as to the dollar amount, and those deductions must be included in the insurer's claim file. The deductions shall be limited to the amount by which the resale value of the motor vehicle is increased by the estimation of the previous damage or the correction of the prior condition.

(j) (No change.)

(k) The insured shall have the right to receive the proceeds of any settlement. The insurer may not insist on making settlement proceeds jointly payable to the insured and the vehicle repairer, or payable to the vehicle repairer only.

1. The insured may elect to have the insurer pay the repairer directly in order to expedite recovery of the motor vehicle. The insured must make this election in writing.

11:3-10.4 Adjustment of total losses

(a) If the insurer elects to make a cash settlement, it must bear in mind at all times that ***the*** insured's position is that of a retail consumer and the settlement value arrived at must be reasonable and fair for a person in that position. If the insurer elects to make a cash settlement, its offer, subject to applicable deductions, must be one of the following plus applicable sales tax:

1. The average of the retail value for a substantially similar motor vehicle as listed in the current editions of the two valuation manuals approved by the Commissioner.

i. The average figure arrived at may be reduced by considering all factors, including but not limited to mileage tables and presence or absence of extras.

ii. If the destroyed vehicle included an option which is listed in one manual but not in the other, the value of the option shall not be averaged. The insured shall receive full value for the option by carrying over the amount listed to the other manual. ***The option carryover shall apply only in those instances where the option has not been considered by the used vehicle guide either as a separate item or included in the vehicle's base value.***

iii. Manuals approved for use on and after January 1, 1976, are the "Redbook", published by National Market Reports, Inc., and the "N.A.D.A. Official Used Car Guide", published by the National Automobile Dealers Association Used Car Guide Company. The use of any other manuals may be approved by the Commissioner upon demonstration of need, suitability and accuracy.

(b) (No change.)

(c) If the insured vehicle is a private passenger automobile of the current model year, meaning that the vehicle has not been superseded in the market place by an officially introduced succeeding model, the insurer shall utilize one of the following methods in the settlement of the loss, unless the utilization of (a) or (b) above is more favorable to the consumer.

1. Either the insurer shall pay the insured an amount equal to the reasonable purchase price on the date of the loss of a new identical vehicle, less any applicable deductible and an allowance for depreciation in accordance with the schedule below; or

2. The insurer shall provide the insured with a new identical replacement vehicle charging the insured for any applicable deductible and for depreciation in accordance with the schedule below:

Depreciation Schedule	
Purchase Price	Depreciation per mile
Up to \$6,500	\$0.10
\$ 6,501-\$ 8,000	0.12
8,000- 10,000	0.15
10,001- 12,001	0.18
12,000- 15,000	0.21
15,001- 20,000	0.25
More than \$20,000	0.29

(d) (No change.)

(e) The following provisions of N.J.A.C. 11:13-1.3 also shall apply to the adjustment of total losses, except that the insurer shall have a total of 14 working days to comply with the requirements of subsections (a), (b), (c), (h), (i), (j) and (k) of N.J.A.C. 11:13-1.3.

(f) This section does not prohibit an insurer from issuing a stated value policy insuring against physical damage where the amount of damages to be paid in the event of a total loss is a specified dollar amount.

(g) (No change.)

11:3-10.5 Unreasonable delay

(a) Unless a clear justification exists, physical damage claims will have a maximum payment period of 30 calendar days. A payment period is the period between the date of the receipt of the notice of loss by the insurer, and:

1.-3. (No change.)

(b) (No change.)

(c) Any letter of explanation, rejection or acceptance of any element of a claim shall contain in the upper right hand corner *[,] the date of receipt of notice of loss by the insurer and

be identified as such. The letter shall also contain the identity and claim processing address of the insurer, and the insured's policy number and claim number.

(d) A copy of the second update letter sent 60 days after the date of receipt of notice of loss, and all thereafter sent to any New Jersey insured, shall be mailed simultaneously to the insured and the *[Marketplace Regulation and Consumer Assistance Division]* ***Division of Licensing and Enforcement***, New Jersey Department of Insurance, 201 East State Street, CN 325, Trenton, New Jersey 08625.

11:3-10.6 Loss of use

In the event of the theft of the entire vehicle the insurer at the time of notification shall advise the insured of his or her right under the policy to be reimbursed for transportation expenses. The notification must be confirmed in writing immediately after receipt of notice of theft. All conditions and benefits related to this coverage as stated in the policy must be contained in the notification to the insured.

11:3-10.7 Subrogation agreements

(a) If an insured has received payment under his or her physical damage coverage that is subject to a deductible, the insured shall share, pro rata, with the insurer any net recovery received by the insurer from third parties.

(b) Net recovery shall be the total recovery less the insurer's allocated loss adjustment expenses attributable to such recovery. The formula for computing net recovery and the insured's share of recovery of the deductible may be stated as follows:

1. Total recovery – Allocated loss adjustment expenses = Net recovery.

$\frac{\text{Deductible} \times \text{Net recovery}}{\text{Total loss}} = \text{Insured's Share of recovery.}$

2. Application of formula: Assume a loss of \$500.00 subject to a \$100.00 deductible with \$50.00 in allocated loss adjustment expenses:

i. If there is full recovery of \$500.00: computation of net recovery:

$\$500.00 - \$50.00 = \$450.00$

Computation of insured's share of recovery:

$\frac{\$100.00}{\$500.00} \times \$450.00 = \90.00

\$500.00

ii. If there is a partial recovery of \$300.00: computation of net recovery: $\$300.00 - \$50.00 = \$250$

Computation of insured's share of recovery:

$\frac{\$100.00}{\$500.00} \times \$250.00 = \50.00

\$500.00

(c) Unless the insurer returns its insured's full deductible the insured shall attempt to effect full recovery in clear liability cases and shall not enter into any intercompany agreements that provide for the acceptance of lesser amounts on a formula basis.

(d) (No change.)

11:3-10.10 Examinations by the New Jersey Insurance Department

To ensure compliance with this rule, the Department of Insurance personnel will investigate the market performance of insurers. To enable department personnel to reconstruct an insurer's activities pursuant to the provisions of this rule, each insurer must maintain a complete file on each claim settled pursuant to this rule. The claim file shall contain all communications, transactions, notes and work papers relating to the claim. All papers in the file must be accurately dated by the insurer.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Licensing Service

Motor Home Title Certificates

Adopted New Rules: N.J.A.C. 13:21-20

Adopted Amendment: N.J.A.C. 13:21-20.2

Proposed: October 7, 1985 at 17 N.J.R. 2353(b).

Adopted: November 14, 1985 by Robert S. Kline,
Acting Director, Division of Motor Vehicles.

Filed: November 26, 1985 as R.1985 d.644, **without change.**

Authority: N.J.S.A. 39:10-4.

Effective Date: December 16, 1985.

Expiration Date pursuant to Executive Order No.
66(1978): December 16, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the expired rules adopted as new appears in the New Jersey Administrative Code at N.J.A.C. 13:21-20.

Full text of the adopted amendment to the adopted new rules follows.

13:21-20.2 Assignment and affixation of vehicle identification number

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

(e) First-stage and multi-stage manufacturers shall assign and affix a vehicle identification number in accordance with the format, content and general physical requirements for vehicle identification numbers prescribed by the National Highway Traffic Safety Administration at 49 C.F.R. 565.1 et seq. and 49 C.F.R. 571.115.

(b)

BOARD OF MEDICAL EXAMINERS

Requirements for Approval of Colleges of Chiropractic

Adopted Amendment: N.J.A.C. 13:35-2.4

Proposed: September 16, 1985 at 17 N.J.R. 2231(b).

Adopted: November 13, 1985, by Board of Medical Examiners, Edward M. Luka, M.D., President.

Filed: November 21, 1985, as R.1985 d.631, **without change.**

Authority: N.J.S.A. 45:9-2.

Effective Date: December 16, 1985.

Expiration Date pursuant to Executive Order No.
66(1978): August 1, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:35-2.4 Requirements for approval of colleges of chiropractic

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

(k) The requirement of N.J.S.A. 45:9-41.5 that an applicant for chiropractic licensure shall have graduated from an approved school(s), institution(s), or college(s) of chiropractic shall mean that the school was approved during the entire course of the applicant's training by the Council on Chiropractic Education or other accrediting agency having prior approval of the Board. Board approval of a college's accreditation shall be effective for a period not to exceed five years. Renewed approval may be sought prior to the end of that period. The Board may also inspect the school prior to determining its approval. However, any graduate of a chiropractic college who was a bona fide student in good standing enrolled at a school which, prior to March 4, 1985, was approved by the Board, shall upon proof of satisfaction of all other statutory prerequisites, be deemed eligible to sit for the licensure examination in this State until March 31, 1988 and not thereafter.

(c)

DIVISION OF CONSUMER AFFAIRS

Unit Pricing of Consumer Commodities in Retail Establishments

Adopted New Rules: N.J.A.C. 13:45A-14

Adopted Amenments: N.J.A.C. 13:45A-14.2, 14.3 and 14.4

Proposed: September 16, 1985 at 17 N.J.R. 2232(b).

Adopted: November 21, 1985 by James J. Barry, Jr.,
Director, Division of Consumer Affairs.

Filed: November 26, 1985 as R.1985 d.643, **with substantive and technical changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 56:8-25.

Effective Date: December 16, 1985.

Expiration Date pursuant to Executive Order No.
66(1978): December 16, 1990.

Summary of Public Comments and Agency Responses:

The Division of Consumer Affairs ("DCA") held a 30 day written comment period from September 16, 1985 to October 16, 1985 concerning the proposed re-adoption with amendments of the rule governing Unit Pricing of Consumer Commodities in Retail Establishments, N.J.A.C. 13:45A-14.1 et seq. Comments were submitted by three representatives of major business associations, a representative of a major retail

store chain as well as from the public affairs counsel to a major store association. All six comments have been reviewed by DCA in consideration of the final adoption.

One commentator expressed concern that a proposed change in the definition of exempted "persons" under the rule might lead to an interpretation that any person who operated a series of retail establishments would not be exempted under the proposed amendment to N.J.A.C. 13:45A-14.3. This commentator suggested either leaving the present exemption section at N.J.A.C. 13:45A-14.3(a)2 unchanged or changing the term "person" as proposed to the term "retail establishment."

Another commentator raised similar concerns expressed above and further sought to draw a distinction between convenience stores which may have virtually no variety of package size or brand selection and supermarkets that do. This commentator expressed concern that application of the proposed amendment to convenience stores would penalize consumers since he envisioned that price increases would be necessary in order to implement compliance with the unit pricing regulation. Another belief expressed by this commentator was that there would be no corresponding advantage for consumers when unit pricing is required in convenience stores which generally offer no variety of package size or brand selection.

Comments submitted by a retail business association sought clarification of the proposed change in the subsection addressing exempted "persons." This commentator sought assurance that its interpretation of that section of the regulation would require that retail establishments would be considered on a store by store basis.

Additionally, a commentator noted a potential discrepancy in the definition of person set forth in the Unit Price Disclosure Act and that which was proposed as an amendment to the rule. This commentator also objected to the proposed amendments on the grounds that unit pricing would not be economically and technologically feasible for small stores to implement. Furthermore, the commentator took the position that the goal of in-store comparison was not relevant to a small store setting in which a single brand or size of a commodity is displayed for sale.

The DCA received a comment recommending that the units of measure for flavor extracts and imitation flavorings be expanded to include "pint." The reason stated for this recommendation was to eliminate the variation between the approved units of measure for such commodities in New Jersey as compared to a neighboring state. The DCA has included this recommendation in the final adoption.

All commentators mentioned above have been sent a response from DCA indicating that in light of the confusion and varying interpretations generated by the proposed amendments, the rule is being adopted in its original form with an amendment to N.J.A.C. 13:45A-14.4(b)36 providing for the inclusion of "pint" to the approved unit of measure for seasonings and spices, flavor extracts and imitation flavorings.

Summary of Changes Subsequent to Proposals:

The unit of measure designation "pint" is being added to the existing approved units of measure, pound and ounce, for seasonings and spices, flavor extracts, imitation flavorings over five ounces.

The proposed amendments to N.J.A.C. 13:45A-14.2, defining "person" and N.J.A.C. 13:34A-14.3, referring to persons exempted from compliance with the rule have been withdrawn. Accordingly, the rule is being adopted with its existing text remaining unchanged except for the minor addition noted above.

The DCA has decided to delete the proposed amendments regarding persons who are exempt from compliance with the unit pricing regulation since it appears that varying interpretations of the proposed amendments have resulted in undue confusion. In addition, upon closer analysis of the wording of the existing rule, especially in light of the text of the Unit Price Disclosure Act, and after reviewing comments submitted by interested parties, the DCA has determined that its basic concerns are already addressed in the existing rule. Specifically, the rule is applicable to: (1) "persons" owning and operating a single retail establishment with annual gross receipts from the sale of consumer commodities in the preceding year of more than \$2 million; (2) as well as to "persons" owning and operating a single retail establishment or a series of retail establishments, one or more of which having a total floor space of more than 4,000 square feet.

Furthermore, the DCA's proposed amendment concerning a requirement of record-keeping is being withdrawn. The Unit Price Disclosure Act at N.J.S.A. 56:8-22 under the definition of "person" and at N.J.S.A. 56:8-24 implies that such record-keeping criteria would be required in order to qualify for an exemption from compliance with the rule. Likewise, provisions in the regulation at N.J.A.C. 13:45A-14.1 and 14.3(a)1 have the same implication. Thus, the DCA has concluded that an amendment at this time is unnecessary.

Full text of the expired rules adopted as new rules may be found in the New Jersey Administrative Code at N.J.A.C. 13:45A-14.

Full text of the adopted amendments to the adopted new rules follows (additions to proposal shown in boldface with asterisks *thus*; deletions from proposal shown in brackets with asterisks *[thus]*).

13:45A-14.2 Definitions

...

"Person" means any natural person, partnership, corporation or other organization engaged in the sale, display or offering for sale of consumer commodities at retail ***from one or more retail establishment*** whose combined total floor area, exclusive of office, receiving and storage areas, dedicated to the sale of consumer commodities exceeds 4,000 square feet or whose combined annual gross receipts from the sale of consumer commodities in the preceding year exceeded \$2 million, regardless of the square footage involved.

13:45A-14.3 Persons and operations exempted from complying with Unit Price Disclosure Act

(a) The following persons or entities shall be exempted from complying with this subchapter and the terms of the Unit Price Disclosure Act:

1. (No change.)

2. Any person owning and operating a single retail establishment ***or a series of retail establishments each*** having a total floor space of 4,000 square feet or less regardless of the annual gross receipts from the sale of consumer commodities therein.

3.-4. (No change.)

[5. An exempt person shall maintain sufficient documentation which may be necessary to support a claim of exemption. The Division of Consumer Affairs, upon reasonable notice, shall have the right to examine said documentation.]

13:45A-14.4 Regulated consumer commodities and their approval units of measure

- (a) (No change.)
- (b) (No change.)
- 1.-35. (No change.)
- 36. Seasonings and spices, flavor extracts, imitation flavorings over 5 oz. ounce, *pint,* pound.
- 37.-45. (No change.)

OFFICE OF WEIGHTS AND MEASURES

(a)

National Bureau of Standards Handbook 44

Adopted Amendment: N.J.A.C. 13:47B-1.20

Proposed: September 16, 1985 at 17 N.J.R. 2233(a).
 Adopted: November 1, 1985 by Thomas W. Kelly, State Superintendent, Office of Weights and Measures.
 Filed: November 26, 1985 as R.1985 d.636, **without change**.

Authority: N.J.S.A. 51:1-61.

Effective Date: December 16, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): January 4, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:47B-1.20 National Bureau of Standards Handbook 44
 All specifications, tolerances and other technical requirements for weighing and measuring devices contained in National Bureau of Standards Handbook H-44, 1985 and all future editions together with all amendments and supplements thereto, adopted by the National Conference on Weights and Measures are hereby adopted and promulgated as the legal requirements for all weighing and measuring devices used for commercial purposes and law enforcement in the State of New Jersey; provided, however, that the Superintendent of the Office of Weights and Measures of the Division of Consumer Affairs, Department of Law and Public Safety may from time to time further amend or supplement said specifications, tolerances and other technical requirements for the purpose of conforming to the needs of any situation affecting the interests of the State and its people.

(b)

Registry for Security Sealing Devices

Adopted New Rule: N.J.A.C. 13:47B-1.24

Proposed: September 16, 1985 at 17 N.J.R. 2234(a).
 Adopted: November 1, 1985 by Thomas W. Kelly, State Superintendent, Office of Weights and Measures.
 Filed: November 26, 1985 as R.1985 d.638, **without change**.

Authority: N.J.S.A. 51:1-118.

Effective Date: December 16, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): January 4, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:47B-1.24 Registry for security sealing devices

(a) Licensed repairman means any person engaging in the partial or complete constructing and reconstructing, repairing, altering, installing or adjusting of any weight or measure or any weighing and measuring device, used in trade or commerce, in New Jersey, as set forth in N.J.S.A. 51:1-113 et seq.

(b) "Security sealing device" means any mechanical device used to block or prevent entry to the adjustable elements of any weight or measure or any weighing and measuring device used in trade or commerce in New Jersey.

(c) "Weights and measures and weighing or measuring devices" means a "weight or measure" or "weights and measures" as set forth and defined by N.J.S.A. 51:1-2.

(d) The State Superintendent of Weights and Measures, in the Division of Consumer Affairs, Department of Law and Public Safety, State of New Jersey, shall design and adopt an official registry for security sealing devices. Said registry shall be used to issue to any and all licensed repairmen a distinct and individual combination of letters and numerals which will be that licensed repairman's registry mark.

(e) All licensed repairmen shall incorporate his or her registry mark into and upon any security sealing device affixed by that licensed repairman to any weights or measures or weighing and measuring device partially or completely constructed, repaired, altered, installed or adjusted by said licensed repairman.

(f) No weighing or measuring device shall be permitted to be used for any commercial purpose unless the devices adjustable elements are blocked and sealed by a security sealing device bearing the registry mark of a licensed repairman or that of a weights and measures officer.

(g) Any licensed repairman who shall issue a false certificate of inspection and test of a commercial weight or measure or weighing and measuring device or who shall delegate his or her authority or registry mark, to any person, shall be subject to the revocation or suspension of his or her license as provided in N.J.S.A. 51:1-122.

(h) Any violation of or non compliance with the provisions of this section shall subject the violator thereof to the penalties authorized by N.J.S.A. 51:1-113, et seq.

(c)

Standard for Treated Lumber

Adopted Amendment: N.J.A.C. 13:47C-3.6

Proposed: September 16, 1985 at 17 N.J.R. 2234(b).
 Adopted: November 6, 1985 by Thomas W. Kelly, State Superintendent, Office of Weights and Measures.
 Filed: November 26, 1985 as R.1985 d.645, **with technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 51:4-31.

Effective Date: December 16, 1985.

Expiration Date pursuant to Executive Order No.

66(1978): August 20, 1989.

Summary of Public Comments and Agency Responses:

In addition to publication in the New Jersey Register, full text of the proposed regulation was sent to 72 members of the treating industry whose names and addresses are on file with the agency.

At the request of the Eastern Building Material Dealers Association, a meeting was held to discuss the regulation on October 18, 1985 at the Executive Motor Lodge, Route 73, Mount Laurel, New Jersey with an attendance of 55 retail and wholesale dealers and wood treaters.

Only one objection to the present and proposed amendment was raised at the meeting. The objection questioned the agency's jurisdiction in regulating the industry. The agency responded that it was confident that it had sufficient statutory authority to regulate the industry.

A written report covering the meeting is on file with the agency.

Several letters of comment were received by the agency.

Technical questions were raised concerning use of the phrase "above ground use only" in (g)5. The comment stated that such phrase is not used in the industry because it is not clear. The comment suggested use of the technical term "non-structural use" because of its acceptability in the industry. The agency responded that to use the suggested phrase would be in conflict with the statute and was therefore rejected.

One letter again attached the agency's jurisdiction. The agency again responded that it has been conferred sufficient statutory authority in this area. The agency also referred the comment to the Office of the Attorney General for reply.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion indicated in brackets with asterisks *[thus]*).

13:47C-3.6 Standard for treated lumber

(a) All preservatives, commodities, analysis methods, miscellaneous standards, conversion factors and correction tables for treated lumber so contained in the "Book of Standards" published by the American Wood Preservers Association (AWPA), 7753 Georgetown Road, Bethesda, Maryland, 20814, together with all amendments and supplements thereto, are hereby adopted by reference as the legal requirements for treated lumber sold, sold and delivered, offered or advertised for sale to consumers as building materials in the State of New Jersey.

(b) Treated lumber sold, sold and delivered, offered or advertised for sale to consumers as building materials in the State of New Jersey with a preservative retention of less than .4 of a pound per cubic foot (hereinafter referred to as pcf) shall in addition to being graded, measured, and labeled in accordance with the requirements of N.J.S.A. *[51:4-25,]* ***51:4-28*** bear legible treatment marks that contain the following minimum information:

1. The year of treatment;
2. The treaters trademark, if any;
3. The preservative used in treatment;
4. The applicable AWPA or equivalent standard;
5. The maximum or worst exposure conditions to which the treated wood should be subjected;

6. Treating company name and plant location.

(c) Due to industry practices and standards recognized by the Superintendent pursuant to N.J.S.A. 51:4-24, treated lumber with waterborne preservative retentions in excess of .4 pcf or equivalent need only carry a treatment mark with the information required in (b) 1 through 6 above.

(d) Hardwoods as listed in the National Hardwood Lumber Association Rule Book which are treated to either plus or minus .4 pcf need only carry a treatment mark as described in (b)1 through 6 above.

(e) Rough finished lumber treated to plus or minus .4 pcf, which are either hardwoods as described in (d) above or softwoods as set forth in National Bureau of Standards Product Standard 20-70, need only carry a treatment mark as described in (b)1 through 6 above.

(f) Treated timbers, treated to plus or minus .4 pcf including both hardwoods and softwoods as defined in (d) and (e) above, five inches (nominal size) in thickness or larger; surfaced four sides—S4S—or rough finished, 12 feet or less in length need not carry a grademark but must carry a treatment mark.

(g) Any treated lumber product treated to a plus or minus .4 pcf, sold and delivered, offered or advertised for sale to consumers by the use of any media, exclusively for landscaping or gardening purposes that for any reasons are not treated in complete accordance with the applicable AWPA standards for that treated lumber product, need not be grademarked but must be labeled with the following minimum information:

1. The year of treatment;
2. The treaters trademark, if any;
3. The preservative used in the treatment;
4. The words "Non AWPA standard";
5. The words "Above ground use only";
6. The name and address of the treating company or plant.

(h) The exemptions listed above in (c) through (g) from the grademarking requirements pertain only to those treated lumber products specifically enumerated within the subsections. All other treated lumber products, building materials, as defined in N.J.S.A. 51:4-23 must fully comply with all provisions of law.

(i) Any violation of or non compliance with the provisions of this regulation shall subject the violator to the penalties set forth in N.J.S.A. 51:4-38.

NEW JERSEY RACING COMMISSION

(a)

Thoroughbred Rules Licenses; Fingerprints; Photos

Adopted Amendment: N.J.A.C. 13:70-4.1.

**Adopted Repeals: N.J.A.C. 13:70-4.17, 4.19,
4.20 and 4.21.**

Proposed: October 7, 1985 at 17 N.J.R. 2362(b).

Adopted: November 22, 1985 by New Jersey Racing Commission, Harold G. Handel, Executive Director.
Filed: November 26, 1985 as R.1985 d.639, **without change.**

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

Effective Date: December 16, 1985.
 Operative Date: January 1, 1986.
 Expiration Date pursuant to Executive Order No.
 66(1978): March 19, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted amendment follows.

13:70-4.1 Persons required to have licenses; fingerprints and photographs

(a) The following persons shall be required to take out a license from the Racing Commission and the annual fee shall be as follows:

- 1.-16. (No change.)
17. Veterinarians: \$50.00

(b) All persons licensed by the Commission and all employees of the racing associations and/or employees of contractors doing work for the track associations will be required to be fingerprinted and photographed at the discretion of the Commission. The applicant must pay for the cost of the fingerprint card checks. The Commission will direct the fee, which will be consistent with the charge set by the reviewing agency for the type of inquiry requested; for example, State, Federal, State and Federal, name check. Owners who, because of extenuating circumstances, cannot come into New Jersey to be fingerprinted and photographed during a racing year, will be issued conditional licenses only and will not be permitted access to the stable area or paddock at any New Jersey track until photographed and fingerprinted by the Racing Commission. Holders of a conditional license will not be eligible for passes at any of the tracks in New Jersey.

(a)

**Thoroughbred Rules
 Requirements; Farms or Licensed Tracks**

**Adopted Repeal and New Rule: N.J.A.C.
 13:70-4.15**

Proposed: June 3, 1985 at 17 N.J.R. 1393(a).
 Adopted: October 28, 1985 by New Jersey Racing
 Commission, Harold G. Handel, Executive Director.
 Filed: November 26, 1985 as R.1985 d.635, **with
 substantive changes** not requiring additional public
 notice and comment (see N.J.A.C. 1:30-3.5).

Effective Date: December 16, 1985.
 Operative Date: January 1, 1986.
 Expiration Date pursuant to Executive Order No.
 66(1978): March 19, 1989.

Summary of Public Comments and Agency Responses:

Several written comments were received in relation to the proposed rules. The Department of Community affairs indicated that they were the state agency responsible for the adoption, administration and enforcement of the Uniform Construction Code and the Fire Code. As such, reference would not be in effect and would be superceded by the Department of Community Affairs rules. In addition, various horsemen's groups believed the "tick free" requirement was un-

realistic and unenforceable.

The aforementioned comments were considered by the Commission in its deliberation and the Commission concluded that the provisions in the rule relating to fire safety ((b) 3, 4 and 5) and the "tick free" provision ((b)6) should be removed. The adopted regulations contain these changes between the rule as proposed which are not substantial.

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

13:70-4.15 Requirements; farms or licensed tracks

(a) No horse may start in any race wherein pari-mutuel wagering is conducted unless stabled on the grounds of a racing association licensed by the Commission or at a farm or training facility licensed by the Commission. Nothing in this rule shall prohibit any horse stabled outside the State of New Jersey from vanning to any racing association to start.

(b) A license shall not be issued to any farm or training center not in compliance with the following requirements:

1. All box stalls shall be properly ventilated and measure approximately 10 feet by 10 feet or larger.

2. Arrangements for the disposal of manure and other refuse shall be made in compliance with appropriate State and municipal health codes and/or ordinances.

[3. All electrical wiring must meet the requirements of the New Jersey Fire Underwriter's Code.]

[4.]**3. Adequate spraying and/or fogging equipment must be available.

***[5.]** One fire extinguisher shall be located on the outside wall of each stable entrance door and two fire extinguishers shall be located inside each stable door or enclosure along with fire hoses with ample supply.

6. Farms or training centers shall be maintained tick free.]*

[7.]**4. Any farm or training center that is placed under quarantine by the New Jersey Department of Agriculture shall have their license immediately suspended. Any facility whose license is so suspended, shall be afforded the right of appeal as provided for in N.J.A.C. 13:70-13A.

(c) Any farm or training center making application for licensure as an off-track stabling facility shall be liable to inspection by the employees of the Commission and shall be required to provide unrestricted access to all stabling facilities to the employees and agents of the Commission upon demand.

(d) Any horse in training or entered to start stabled on such a farm or training center must be under the care and custody of a licensed trainer. It shall be the responsibility of the trainer to insure that only individuals licensed by the Commission are employed in any capacity of caretaker, groom or other attendant with respect to the care, custody and training of such a horse. Nothing in this section shall be deemed to apply to brood mares, foals, weanlings, yearlings, stallions or other horses not in training.

(e) It shall be the responsibility of the farm manager or training center manager to complete and file all reports required of him by the Commission. It shall similarly be the responsibility of the trainer to complete and file all reports required of him by the Commission, including, but not limited to, the Equine Fatality Report (see: N.J.A.C. 13:70-14.16).

(f) Failure to comply with the requirements in this section shall subject the offending party to the penalties provided for in N.J.A.C. 13:70-23. Further, violation of this section may subject the offending party to suspension, revocation or denial of the farm license and/or declaration of ineligibility for stables or horses involved.

(a)**Thoroughbred Rules
Urine Testing****Adopted Amendment: N.J.A.C. 13:70-14A.11**

Proposed: October 7, 1985 at 17 N.J.R. 2363(a).
Adopted: November 22, 1985 by New Jersey Racing
Commission, Harold G. Handel, Executive Director.
Filed: November 26, 1985 as R.1985 d.641, **without
change.**

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

Effective Date: December 16, 1985.
Expiration Date pursuant to Executive Order No.
66(1978): February 19, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:70-14A.11 Urine test

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

(e) Any information received in the process of obtaining a urine sample, including but not limited to medical information, the results of any urine test, and any reports filed as a result of attending a Supervisory Treatment Program shall be treated as confidential, except for their use with respect to a ruling issued pursuant to this rule, or any administrative or judicial hearing with regard to such a ruling. Access to the information received and/or reports of any positive results and/or reports from a Supervisory Treatment Program shall be limited to the Commissioners of the New Jersey Racing Commission, the Executive Director and/or his designee, Counsel to the Racing Commission and the subject, except in the instance of a contested matter. In the instance of a contested matter, any information received and reports prepared shall not be disclosed without the approval of the Executive Director or his designee.

(f) Information received and reports prepared pursuant to this rule shall be stored in a locked secure area in the office of the Executive Director for a period of one year, after which time, they shall be destroyed. However, the Commission may maintain the information received and reports on individuals who have violated this rule for the purpose of recording the number of violations and the results of supervisory treatment, and for use should future violations occur.

(b)**Harness Rules
Licenses; Fingerprints; Photos****Adopted Amendment: N.J.A.C. 13:71-7.1.**

Proposed: October 7, 1985 at 17 N.J.R. 2364(a).
Adopted: November 22, 1985 by New Jersey Racing
Commission, Harold G. Handel, Executive Director.
Filed: November 26, 1985 as R.1985 d.640, **without
change.**

(CITE 17 N.J.R. 2996)

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

Effective Date: December 16, 1985.
Operative Date: January 1, 1986.
Expiration Date pursuant to Executive Order No.
66(1978): March 19, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted amendment follows.

13:71-7.1 Persons required to have licenses; fingerprints and photographs

(a) The following persons shall be required to take out a license from the New Jersey Racing Commission and the annual fee therefor shall be as follows:

1.-11. (No change.)

12. Veterinarians: \$50.00

(b) All persons licensed by the Commission and all employees of the racing associations and/or employees of contractors doing work for the track associations will be required to be fingerprinted and photographed at the discretion of the Commission. The applicant must pay for the cost of the fingerprint and card checks. The Commission will direct the fee, which will be consistent with the charge set by the reviewing agency for the type of inquiry requested; for example, State, Federal, State and Federal, name check. Owners who, because of extenuating circumstances, cannot come into New Jersey to be fingerprinted and photographed during a racing year, will be issued conditional licenses only and will not be permitted access to the stable area or paddock at any New Jersey track until photographed and fingerprinted by the Racing Commission. Holders of a conditional license will not be eligible for passes at any of the tracks in New Jersey.

(c)**Harness Rules
Requirements; Farms or Licensed Tracks****Adopted New Rule: N.J.A.C. 13:71-7.26**

Proposed: June 3, 1985 at 17 N.J.R. 1393(b).
Adopted: October 28, 1985 by New Jersey Racing
Commission, Harold G. Handel, Executive Director.
Filed: November 26, 1985 as R.1985 d.637, **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. 5:5-30.

Effective Date: December 16, 1985.
Operative Date: January 1, 1986.
Expiration Date pursuant to Executive Order No.
66(1978): March 19, 1989.

Summary of Public Comments and Agency Responses:
Several written comments were received in relation to the proposed rules. The Department of Community Affairs indicated that they were the state agency responsible for the adoption, administration and enforcement of the Uniform

Construction Code and the Fire Code. As such, reference in the rule to fire codes and fire safety related requirements would not be ineffect and would be superceded by the Department of Community Affairs rules. In addition, various horsemen's groups believed the "tick free" requirement was unrealistic and unenforceable.

The aforementioned comments were considered by the Commission in its deliberation and the Commission concluded that the provisions in the rule relating to fire safety ((b)3, 4 and 5) and the "tick free" provision ((b)6) should be removed. The adopted regulations contain these changes between the rule as proposed which are not substantial.

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

13:71-7.26 Requirements; farms or licensed tracks

(a) No horse may start in any race wherein pari-mutuel wagering is conducted unless stabled on the grounds of a racing association licensed by the Commission or at a farm or training facility licensed by the Commission. Nothing in this rule shall prohibit any horse stabled outside the State of New Jersey from vanning to any racing association to start.

(b) A license shall not be issued to any farm or training center not in compliance with the following requirements:

1. All box stalls shall be properly ventilated and measure approximately 10 feet by 10 feet or larger.

2. Arrangements for the disposal of manure and other refuse shall be made in compliance with appropriate State and municipal health codes and/or ordinances.

[3. All electrical wiring must meet the requirements of the New Jersey Fire Underwriter's Code.]

*[4.]****3.*** Adequate spraying and/or fogging equipment must be available.

*[5. One fire extinguisher shall be located on the outside wall of each stable entrance door and two fire extinguishers shall be located inside each stable or enclosure along with fire hoses with ample supply.

6. Farms or training centers shall be maintained tick free.]*

*[7.]****4.*** Any farm or training center that is placed under quarantine by the New Jersey Department of Agriculture shall have their license immediately suspended. Any facility whose license is so suspended, shall be afforded the right of appeal as provided for in N.J.A.C. 13:71-3.

(c) Any farm or training center making application for licensure as an off-track stabling facility shall be liable to inspection by the employees of the Commission and shall be required to provide unrestricted access to all stabling facilities to the employees and agents of the Commission upon demand.

(d) Any horse in training or entered to start stabled on such a farm or training center must be under the care and custody of a licensed trainer. It shall be the responsibility of the trainer to insure that only individuals licensed by the Commission are employed in any capacity of caretaker, groom or other attendant with respect to the care-custody and training of such a horse. Nothing in this section shall be deemed to apply to brood mares, foals, weanlings, yearlings, stallions or other horses not in training.

(e) It shall be the responsibility of the farm manager or training center manager to complete and file all reports required of him by the Commission. It shall similarly be the responsibility of the trainer to complete and file all reports required of him by the Commission, including, but not limited to, the Equine Fatality Report (see: N.J.A.C. 13:71-20.24).

(f) Failure to comply with the requirements in this section shall subject the offending party to the penalties provided for in N.J.A.C. 13:71-2.3. Further, violation of this section may subject the offending party to suspension, revocation or denial of the farm license and/or declaration of ineligibility for stables or horses involved.

(a)

Standardbred Rules Urine Testing

Adopted Amendment: N.J.A.C. 13:71-18.2.

Proposed: October 7, 1985 at 17 N.J.R. 2364(b).

Adopted: November 22, 1985 by New Jersey Racing

Commission, Harold G. Handel, Executive Director.

Filed: November 26, 1985 as R.1985 d.642, **without change.**

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

Effective Date: December 16, 1985.

Expiration Date pursuant to Executive Order No.

66(1978): September 17, 1989.

**Summary of Public Comments and Agency Responses:
No comments received.**

Full text of the adopted amendment follows.

13:71-18.2 Urine test

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

(e) Any information received in the process of obtaining a urine sample, including but not limited to medical information, the results of any urine test, and any reports filed as a result of attending a Supervisory Treatment Program shall be treated as confidential, except for their use with respect to a ruling issued pursuant to this rule, or any administrative or judicial hearing with regard to such a ruling. Access to the information received and/or reports of any positive results and/or reports from a Supervisory Treatment Program shall be limited to the Commissioners of the New Jersey Racing Commission, the Executive Director and/or his designee, Counsel to the Racing Commission and the subject, except in the instance of a contested matter. In the instance of a contested matter, any information received and reports prepared shall not be disclosed without the approval of the Executive Director or his designee.

(f) Information received and reports prepared pursuant to this rule shall be stored in a locked secure area in the office of the Executive Director for a period of one year, after which time, they shall be destroyed. However, the Commission may maintain the information received and reports on individuals who have violated this rule for the purpose of recording the number of violations and the results of supervisory treatment, and for use should future violations occur.

(a)**VIOLENT CRIMES COMPENSATION BOARD****Statute of Limitations for Filing of Claims****Adopted Amendment: N.J.A.C. 13:75-1.5**

Proposed: August 19, 1985 at 17 N.J.R. 2010(b).
 Adopted: November 15, 1985, by Kenneth W. Welch,
 Chairman, Violent Crimes Compensation Board.
 Filed: November 21, 1985, as R.1985 d.630, **without change.**

Authority: N.J.S.A. 52:4B-9.

Effective Date: December 16, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): August 20, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:75-1.5 Filing of claims

(a) For claim applications submitted prior to November 30, 1981, all claims must have been filed within one year of the date of the incident upon which the claim is based. For claim applications submitted on or before November 30, 1981, all claims must be filed within two years after the date of the incident upon which the claim is based or, if after that date, upon determination by the Board that good cause exists for the delayed filing.

(b)-(e) (No change.)

PUBLIC UTILITIES**(b)****BOARD OF PUBLIC UTILITIES****Rules of Practice: General Provisions; Petitions****Adopted New Rules: N.J.A.C. 14:1-1 and 14:1-6**

Proposed: September 16, 1985 at 17 N.J.R. 2235(a).
 Adopted: November 8, 1985 by Board of Public Utilities, Barbara A. Curran, President.
 Filed: November 14, 1985, as R.1985 d.624, **without change.**

Authority: N.J.S.A. 48:2-12 and 48:2-13.

Effective Date: December 16, 1985.

Expiration Date Pursuant to Executive Order No. 66 (1978): December 16, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption appears in the New Jersey Administrative Code at N.J.A.C. 14:1-1 and 14:1-6.

(c)**Electric Meters****Adopted New Rule: N.J.A.C. 14:5-3**

Proposed: September 16, 1985 at 17 N.J.R. 2237(a).
 Adopted: November 8, 1985 by Board of Public Utilities, Barbara A. Curran, President.
 Filed: November 14, 1985, as R.1985 d.625, **without change.**

Authority: N.J.S.A. 48:2-12, 48:2-13 and 48:2-25.

Effective Date: December 16, 1985.

Expiration Date Pursuant to Executive Order No. 66(1978): December 16, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption appears in the New Jersey Administrative Code at N.J.A.C. 14:5-3.

ENERGY**(d)****THE COMMISSIONER****Home Energy Savings Program****Readoption with Amendments: 14A:21**

Proposed: October 7, 1985 at 17 N.J.R. 2365(a).
 Adopted: November 20, 1985 by Leonard S. Coleman, Jr., Commissioner, Department of Energy
 Filed: November 21, 1985 as R.1985 d.632, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 52:27F-11(q).

Effective Date: November 21, 1985 for readoption;
 December 16, 1985 for amendments.

Expiration Date pursuant to Executive Order No. 66 (1978): November 21, 1990.

Summary of Public Comments and Agency Responses:
 The Home Energy Savings Program (HESP) regulations were published in the New Jersey Register on October 7, 1985. Formal testimony was received through November 6, 1985. No public hearing was held however, an informal meeting was held chaired by the Department of Energy to discuss the proposed changes. The list of attendees is as follows:

Atlantic City Electric
 Elizabethtown Gas Company
 Jersey Central Power and Light Company
 New Jersey Natural Gas Company
 Public Service Electric and Gas Company
 Rockland Electric Company
 South Jersey Gas Company
 Coalition Against Utility Practices Inc.
 Board of Public Utilities

The Department has carefully considered the comments of the informal meeting and the formal testimony submitted and incorporated the following changes to the rule proposal. These changes while substantial are not substantive so as to require republication as required by the Administrative Procedure Act.

SUBCHAPTER 1: General Provisions and Definitions

One comment (Jersey Central Power & Light Company—JCPL) objected to the inclusion of new and existing homes in the scope and purpose of the program. The Department envisions an expansion of HESP to include incentives for new efficient residential structures and performance ratings of those structures. The enunciation of policy in the scope and purpose merely alerts interested parties with no obligation required on their part. Therefore, no change need be made.

A comment by Public Service Electric & Gas Company (PSEG) took exception to the broad implications of the Department reserving authority to include any measure in the definition of "Energy Conservation Measures." Accordingly, the Department has clarified and restricted its authority.

An individual suggested that by allowing Department employees to become program auditors, the Department was infringing on the private sector's ability to perform program services. The Department has no such intention, and will only conduct program audits in limited circumstances or as part of its oversight responsibility.

More comments were directed at the definition of "Residential Building" than any other section of the regulation. In one form or another all (Atlantic City Electric Company—ACE, Elizabethtown Gas Company—ETN, JCPL, New Jersey Natural Gas Company—NJN, PSEG, Orange & Rockland Utilities Inc.—ROCK, and South Jersey Gas Company—SJG) objected to the inclusion of buildings one year old or greater, claiming that existing codes took care of the conservation needs of one year old structures. In addition, there was a fear that the utility might be placed between the builder and homeowner in a warranty dispute. Many suggested a three year threshold. The Department initially chose a one year standard so that an energy history could be developed and because a typical new home warranty is one year. So as not to place the utility in an untenable position but to address the legitimate conservation needs of new homeowners, the Department has changed the regulation to a two year threshold.

There was concern that the inclusion of multi-family structures and condominiums as "Residential Buildings" was counter productive because many tenants could not implement the Program Audit recommendations (ACE, ETN, JCPL, NJN). The full definition of "Residential Buildings" requires that multi-family units have their own heating systems. Most multi-family structures do not have separate heating systems for their units and thus do not qualify as residential buildings. Occupants or owners of qualifying units are in a position to implement the full range of recommendations because they

control their heating system. The utilities are free to refuse to provide program services to ineligible customers.

SUBCHAPTER 2: Program Announcement

One utility (ACE) pointed out that the requirement of the utility to publish an announcement at its own expense meant that the costs could not be borne by the ratepayers. The Department never intended to injure shareholders and has eliminated the language.

Three utilities (NJN, PSEG, SJG) questioned the ten year requirement for program announcements since the regulations are in force for only five years. Accordingly the change to a five year requirement has been made.

In response to a comment on the thirty day review of utility materials (ETN) the Department has added language that failure to act constitutes automatic approval.

Four utilities (ACE, ETN, JCPL, ROCK) questioned the Department's prior approval as an unfair restraint on their ability to communicate with their customers. One individual expressed concern that the utility could market its non-program services through the program announcement. The Department must weigh these opposing positions in determining the extent of its prior review. The Department's concern is for objective, factual and literate program announcements and the conduct of any review is guided by its concern. It does not seek to disassociate the utility from its customers. Personalized announcements are acceptable and encouraged, but without seeing the announcement prior to its publication, the Department cannot ensure its objectivity. For the same reasons, the Department's prior approval of a promotional campaign is needed.

Two gas utilities (ETN, SJG) objected to the expansion to gas utilities of the requirement for sending program announcements, with one of them (ETN) further citing the change from a two year cycle to a one year cycle. Analysis has shown that the receipt of a Program Announcement is the single most important reason for program participation. Annual cycling will allow for more timely delivery of program information and increase participation rates. If electric and gas service territories overlap, the involved utilities are free to fashion their own remedy to obviate any duplication, provided that no abdication of mailing program announcements occurs.

In order to clarify questionable language concerning new customers, at the suggestion of one utility (JCPL) the Department has changed the term "service hook-up" to the "date service is established in the customer's name."

SUBCHAPTER 3: Program Services and Program Audits.

One utility (NJN) objected to the elimination of lenders from the Master Record. Since the original regulations were published in 1981, new financing programs such as the Department's Oilheat Loan Program have come into being. These programs have their own participating financial institutions and information on them is distributed separately from the Master Record. The Department finds that a single list of lenders is no longer necessary.

The requirement for commercial offices with toll free numbers was questioned (ACE). Accordingly, the Department has eliminated the commercial office requirement provided that a central toll free number is maintained.

The reporting of actual building square footage and actual energy use was objected to (ACE, JCPL) as burdensome. The Department agrees and now will require approximate rather than actual numbers.

Two utilities (ACE, PSEG) that give loans for thermal windows disagreed with the elimination of thermal window installation as a do-it-yourself program measure. The loans are distributed based on a measure with a seven or ten year payback. A contractor installed thermal window generally will have a payback in excess of ten years. Since most homeowners do not install these windows, the Department finds that the representation of loans for self installed thermal windows is often a subterfuge of the loan program requirements. Further, the Department does not wish to encourage the self installation of thermal windows. The improper installation of any kind of window would result in long-term degrading of the thermal envelope by infiltration, among other possibilities. Since windows constitute the most numerous openings in the building envelope, a very high level of competence and experience is needed to properly install them. Poorly installed new windows of any variety can have a greater impact on heat loss than leaving existing windows in place.

Homeowners who lack the basic know-how, often the tools and even the motivation should not be allowed to install heavy and costly thermal windows. If allowed and the installation subsequently proves faulty or inferior the homeowner has no recourse or remedy as he would had a contractor performed the installation.

One utility objected to the data collection requirements (ETN) of the program audit because they would raise the audit cost. The Department believes that such data is now being collected but is not reported on the program audit results. Whenever such required data is not now collected, its collection will enhance the value of the audit to the homeowner because it will be a more complete and accurate audit.

An individual had comments regarding the auditor disclosure requirements and prohibitions. Specifically, the comment pointed to sections that require or allow the auditor to disclose a financial interest in program measures, and concluded that such disclosures could be used to garner subsequent business for the individual or their employer. The Department agrees and has eliminated the disclosure requirement. The decision carefully weighed the public's right to know with the potential abuse of the auditor's privileged position with the homeowner. Since the Department certifies auditors, separately screens contractors, and specifies the audit contents with limited flexibility on the part of the auditor, the potential abuse of improper disclosure is the more important consideration.

A technical change has been made to 14A:21-3.7. The current text, although proposed for deletion, has been retained in order to be consistent with 14A:21-3.1. This is not a substantive change or additional requirement, but simply reflects a uniformity between the rules.

SUBCHAPTER 4: Arranging Installation and SUBCHAPTER 5: Arranging Financing

Coincident with the elimination of the auditor disclosures from SUBCHAPTER 3, the Department has eliminated SUBCHAPTERS 4 and 5 in their entirety both because they are unnecessary and because of the implied bias of the allowable utility disclosures. One comment states that fair competition between auditors who are also installers and independent installers is difficult if homeowners are given only a limited knowledge of their opportunities. The Department agrees and further believes that information provided to the eligible customer regarding the Master Record and financing opportunities is sufficient to eliminate the need for separate utility arrangement of installation and financing.

SUBCHAPTER 6: (New SUBCHAPTER 4) Customer Billing

An individual commented that allowing the utility and home heating supplier to bill for program services as part of the normal billing process provides an unfair economy to those providers of the services. The Department has clarified the allowable charge that can be included in a regular bill to be only the charge for a Program Audit. There is little value in setting up a separate billing mechanism.

SUBCHAPTER 7: (New SUBCHAPTER 5) Auditors, Inspectors and Installers

One utility (PSEG) objected to the certification of training necessary before a candidate could be tested to be a Program Auditor. Experience has shown that such training now occurs, and with an absence of training, a high percentage of candidates fail the test. Trained and capable auditors are essential to the success of HESP.

The requirement for proof of open competitive subcontracting with provision for small and minority owned business was changed to a requirement for proof only upon Department request based on the petition of one utility (JCPL).

SUBCHAPTER 8: (New SUBCHAPTER 6) Inspections

No comments received.

SUBCHAPTER 9: (New SUBCHAPTER 7) Master Record

The elimination of a lenders list was questioned (PSEG). The Department's response is the same as when the question was raised in SUBCHAPTER 3 comments.

SUBCHAPTER 10: (New SUBCHAPTER 8) Lists of Installers and Suppliers

Four utilities objected to the complete updating of the list every thirty days and instead suggested that an errata sheet be used (ACE, JCPL, NJN, PSEG). The Department believes that a single complete list is necessary in order not to unfairly discriminate among installers and suppliers. However, the volume of changes month to month is sufficiently low so that the Department will move to a two month cycle with the lists being effective for seventy-five days.

An individual commented that the inclusion of language in the list that informs customers that installation arranging is available from the utilities is unfair. Since the Department has eliminated SUBCHAPTER 4, the language was deleted here. Likewise, the disclaimer of warranty that includes the utility is inappropriate since it is the Department that provides the list. That portion of the disclaimer has been eliminated.

SUBCHAPTER 11: (New SUBCHAPTER 9) Home Heating Suppliers

No comments were received on this section.

SUBCHAPTER 12: (New SUBCHAPTER 10) Reporting and Recordkeeping

An objection (PSEG) to requests for information on non HESP programs ignores the interrelationship among all residential programs. The same utility distributes information on its installation program at the time of program audit. Separately, the utility has indicated that the audit results should conform with the installation program and not vice-versa. Clearly, they like the Department, understand the link of audit

and implementation programs. The reporting of information already collected is hardly a burden and gives the Department a clear indication of how well the audit and installation programs are working together.

One commenter (PSEG) objected to the reporting of program costs. Since this information must be reported by the Department to the U.S. Department of Energy, the section must remain. Moreover, reporting of financial information and promotional information are the keys to evaluating the cost effectiveness of the program.

Two utilities (JCPL, PSEG) objected to disclosure of per audit charges by subcontractors as proprietary information. Since the Department is separately receiving information on average costs per audit, the section on subcontractor charges has been eliminated. The Department finds however, that utilities cannot claim that the regulations will increase their per audit costs while denying disclosure of information that may or may not substantiate that claim.

Three comments (ETN, JCPL, PSEG) concerned the receipt of monthly reports on the tenth of the month following the reporting period. Since the Department's prime interest is in the completeness and accuracy of information, the Department find no problem in delaying receipt until the fifteenth of the month.

The retaining of customer names who request, but don't actually receive a program audit was the subject of two comments (NJN, PSEG). Accordingly, the Department has deleted that requirement, since the gross number of cancelled audits is reported separately.

SUBCHAPTER 13: Utility Financing

Several commenters were concerned that this section ignored the Board of Public Utilities (BPU) economic regulatory responsibility in the area of utility conservation. The Department disagrees with this view. However, the Department has deleted SUBCHAPTER 13 because it is already covered by the proposed Energy Conservation Planning and Program Development regulations (16 NJR 3293(a)).

SUBCHAPTER 14: (New SUBCHAPTER 11) Utility Supply and Installation of Program Measures

One commenter objected to N.J.A.C. 14A:21-14.2 which covers the prohibition against utility supply or installation of program measures. The Department disagrees with the exception to this subsection. However, it does agree that subchapter 14 should be amended. To this end N.J.A.C. 14A:21-14.3 is deleted as it is addressed in the Department's proposed Energy Conservation Planning and Program Development regulations (16 NJR 3293(a)).

N.J.A.C. 14A:21-14.6 is deleted because the federal regulation which authorized this section has expired.

New Subchapter 12: Disqualification from Home Heating Supplier Participation and Master Record

The Office of Administrative Law advised the Department that a hearing in conformance with the requirements of the Administrative Procedure Act is required before disqualification can take place. A new rule has been added to provide such a hearing.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14A:21.

Full text of the amendments to the readoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

CHAPTER 21 HOME ENERGY SAVINGS PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

14A:21-1.1 Scope and purpose

(a) The following rules implement the Home Energy Savings Program (HESP) that expands upon the Residential Conservation Service (RCS) State Plan which the Department submitted to the U.S. Department of Energy.

(b) The purpose of the HESP Program is to encourage the installation of energy conservation measures and renewable resource measures in new and existing houses by residential customers of investor-owned electric and gas utilities and home heating suppliers.

14A:21-1.2 Definitions

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

...

"Covered utility" means an investor owned utility providing natural gas or electric energy, or both, in New Jersey and holding a certificate of public convenience and necessity from the Board of Public Utilities pursuant to N.J.S.A. 48:1 et seq.

...

"Eligible customer" means a person who:

1. Owns and/or occupies a residential building; and
2. Receives a fuel bill from a covered utility or participating home heating supplier for fuel used in such residential building.

"Energy conservation measures" means the following measures in a residential building:

1. Caulking.
2. Weatherstripping.
3. Furnace efficiency modifications.
4. Replacement central air conditioner.
5. Ceiling insulation.
6. Wall insulation.
7. Floor insulation.
8. Rim joist insulation.
9. Duct insulation.
10. Pipe insulation.
11. Water heater insulation.
12. Storm window and door.
13. Thermal window and door.
14. Window heat gain and loss retardant materials.
15. Devices associated with electric load management techniques.
16. Clock thermostat.
17. Solar hot water systems.
18. Replacement solar swimming pool heaters.
19. Solar Sunspace.
20. Any other ***energy conservation*** measure ***that has a payback less than or equal to its expected useful life*** designated by the Department.

"Energy conserving practices" or "program practices" means:

1. Heating unit efficiency maintenance and adjustments.
2. Optimizing the burner firing rate.
3. Nighttime temperature setback.
4. Reducing thermostat settings in winter.
5. Raising thermostat settings in summer.
6. Water flow reduction in showers and faucets.
7. Reducing hot water temperatures.
8. Reducing energy use when a home is unoccupied.
9. Plugging leaks in attics, basements, and fireplaces.
10. Sealing leaks in pipes and ducts.
11. Efficient use of shading.
12. Any other low or no-cost practice designated by the

Department which:

- i. Saves energy; and
- ii. Does not require the installation of any energy conservation measure.

"Furnace efficiency modifications" means:

1. Replacement furnace or boilers;
2. Furnace replacement burner (oil-fired unit);
3. Flue opening modification.

...

"Home Energy Savings Program (HESP)" means the program required to be implemented under this chapter.

"Home heating supplier" means a person who sells or supplies home heating fuels (including No. 2 home heating oil, kerosene, coal, wood, butane, and propane) to an eligible customer for consumption in a residential building. The term also applies to any person who offers heating unit maintenance on a contractual or emergency basis.

"Installer's warranty" means the written warranty by the installer for the installation of any program measure that stipulates that any defect in materials, manufacture, design, or installation found within one year from the date of installation shall be remedied without charge and within a reasonable period of time.

"Manufacturer's warranty" which means the written warranty by the manufacturer of a program measure offered under the HESP Program that the eligible customer for whom the measure is installed, the installer who installs the measure, and the supplier of the measure shall, for those measures found within one year from the date of installation to be defective due to materials, manufacture or design, at a minimum, be entitled to obtain, within a reasonable period of time and at no charge, appropriate replacement parts or materials.

"Master Record" means the record of qualified installers, and suppliers compiled by the Department pursuant to N.J.A.C. 14A:21-9.

"Participating home heating supplier" means any home heating supplier who wishes to participate in the HESP Program and complies with this chapter.

"Payback" means the amount of time a customer would need to recover the cost of an investment in a program practice or measure from the energy saved by that measure or practice. All payback estimates will use a simple payback calculation: cost of investment/energy saving from first year. All payback estimates will be given in years.

...

"Program announcement" means the information and offer of services required to be sent by each covered utility to every

eligible customer in their service area pursuant to N.J.A.C. 14A:21-2.

...

"Program audit" means an on-site evaluation of a residential dwelling by a program auditor *[during]* *from* which the applicability of program measures is evaluated.

"Program auditor" means any individual employed by the Department or by a covered utility or home heating supplier or under contract with a covered utility, home heating supplier or the Department who meets all of the qualifications contained in N.J.A.C. 14A:21-7.2 and has successfully passed a Department auditor test.

"Program inspector" means any individual employed by the Department or by a covered utility or home heating supplier or under contract with a covered utility, home heating supplier or the Department who meets all of the qualifications contained in N.J.A.C. 14A:21-7.3 and has successfully passed a Department inspector test.

"Program measures" means energy conservation measures and energy conserving practices.

...

"Reducing energy use when a home is unoccupied" means reducing the thermostat setting to 55 degrees F. when a home is unoccupied for four hours or longer in the heating season, turning an air conditioner off in the cooling season when no one is home, and turning a water heater off when a home is vacant for two days or longer.

"Reducing hot water temperatures" means manually setting back the water heater thermostat to 120 degrees F., and reducing the use of heated water for clothes washing.

"Reducing thermostat settings in winter" means limiting the maximum daytime thermostat control setting for the heating unit to 65 degrees F. during the heating season.

"Replacement central air conditioner" means a central air conditioner which replaces an existing central air conditioner of the same fuel type and which reduces the amount of fuel consumed due to an increase in efficiency.

...

"Residential building" means any building used for residential occupancy which:

1. *[Is more than one year old.]* ***On the date of the program audit request has had a certificate of occupancy for more than two years.***

2. Has a system for heating, cooling or both heating and cooling living spaces; and

3. Contains at least one, but not more than four, dwelling units. Multi-family dwellings not centrally heated or cooled, mobile homes, townhouses and rowhouses in rows of more than four separate houses are included in this definition.

"Rim joist insulation" means a material primarily designed to resist heat flow which is installed along the foundation under the first level conditioned area of a building.

"Sealing leaks in pipes and ducts" means installing caulking in any leak in a heating or cooling duct, tightening or plugging any leaking joints in hot water or steam pipes, and replacement of washers in leaking water valves.

"Solar domestic hot water systems" means equipment designed to absorb the sun's energy and to use this energy to heat water for use in a residential building other than for space heating.

“Solar sunspace system” means a structure of glass, fiberglass or similar transparent material which is attached to the South-facing (+ or —45 degrees of True South) wall of a structure which allows for air circulation to bring heat into the residence, and which is able to be closed off from the residential structure during periods of low solar insolation.

“Storm window or door” means a window or door or glazing material placed outside or inside an ordinary or prime window or door, creating an air space, to provide greater resistance to heat flow than the prime windows or doors alone.

“Supplier warranty” which means the written warranty by the supplier of a program measure offered under the HESP Program, provided, at a minimum, to any person who purchases the measure from such supplier a warranty equivalent to a manufacturer’s warranty.

“Thermal window or door” means a window or door unit with improved thermal performance through the use of two or more sheets of glazing material affixed to a window or door frame to create one or more insulated air spaces.

“Water flow reduction in showers and faucets” means placing a device in a shower head or faucet to limit the maximum flow to 2.75 gallons per minute at 80 pounds per square inch of water pressure, or replacing existing shower heads or faucets with those having built-in provisions for limiting the maximum flow to 2.75 gallons per minute at 80 pounds per square inch of water pressure.

“Window heat gain and heat loss retardants and sunlight control devices” mean those mechanisms which significantly reduce summer heat gain through South-facing (+ or —45 degrees of True South) windows and which significantly reduce heat loss through windows in winter by use of devices such as awnings, insulated rollup shades (external or internal), metal or plastic solar screens, or moveable rigid insulation.

SUBCHAPTER 2. PROGRAM ANNOUNCEMENT

14A:21-2.1 Scope

(a) Beginning January 26, 1986, each covered utility shall **[at its own expense]** send a program announcement to its eligible customers in the State. All program announcements shall be sent to all eligible customers at least once a year until January 1, **[1995.]** **1991.** Such program announcements may be cycled by the covered utilities by route service areas. The program announcements shall be in a form provided, or approved in advance by the Department. The Department shall have a minimum of 30 calendar days from the date of proposed form submittal by the covered utility to approve, reject or otherwise modify the form of the proposed program announcement. ***The Department’s failure to act within the thirty day period shall constitute automatic approval.***

(b) A program announcement shall be sent with either the customer’s utility bill or mailed independently to each customer. The program announcement shall be reinforced with a promotional campaign approved in advance by the Department. The Department shall have a minimum of 30 calendar days from the date of the proposed promotional campaign submittal by the covered utility to approve or reject the proposed promotional campaign. ***The Department’s failure to act within the thirty day period shall constitute automatic approval. If an energy conservation plan including the promotional efforts related to HESP program services, has been separately approved by the Department, no separate submittal of a promotional campaign is necessary under this subchapter.***

14A:21-2.2 Contents and prohibitions

(a) The program announcement may include all of the following for a typical New Jersey residential building, as specified from time to time by the Department:

1. A list and description of program measures.
2. Estimated saving expressed in ranges of dollars that result from taking advantage of individual program measures over one year’s time. Such estimated savings shall be calculated by the Department from time to time and shall be made available for use by the covered utilities.
3. A description and offer of available program services, instructions as to how to apply for them, and the cost, if any, for each service, including instructions on how to apply for a program audit.

(b) The program announcement shall not include:

1. Any brand names or advertising for sale, installation or financing of program measures; or
2. Any information on products which are not program measures.

14A:21-2.3 New customers

(a) Each covered **[electric]** utility shall identify and send a program announcement to each new ***eligible*** customer within sixty calendar days of the **[service hook-up]** ***date service is established in the customer’s name***.

(b) Each covered utility shall inform each new ***eligible*** customer in writing within sixty calendar days of the **[service hook-up]** ***date service is established in the customer’s name*** that upon request, the customer may receive at no charge, a copy of the results of any past program audit of the customer’s residence which a covered utility may have performed pursuant to this chapter.

SUBCHAPTER 3. PROGRAM SERVICES AND PROGRAM AUDITS

14A:21-3.1 Program services

(a) All covered utilities shall offer and provide, upon request, the following program services to all eligible customers:

1. A program audit of all applicable program measures in a form to be prescribed or approved by the Department;
2. Lists of participating installers and suppliers who install or sell program measures, and in a form specified or approved by the Department;
3. A list ***and description*** of all available programs that fund program measures, including loans, grants *****, **rebates*** and tax credits;
4. Participation in conciliation procedures; and
5. Conservation literature in a form specified or approved by the Department.

(b) All covered utilities shall designate **[commercial office(s) with a]** toll-free telephone number(s) **[which will receive customer requests for program service.]** ***by which eligible customers may request program services*.**

(c) All covered utilities receiving requests for program services from eligible customers shall record the requests and the arrangements made by the covered utility for the audit in a form to be prescribed by the Department. All such records shall contain the following information, if available, from the customer:

1. Name and address of customer;
2. Type of program services requested;
3. Dates scheduled for providing the services, and date services were completed;
4. Dwelling type;

5. Type of fuel used;
6. Time customer is home most often;
7. Media sources from which customer heard about program;
8. The name of the customer's home heating supplier;
9. The name of the customer's covered utilities;
10. Information on whether the customer qualifies for a program audit free of charge; and
11. Phone number where the customer can be reached during the daytime.

(d) The Department shall also receive requests from eligible customers for program services and shall record the same information required by N.J.A.C. 14A:21-3.1(c).

14A:21-3.2 Arrangement of program audit

(a) If an eligible customer who heats with electricity or gas contacts the Department and requests a program audit, the Department shall refer that request to an appropriate covered utility.

(b) If an eligible customer who heats with oil contacts the Department and requests a program audit, the Department shall refer that request, except for that part which requires a heating unit analysis to an appropriate covered utility. The Department shall determine whether the customer's heating supplier is a participating home heating supplier. If so, the Department shall refer the customer's request for a heating unit analysis to that participating home heating supplier. If the customer's home heating supplier is not a participating home heating supplier, the Department shall choose a participating home heating supplier located in the customer's geographic service area to perform the heating unit analysis part of the program audit. The Department shall make the selection in a random and non-discriminatory manner from the list of participating home heating suppliers who have registered with the Department. The Department shall notify the customer of the referral.

(c) Upon receiving a referral from the Department each covered utility and participating home heating supplier shall promptly contact the eligible customer to arrange for an appointment to provide the applicable program audit and services or heating unit analysis.

(d) If a covered utility receives a request for a program audit from a customer who heats with fuel purchased from a home heating supplier the utility shall record the same information required by N.J.A.C. 14A:21-3.1(c), and refer the request for a heating system analysis to the Department for review and referral.

14A:21-3.3 Timing and preconditions

(a) All covered utilities shall provide a program audit to determine applicable program measures and their estimated costs, savings and paybacks within 30 working days of receipt of a request or referral. If the demand for such services becomes too great, that utility must so notify the Department, in writing, and contact each eligible customer requesting the services within 30 working days of the request or referral to set up an appointment and complete the program audit within 60 working days of the date of the request or referral.

(b) All participating home heating suppliers shall provide oil-fired heating unit analyses to determine applicable program measures and their estimated costs, savings and paybacks within 30 working days of receipt of a request or referral. If the demand for such services becomes too great, the participating home heating supplier must so notify the Department, in writing, and contact each eligible customer requesting such services within 30 working days of the request or referral

to set up an appointment and complete the analysis within 60 working days of the date of the request or referral.

(c) No covered utility or participating home heating supplier shall require any eligible customer to purchase or perform any other audit, service, product or measure as a precondition to receiving any program service.

(d) No covered utility or participating home heating supplier shall discriminate unfairly among eligible customers participating in the program.

14A:21-3.4 Applicability of program measures

(a) (No change.)

(b) A program measure is applicable in a residence if:

1.-3. (No change.)

5. through 14. renumbered 4. through 13. (No change in text.)

14. With respect to solar sunspace systems, an evaluation is made only if adequate ground area in front or beside a south facing wall exists for the addition of a sunspace system and if adequate solar radiation is present on the south side.

14A:21-3.5 Cost, savings and payback estimates

(a) (No change.)

(b) All costs, savings and payback estimates for a gas-fired heating unit shall be based upon an evaluation of the unit's seasonal efficiency. This evaluation shall be based upon steady state efficiency corrected for cycling losses, pursuant to a procedure to be provided to the auditor by the Department.

(c) (No change.)

(d) All costs, savings and payback estimates for an applicable solar hot water system shall be based upon the following information which shall be disclosed to the eligible customer:

1. Square feet of collector;

2. The capacity of storage;

3. Estimated percent of the water heating load to be met by solar energy; and

4. Location of collectors.

(e) All costs, savings and payback estimates for applicable solar sunspace systems shall be based upon the following information:

1. The estimated percent of the heating load to be met by the system;

2. The approximate dimensions of such system; and

3. The collection storage characteristics.

14A:21-3.6 Results of the program audit

(a) As part of every program audit each auditor shall provide a written list on a form provided or approved by the Department of energy conserving practices at the time of on-site evaluation. The auditor shall:

1. Determine the applicability of each practice;

2. Explain each one of the applicable practices to the eligible customer;

3. Explain the importance of completing applicable program practices before any energy conservation measure is installed;

(b) Upon completion of the program audit, every auditor shall provide the program audit results in writing within 10 working days to each eligible customer who receives a program audit. The program audit results shall be in a form prescribed or approved by the Department. The auditor shall provide a telephone number which the eligible customer may call to review the audit results.

(c) Program audits results shall include the following:

1. Home characteristics to include:

i. Number of occupants;

ii. Building type;

- iii. Approximate age of building;
 - iv. Space heating fuel type;
 - v. Space heating efficiency, assumed or actual;
 - vi. Space heating system type;
 - vii. Water heating fuel type;
 - viii. Water heating system type;
 - ix. ***Approximate*** ***[Building]*** ***building*** square footage;
 - x. ***Approximate*** ***[Annual]*** ***annual*** heating cost.
2. An estimate of the total costs (materials and labor), expressed in dollars for each applicable program measure addressed in the program audit;
3. An estimate of the total cost, expressed in dollars, of installation by the customer of each applicable program measure addressed in the program audit; however, such estimates shall not be provided for replacement central air conditioners, wall insulation, furnace efficiency modifications, devices associated with load management techniques, and thermal windows.
4. An estimate of the savings, expressed in dollars, which would occur during the first year from installation of each applicable program measure addressed in the program audit;
5. An estimate of payback expressed in years for installation of each applicable program measure addressed in the program audit;
6. The following disclosure, conspicuously placed and highlighted;

“THE PROCEDURES USED TO MAKE THESE ESTIMATES ARE CONSISTENT WITH NEW JERSEY DEPARTMENT OF ENERGY CRITERIA FOR RESIDENTIAL PROGRAM AUDITS. HOWEVER, ACTUAL INSTALLATION COSTS AND ENERGY SAVINGS YOU REALIZE FROM INSTALLING THESE MEASURES MAY DIFFER FROM THE ESTIMATES CONTAINED IN THIS AUDIT REPORT. TOTAL SAVINGS FROM THE INSTALLATION OF MORE THAN ONE PROGRAM MEASURE WILL PROBABLY BE LESS THAN THE SUM OF SAVINGS OF EACH MEASURE INSTALLED INDIVIDUALLY.”

7. An example of the effect that the installation of one energy conservation measure has on the energy savings of a related energy conservation measure. The example shall be in a form provided or approved by the Department.
8. The possible economic benefits to the customer of existing federal or State tax incentives, with one sample calculation of the effect of the tax benefit on the cost to the customer of installing an applicable energy conservation measure.

14A:21-3.7 Additional information

***(a) Every auditor shall present the following to an eligible customer upon the completion of the program audit:**

- 1. Lists of participating installers and suppliers who install or sell program measures, in a form specified or approved by the Department;
- 2. A list and description of all available programs that fund program measures, including loans, grants, rebates and tax credits;
- 3. Information on participation in conciliation procedures; and
- 4. Conservation literature in a form specified or approved by the Department.*

(b) Every auditor shall provide an eligible customer with a written statement of any substantial interest in which the auditor or the auditor's employer has, directly or indirectly, in the sale or installation of any program measure.

14A:21-3.8 Prohibitions

(a) No ***program*** auditor shall provide costs, savings or payback estimates resulting from the installation or any product or measure which is not a program measure.

(b) No ***program*** auditor shall recommend a particular supplier, installer or lender who supplies, installs or finances the sale or installation of any program measure. ***[However, if a covered utility or participating home heating supplier who performs the auditor supplies, installs or finances the sale or installation of program measures, the auditor may so state.]**

(c) No auditor shall unfairly discriminate in recommendations of program measures.*

[SUBCHAPTER 4. ARRANGING INSTALLATION]

[14A:21-4.1 Services provided]

***(a)** Upon request by an eligible customer, each covered utility shall promptly provide services to arrange installation of any program measure. These services shall include:

1. Distribution of lists of installers prepared from a Master Record provided by the Department. The lists shall be available upon request at each commercial office of each covered utility or by mail from the utility, and shall also be provided upon completion of a program auditor;

2. Written information explaining how to solicit bids for the installation of program measures. Such written information shall be distributed by each covered utility to all eligible customers who receive an audit, or upon request by any eligible customer. This information shall be available by mail or at each utility area office or other easily accessible designated locations of the utility. Such written information shall be in a form prescribed by the Department;

3. In-person assistance about the selection of installers, the filling out of specification forms, or the receipt of bids provided by trained personnel who shall be available in at least one specified location during business hours and/or at several locations during designated hours; and

4. Telephone assistance available through the covered utility by a toll-free number. The toll-free number shall be placed conspicuously on all lists and written information distributed pursuant to this section.*

[14A:21-4.2 Prohibitions]

***(a)** When providing arranging services, no covered utility shall recommend, select or provide information about any installer if such recommendation, selection or information would unfairly discriminate among installers of program measures. However, if a covered utility installs program measures it may so inform the customer and fairly describe the service or product. No covered utility, when providing arranging services, shall discriminate unfairly among eligible customers, among suppliers or among program measures.

(b) No covered utility shall provide any such arranging service with any installer not included on the current Master Record of installers at the time it provides the service.

(c) No covered utility shall provide any arranging services for any measure which is not a program measure.*

[SUBCHAPTER 5. ARRANGING FINANCING]

[14A:21-5.1 Services provided]

***(a)** Upon request by an eligible customer, each covered utility shall promptly arrange financing for the purchase and installation of any program measure. The arranging of services shall include:

- 1. Distribution of lists of lenders. The lists shall be available

upon request at each commercial office of each covered utility or by mail from the utility;

2. Written information explaining the standards for credit applications, and loan applications, and the availability of financial assistance through lenders. Such written information shall be distributed by each covered utility to all eligible customers who receive an audit or upon request from an eligible customer. This information shall be available by mail or at each utility area office or other easily accessible designated locations of the utility. Such written information shall be in a form prescribed or approved by the Department;

3. In-person assistance about the selection of lenders, shopping for loans and filling out loan applications provided by trained personnel who shall be available in at least one specified location during business hours and/or at several locations during designated hours; and

4. Telephone assistance available through the covered utility by a toll-free number. The toll-free number shall be placed conspicuously on all lists and written information distributed pursuant to this section.]*

[14A:21-5.2 Prohibitions]

(a) When providing any arranging services, no covered utility shall recommend, select or provide information about any lender if such recommendation would unfairly discriminate among lenders. However, if a utility finances program measures, it may so inform the customer and fairly describe the service. No covered utility, when providing or arranging services, shall discriminate unfairly among eligible customers, among suppliers, installers or among program measures.]

SUBCHAPTER *[6.]*4.* CUSTOMER BILLING, TERMINATION OF SERVICE AND PAYMENTS

14A:21-*[6.1]4.1* Services required**

(a) When billing a customer for *[any costs for any program service, including arranged loans,]* ***a program audit,*** each covered utility and participating home heating supplier shall identify the charge*[s]* and list *[them]* ***it*** separately on *[every]* ***the first*** bill rendered for the*[se]* charge*[s]*.

(b) Each covered utility shall allow eligible customers to include payments for those charges along with payments for their utility bill. When receiving a payment from a customer that includes payment for utility service or fuel and payment for any program service, the utility shall credit the portion of the payment that exceeds the charge for utility service or fuel to program charges, unless the customer specified otherwise.

14A:21-*[6.2]4.2* Prohibitions**

No covered utility or participating home heating supplier shall terminate or otherwise restrict service or fuel to any eligible customer upon customer default for program services.

14A:21-*[6.3]4.3* Payments**

(a) (No change.)

(b) No eligible customer shall be charged more than \$15.00 for a program audit. Any eligible customer who is either eligible for a "lifeline credit" pursuant to N.J.S.A. 48:2-29.15 et seq. or lives in a household where the gross annual income is less than or equal to 150 percent of the poverty level income for that household as defined by the U.S. Department of Health and Human Services guidelines shall receive a program audit at no cost.

(c) (No change.)

SUBCHAPTER *[7.]*5.* AUDITORS, INSPECTORS, AND INSTALLERS: QUALIFICATIONS AND TESTING

14A:21-*[7.1]5.1* General**

(a) All auditors and inspectors of program measures shall be qualified by the Department as to basic skills necessary to perform such tasks. Each auditor and inspector shall take a written test, prepared and administered by the Department, prior to being qualified to conduct audits and/or inspections. The Department may require that evidence of successful completion of energy auditor or inspector training be presented prior to testing. The Department may retest any or all auditors and/or inspectors upon notice as audit procedures or installation standards change, or for good cause as determined by the Department.

(b) Any home heating supplier who has previously passed a Department-approved test and has been qualified by the Department may apply for and receive a waiver of testing and qualification standards as set forth herein. Any home heating supplier may apply for and receive a waiver of testing and qualification standards if such person submits written proof which, in the opinion of the Department, establishes that the person has sufficient training in conducting testing and analysis of program measures applicable to heating units.

(c) (No change.)

14A:21-*[7.2]5.2* Qualifications of auditors**

(a) Persons conducting a program audit shall have the following qualifications:

1. (No change.)

4. A general knowledge of the different types of each applicable program measure, the advantages, disadvantages and applications of each; and any applicable installation standards;

5. The capability to conduct the program audit, including:

i. Familiarity with the energy conserving practices required to be audited;

ii. Ability to determine the applicability of program measures; and

iii. A proficiency in the pertinent auditing procedures for each applicable program measure;

6. Where a heating unit efficiency modification is an applicable program measure, a working ability to calculate the seasonal efficiency and steady-state efficiency of the furnace or boiler;

7. Where a solar energy measure is an applicable program measure, an understanding of the nature of solar energy and its residential applications, including:

i. Insolation;

ii. Shading;

iii. Heat capture and transport; and

iv. Where appropriate, heat transfer for hot water and space heating;

8. The ability to convey this information and the results of the program to eligible customers in easily understandable terms.

(b) Home heating suppliers may be qualified to conduct a specific part of an audit and may be tested accordingly.

14A:21-*[7.3]5.3* Qualifications for inspectors**

(a) Inspectors of program measures shall be thoroughly familiar with applicable installation standards. Inspectors shall be able to examine installations for compliance with applicable installation standards.

(b) Inspectors may be qualified to conduct inspections of one or more types of program measure installations, and shall be tested and qualified accordingly by the Department.

14A:21-[7.4]5.4*** Disqualification of auditors and inspectors

(a) The Department may disqualify any auditor or inspector from participating in the program.

(b) Grounds for disqualification include, but are not limited to the following:

1. Violation, within three years prior to the date of application, of any laws governing the conduct of occupations or professions regulated by the state(s) in which the applicant has done business;

2. Violation of the Federal Organized Crime Control Act of 1970 or conviction for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating a lack of business integrity or honesty by the applicant, or if the applicant is a corporation, partnership or other business entity, by a person who is a principal of the corporation, partnership or business entity;

3. Violation of any federal or state anti-trust statutes, or Federal Anti-Kickback Act;

4. Violation of any laws governing hours of labor, minimum wage standards, discrimination in wages or child labor, and Equal Employment Opportunity laws;

5. Any other cause affecting the responsibility of a auditor or inspector of such a serious and compelling nature as may be determined by the Department to warrant disqualification, including such conduct as may be prescribed by law or regulation even though such conduct has or may not be prosecuted as a violation of such a regulation; or

6. Failure to fully comply with all applicable requirements of this chapter.

14A:21-[7.5]5.5*** Procedures for disqualification

(a) Any auditor or inspector whom the Department plans to disqualify from participating in the program shall receive written notice from the Department of the disqualification and the grounds therefor at least 30 days before such disqualification.

(b) The Department shall allow the auditor or inspector to respond in writing to the allegations contained in the notice. All such responses must be received by the Department no later than 30 days after receipt of the proposed agency action. Disqualification from participation shall constitute final agency action.

(c) An auditor or inspector who has been disqualified by the Department may file a request for reconsideration after one year. The request for reconsideration shall be accompanied by a statement, under oath, setting forth substantial and appropriate grounds for reconsideration which shall be supported by documentary evidence. Substantial and appropriate grounds include, but are not limited to:

1. Newly discovered material evidence that the Department erred in its previous decision;

2. Reversal of a conviction of an offense or civil judgement which formed the basis of the Department's previous decision, on material grounds;

3. Actual change of ownership or effective control; and

4. Elimination of the causes for which disqualification occurred.

(d) The Department shall review the request for reconsideration and shall, within 45 days of its receipt, notify the auditor or inspector of its decision whether to allow the

auditor or inspector to continue to participate in the HESP Program.

14A:21-[7.6]5.6*** Audit subcontractors

(a) Covered utilities may subcontract HESP program audits. In developing bid specifications, advertising for bids and awarding contracts and subcontracts, covered utilities shall give consideration to participation by small businesses and minority-owned businesses. The covered utilities shall furnish the Department evidence of compliance with the above requirement ***upon request***.

SUBCHAPTER *[8.]6.*** INSPECTION OF INSTALLATIONS

14A:21-[8.1]6.1*** Mandatory inspections

(a) All inspections of the following installations of program measures shall be conducted pursuant to the Uniform Construction Code, N.J.A.C. 5:23-1.1 et seq.:

1. Flue opening modifications;

2. Electrical or mechanical ignition systems;

3. Solar water heating systems and solar sunspace systems;

4. All major heating and cooling system modifications; and

5. All types of in-wall blown or poured insulation.

(b) (No change.)

14A:21-[8.2]6.2*** Random inspections

(a) Random inspections shall be made of all program measures installed by participating installers.

(b) At least one inspection shall be performed during the life of the program of the work of every participating installer who makes an insulation of a program measure.

(c) Each audit recipients may submit to the Department a work order in a form prescribed by the Department for each installation at the time of the entry of the contract for installation. The Department shall review all submitted work orders and choose which installations shall be inspected on a random basis.

(d) The Department shall promptly notify a covered utility, which services the geographic area of the installation, of the name, address and telephone number of the audit recipients, and the type of installation needed to be inspected. The covered utility shall promptly contact the audit recipient and inform them of the proposed inspection, and arrange an appointment within two weeks. The covered utility shall provide an inspector, qualified by the Department to inspect that type of installation, to make an inspection report of the site to determine compliance with applicable installation standards. ***In no case, may an inspector inspect his own work or the work performed directly by the inspector's employer.***

(e) Upon completion of the inspection, the inspector shall make a written report stating the following (copies of such report shall be provided to the audit recipient, the installer and the Department no later than one week from the date of the inspection.):

1.-5. (No change.)

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

(h) Upon receipt of a notice of reinspection, the utility shall contact the audit recipient to arrange for a reinspection. The reinspection report shall contain the same information as in (d) above. Copies of the report shall be provided to the customer, the installer and the Department no later than one week of the date of reinspection.

(i) (No change.)

(j) The Department shall review complaints made by audit recipients of faulty or improper installations by participating

installers, and may, in its discretion, notify a covered utility to provide an inspection of the customer's residence by a qualified inspector. Upon receipt of such a notice, the covered utility shall comply and conduct an inspection and report the results in compliance with the requirements in this subchapter.

SUBCHAPTER ***[9.]**7.*** MASTER RECORD OF INSTALLERS AND SUPPLIERS

14A:21-**[9.1]**7.1*** General requirements

(a) The Department shall compile and maintain a Master Record of installers and suppliers of program measures who participate in the HESP Program. The Department shall provide an application to any installer or supplier of program measures who notifies the Department that they wish to become a participant.

(b) (No change.)

(c) The Department shall update the Master Record every 30 days and shall promptly notify covered utilities of any changes in its content.

(d) (No change.)

(e) Each application must be accompanied by a nonrefundable application fee of \$25.00 payable to the New Jersey Department of Energy-HESP by check or money order. The Department at its discretion may waive all or part of the application fee.

14A:21-**[9.2]**7.2*** Installers: Requirements for participation

(a) To be eligible for inclusion on the Master Record an installer must submit a certified application to the Department which shall include the following:

1.-3. (No change.)

4. A detailed list of any liens, stop notices or claims filed against or by reason of any project undertaken or supervised by the installer within the past three years, including any administrative or judicial complaints and any claims filed with the Better Business Bureau, the New Jersey Division of Consumer Affairs or its subdivisions, or any similar state, county or municipal agency, and the disposition of same.

5. (No change.)

6. Verification that the installer carries comprehensive public liability insurance adequately protecting the installer from liability for bodily injury, including death, and/or property damage arising out of the installer's performance. Such insurance shall be in amount not less than \$300,000 for bodily injury for each occurrence plus \$250,000 for property damage for each occurrence or in an amount not less than \$500,000 per occurrence for bodily injury and property damage liability. The policy shall contain an endorsement for contractual liability. Every year thereafter the installer shall provide the Department with a certification of insurance;

7. (No change.)

8. A statement that the installer agrees not to discriminate among audit recipients participating in the HESP Program.

9. A statement with accompanying documentation that the installer meets all applicable installer qualifications;

10. A statement that all program measures installed by the installer pursuant to the HESP Program shall be covered by a written manufacturer's and installer's warranty for one year; and

11. An agreement that the installer shall use only materials which meet applicable material standards.

(b) The installer shall agree to provide the following to any audit recipient who selects that installer from a program list:

1. A written contract detailing the installation to be done;
2. A statement that the installation shall be in compliance with all applicable material and installation standards;

3. A written provision in the contract stating a specific time period for the completion of all work, with specific penalties for failure to complete an installation on time; however, the installer shall not be liable for those penalties due to acts of God or labor strikes;

4. A written guarantee that any violation in the installation of applicable material and/or installation standards shall be corrected by the installer at no additional cost to the eligible customer within one month of discovery and notice to the installer;

5. Written assurance that all program measures installed by the installer carry a manufacturer's and/or installer's warranty pursuant to N.J.A.C. 14A:21-9.2(a)10; and

6. Agreement to participate in program customer conciliation procedures.

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

14A:21-**[9.3]**7.3*** Suppliers: Requirements for participation

(a) To be eligible for inclusion on the Master Record, a supplier shall complete a certified application to the Department which shall include the following:

1. An agreement to supply measures which meet applicable material standards, and which are labeled as complying with the specific standards for that product;

2.-5. (No change.)

6. An agreement that all program measures supplied shall be covered by a one year supplier's warranty.

14A:21-**[9.4]**7.4*** Withdrawal from the HESP program

Any supplier or installer may voluntarily withdraw from the program and may be removed from the Master Record upon 30 days written notice to the Department. However, any person who so notifies the Department of withdrawal must continue to abide by all requirements for participation and extend all benefits due for all eligible customers who contracted with the person while the participant was included on the Master Record.

14A:21-**[9.5]**7.5*** Exclusion

(a) The Department shall have the power to exclude persons from participating and from being included on the Master Record of installers or suppliers.

(b) Grounds for exclusion include, but are not limited to, the following:

1.-4. (No change)

5. Violation of any laws governing hours of labor, minimum wage standards, discrimination in wages or child labor, and Equal Employment Opportunity laws;

6. Any other cause affecting the responsibility of an installer, or supplier of such a serious and compelling nature as may be determined by the Department to warrant exclusion, including but not limited to unresolved claims, liens or stop notices or such conduct as may be prescribed by law or regulation even though such conduct has or may not be prosecuted as a violation of such law or regulation; and

7. (No change.)

14A:21-**[9.6]**7.6*** Removal

(a) Any person may be removed by the Department from the Master Record of installers or suppliers.

(b) (No change.)

14A:21-[9.7]7.7* Procedures for removal or exclusion**

(a) The Department shall notify in writing any person whom the Department plans to exclude or remove from the Master Record of the exclusion or removal and the grounds at least 30 days before such exclusion or removal. *(See N.J.A.C. 14A:21-12)*

[(b) The Department shall allow the person to respond in writing to the allegations contained in the notice. All such responses must be received by the Department no later than 30 days after receipt of the proposed agency action.]

*[(c)]***(b)* A person who has been excluded or removed from the Master Record by the Department may reapply, after one year*[, for reconsideration. The application shall be accompanied by a new certified application setting forth substantial and appropriate grounds for reconsideration, supported by documentary evidence, together with payment of a new application fee. Substantial and appropriate grounds include, but are not limited to:

1. Newly discovered material evidence that the Department erred in its previous decision;

2. Reversal of a conviction of an offense or civil judgment which formed the basis of the Department's previous decision, on material grounds;

3. Actual change of ownership or control; or

4. The elimination of the causes for which exclusion or removal occurred.]*

[(d) The Department shall review the application for reconsideration and shall, within 45 days of its receipt, notify the applicant in writing of its decision whether to reinstate or include the applicant on the appropriate list.]

14A:21-[9.8]7.8* Temporary suspension**

The Department may, in its discretion, temporarily suspend any listed installer or supplier pending removal from the Master Record, if the Department determines that retaining that person on the Master Record would immediately harm present or potential eligible customers. The Department shall, within five days of such decision to suspend, notify the person in writing of the suspension and the grounds. The person shall have five days within which to respond to the allegations in writing to the Department.

14A:21-[9.9]7.9* Disclosure**

(No change in text.)

SUBCHAPTER *[10.]8.* LISTS OF INSTALLERS AND SUPPLIERS****14A:21-[10.1]**8.1* General contents**

(a) All lists of installers and suppliers of program measures shall contain the name, address and telephone number of each supplier and installer on the Master Record which is in or contiguous to the covered utility's service territory and an indication of which types of program measures a supplier or installer sells or installs and in which geographical areas. Identification of program measures shall not include brand names.

(b) All lists shall contain an effective date and expiration date on the first page. The expiration date shall be *[45]* *75* days after the effective date.

14A:21-[10.2]8.2* Installer lists**

[(a) All lists of installers shall include a statement that installation arranging services are available from covered utilities.]

*[(b)]***(a)* All lists of installers may contain information that any eligible customer who receives *[utility arranging of installation or who receives]* an installer list, and has program measures installed by an installer chosen from that list, is entitled to the following program benefits:

1. A manufacturer's and installer's one year warranty for every program measure, except caulking and weatherstripping;

2. Installations which meet applicable installation standards;

3. Enforcement of standards through a mandatory post-installation inspection or inclusion in the pool of customers from which random inspections will be made, whichever is applicable;

4. Access to program conciliation and redress procedures;

5. Assurance that a listed installer has agreed to comply with all applicable program requirements.

6. That in order to ensure program benefits, appropriate forms should be returned to the New Jersey Department of Energy.

7. That installers on this list must be informed that the work is being done under the New Jersey Home Energy Savings Program (HESP).

8. That inclusion of any installer on this list does not imply that the installer is recommended or selected by the New Jersey Department of Energy *[or your utility]*, nor does the department *[or utility]* in providing this list guarantee or warranty the type of quality of the work to be performed.

14A:21-[10.3]8.3* Supplier lists**

All lists of suppliers may contain the following information that any eligible customer who purchases any program measure from a listed supplier who indicates that the program measure meets applicable material standards or carries program measures warranty is entitled to the following benefits:

1. A supplier one-year warranty for every program measure except caulking and weatherstripping;

2. Access to program conciliation and redress procedures;

3. Assurance that listed suppliers have agreed to comply with all applicable program requirements; and

4. That inclusion of a supplier on this list does not imply that the supplier is recommended or selected by the New Jersey Department of Energy or the customer's utility.

14A:21-[10.4]8.4* Updating lists**

All covered utilities shall keep all lists of installers and suppliers current, and shall promptly place in service revised lists received from the Department.

SUBCHAPTER *[11.]9.* HOME HEATING SUPPLIERS****14A:21-[11.1]**9.1* Participation by home heating suppliers**

Home heating suppliers may participate in the HESP Program to the extent provided by this chapter.

14A:21-[11.2]9.2* Requirements for participation**

To be eligible to participate in the HESP Program a home heating supplier shall notify the Department in writing of its intention to participate and agree to comply with all applicable requirements of this chapter.

14A:21-[11.3]9.3* Voluntary withdrawal (No change.)**

14A:21-[11.4]**9.4* Disqualification

(a) (No change.)

(b) Grounds for disqualification include, but are not limited to, the following:

1. Violation, within three years prior to the date of application, of any laws governing the conduct of occupations or professions regulated by the state(s) in which the applicant has done business;

2.-3. (No change.)

4. Violation of any laws governing hours of labor, minimum wage standards, discrimination in wages or child labor, and Equal Employment Opportunity laws;

5.-6. (No change.)

7. Falsification or willful omission of any information reported by the Department.

14A:21-[11.5]**9.5* Procedures for disqualification

(a) Any home heating supplier whom the Department plans to disqualify from participating in the program shall receive written notice from the Department of the disqualification and the grounds therefor at least 30 days before such disqualification. *(See N.J.A.C. 14A:21-12).*

(b) The Department shall allow the home heating supplier to respond in writing to the allegations contained in the notice. All such responses must be received by the Department no later than 30 days after receipt of the proposed agency action. Disqualification from participation shall constitute final agency action.

*(c)**(b)* A home heating supplier who has been disqualified by the Department may file a request for *[reconsideration]* *application* after one year. *[The request for reconsideration shall be accompanied by a statement under oath setting forth substantial and appropriate grounds for reconsideration which shall be supported by documentary evidence.]*

1. Newly discovered material evidence that the Department erred in its previous decision;

2. Reversal of a conviction of an offense or civil judgment which formed the basis of the Department's previous decision, on material grounds;

3. Actual change of ownership or control; and

4. Elimination of the causes for which disqualification occurred.*

(d) The Department shall review the request for reconsideration and shall, within 45 days of its receipt, notify the home heating supplier of its decision whether to allow the home heating supplier to continue to participate in the HESP Program.

SUBCHAPTER *[12]**10.* REPORTING AND RECORD KEEPING

14A:21-[12.1]**10.1* Reporting: Covered utilities

(a) Each covered utility shall submit the following information in writing to the Department on May 30, 1986 and annually thereafter through May 30, 1990 for the 12 month period ending the preceding April 1;

1. Whether the utility is engaged in supplying, installing, or financing any program measures pursuant to N.J.A.C. 14A:21.13 or 14A:21-14 and a description of the program(s);

2. The approximate number of eligible customers and the percentage of those customers for whom the utility is the primary heating fuel supplier;

3. The number of eligible customer*s* who have requested each service and the number of requests the utility has fulfilled, including:

- i. The number of program audits performed;
- ii. The number of program lists requested;
- iii. The number of loans and grants and the number of related installations arranged by the utility; and

[iv. The number of installations of program measures which the covered utility supplied, installed or financed pursuant to N.J.A.C. 14A:21-13 or 14A:21-14;]

4. The number and function of people assigned to the utility's program, including part-time employees;

5. The costs incurred by the utility in providing each service under the HESP Program including separately those costs paid by individual customers for services received, and those costs paid by all ratepayers;

6. The number of program announcements mailed;

7. The dates program announcements were mailed;

8. A description of other promotional activity;

9. The response rate to promotional activity;

10. The number and nature of customer complaints;

11. Utility's annual budget for the HESP program including:

i. Salaries and wages;

ii. Advertising;

iii. Printing;

iv. Transportation

v. Postage;

vi. Other budget information the Department may require.

12. Average total cost per program audit;

[13. Average cost a subcontracted auditing firm charged per program audit; and]

*[14.]***13.* Such other information as the Department may require for program evaluation.

(b) Each covered utility shall submit the following information in writing and in a form provided or approved by the Department on the *[10th]* *15th* of each month for the preceding month:

1. The number of eligible customers who have requested each program service and the number of requests the utility has fulfilled that may include:

i. The number of program audits requested by housing type and the number of program audits performed by fuel type;

[ii. The number of eligible customers requesting financing;]

*[iii.]***ii.* The number of eligible customers requesting or receiving each one of the following:

(1) Workbook I;

(2) Workbook II;

(3) Insulation Guide;

(4) Financing Guide;

(5) Audit Reference Guide; and

(6) Program Lists.

*[iv.]***iii.* The number of audits completed within 1-30 days, 31-60 days and over 60 days.

2.-3. (No change.)

4. The number of post-installation inspections requested;

5. The number of post-installation inspections found to be satisfactory and the number found to be unsatisfactory;

6. The total number of service requests completed pursuant to N.J.A.C. 14A:21-3.1.

7. The number of ineligible customers;

8. The number of audits cancelled;

9. The number of audits uncompleted; and

10. Such other information as the Department may require.

14A:21-[12.2]**10.2* Record-keeping: Covered utilities

(a) Each covered utility shall keep the following records for the periods indicated and shall make them available to the Department upon request:

1. The name and address of each eligible customer who [requests or] receives a program audit and name of the program auditor, which shall be kept for five years from the date of the program audit;

2. (No change.)

*[3. A copy of all requests furnished by eligible customers for heating unit analyses pursuant to N.J.A.C. 14A:21-3.2(b), which shall be kept for five years from the date of such request:

4. The name and address of each eligible customer for whom a covered utility arranges installation or financing, which shall be kept for five years from the date of such arrangement;]*

*[5.]**3.* The amount and cost of fuel purchased each month or other billing period for the twelve months prior to and following each program audit for each eligible customer, which shall be kept for two years from the date of such program audit; and

*[6.]**4.* The names of the individuals who have met the qualification criteria for auditors and inspectors. These records shall be updated within a reasonable period of time following each implementation of the qualification procedures.

14A:21-[12.3]**10.3* Record-keeping: Participating home heating suppliers

(a) Each participating home heating supplier shall keep the following records for the periods indicated and shall make them available to the Department upon request:

1. The name and address of each eligible customer who requests or receives an oil-fired heating unit analysis as part of a program audit, which shall be kept for five years from the date of the heating unit analysis;

2.-3. (No change.)

4. If the participating home heating supplier supplies fuel, the amount and cost of fuel purchased each month or other billing period for the 12 months prior to and following each heating unit analysis for each of its own eligible customers participating in the HESP Program, which shall be kept for two years from the date of such heating unit analysis; and

5. The names of individuals who have met the qualification criteria for auditors. These records shall be updated within a reasonable period of time following each implementation of the qualification procedures.

[SUBCHAPTER 13. UTILITY FINANCING OF ENERGY CONSERVATION AND RENEWABLE RESOURCE MEASURES]

[14A:21-13.1 Utility financing]

*[(a) All financing arrangements offered by covered utilities for the purchase and installation of program measures shall be submitted to the Department for review and approval prior to implementation.

1. The Department shall review the financing arrangements with respect to substantive content and implementation strategies.

2. All submissions shall specify the following:

i. The types of financing available (loans, rebates, utility bill credits, etc.) and any terms and conditions applicable thereto;

ii. Restricting or limitations on customer participation, if any, and, the justification therefor;

iii. The manner in which financing will be made available (through the covered utility, financial institutions, etc.);

iv. The effect of the financing arrangement on competition in the relevant markets;

v. Such other information as the Department may require.

(b) Documentation concerning the costs of implementing the financing arrangements specified in (a) above may be submitted to the BPU for a determination of the manner and extent to which such costs may be recovered by the covered utility. The covered utility shall provide copies of all such submissions to the Department at the same time they are submitted to the B.P.U.]*

SUBCHAPTER *[14.]**11.* UTILITY SUPPLY AND INSTALLATION OF [ENERGY CONSERVATION AND RENEWABLE RESOURCE]*
PROGRAM MEASURES

14A:21-[14.1]**11.1* Prohibition

Except as provided in this subchapter, no covered utility shall supply or install any program measure.

14A:21-[14.2]**11.2* General exception

(a) The prohibition contained in N.J.A.C. 14A:21-14.1 shall not apply to any program measure supplied or installed by a covered utility through contracts between such utility and independent suppliers or installers where the customer requests such supply or installation and each such supplier or installer:

1. Is on the Master Record of suppliers and installers referred to in N.J.A.C. 14A:21-9;

2. Is not subject to the control of the utility, except as to the performance of such contract, and is not an affiliate or a subsidiary of such utility; and

3. If selected by the utility, is selected in a manner consistent with (b) below.

(b) Activities of a covered utility under (a) above:

1. May not involve unfair methods of competition;

i. Covered utilities must use certified licensed contractors where such skills are required by the nature of the work and the New Jersey Uniform Construction Code (N.J.S.A. 32:27-119 et seq.)

ii. Covered utilities cannot by way of advertising or other marketing inducements indicate that work performed by their contractor is superior to comparable work performed by any other contractor list on the Master Record.

2. May not have a substantial adverse effect on competition in the area in which such activities are undertaken nor result in providing to any supplier or installer an unreasonably large share of contracts for the supply or installation of program measures. Substantial adverse competition will be determined on a case by case basis;

3. Shall be undertaken in a manner which provides, subject to reasonable conditions the utility may establish to insure the quality of supply and installation of program measures, that any financing by the utility of such measures shall be available for the supply or installation by any supplier or installer on the Master Record referred to in N.J.A.C. 14A:21-9 or for the purchase of such measures to be installed by the customer;

4. Shall be undertaken, to the extent practicable and consistent with (b)1, (b)2 and (b)3 above, in a manner which minimizes the cost of program measures to such customers; and

5. Shall include making available upon request a current estimate of the average price of supply and installation of program measures subject to the contracts entered into by the utility under (a) above.

[14A:21-14.3 Utility supply and installation]

*(a) No covered utility shall undertake the supply or installation of any program measure pursuant to the exception contained in N.J.A.C. 14A:21-14.2 without the prior approval of the Department and the BPU.

(b) Any covered utility which wishes to engage in the supply or installation of any program measure pursuant to the exception contained in N.J.A.C. 14A:21-14.2 shall:

1. Submit to the Department and the BPU a program proposal which shall include the following:

i. A description of the program measure to be supplied or installed, including a description of the products;

ii. The geographical areas where the program measure will be installed;

iii. Additional suppliers and installers. A program must contain a procedure for expanding the number of suppliers and/or installers as demand for the service increases.

iv. Procedures for the selection of suppliers and installers. Such procedures shall provide, at a minimum, for individual notice about the selection of subcontractors to each supplier and installer (as appropriate) whose name appears on the HESP lists distributed by the utility in the area to be served by the supply or installation program. The selection procedures shall not discriminate unfairly among suppliers and installers but shall consider the quality and cost of product and installation and geographical area;

v. A copy of the standard contract to be used between the utility and the selected suppliers and installers;

vi. The number of subcontractors to be selected; and

vii. A description of the quality control procedures.

2. Agree to insure that all selected suppliers and installers will be on the Master Record and provide the Department with the names of all selected suppliers and installers in order that the Department can insure that they are included on the Master Record;

3. Provide the Department with written assurances that all selected suppliers and installers will not be subject to utility control except as to performance of the contracts;

4. Agree to participate in a conciliation conference requested by any non-selected installer or supplier alleging injury under the program;

5. Agree to participate in a public hearing held by the Department or the BPU before any program shall become effective; and

6. Agree to provide the Department and the BPU every month which the program operates with sales records and relevant financial data, including sales prices, of their contracted suppliers and installers. Sales records for two years prior to the program shall also be supplied. If the Department and the BPU determine that the program has increased the market shares of the subcontractors to an unreasonably large proportion, the Department and the BPU shall require that additional contractors and suppliers be added to the program pursuant to selection procedures described in (b)(1)(iv) above.

(c) In approving a program proposal, the Department and the BPU shall issue a written decision (available to the public) regarding the following determinations:

1. That the submission requirements set forth in N.J.A.C. 14A:21-14.3 have been fulfilled;

2. That the proposed program is consistent with the State Energy Master Plan;

3. That the program shall not significantly affect competition;

4. That the program shall not interfere with the covered utility's ability to provide safe, adequate and proper service;

5. That the selection process for suppliers and installers does not discriminate unfairly among suppliers and installers;

6. That product and installation standards are consistent with standard practice and do not unfairly restrict suppliers and installers from applying to participate as subcontractors; and

7. That the utility's procedures for selecting subcontractors provided under (b)1. above shall provide to small and minority-owned businesses a fair chance to participate in the subcontracting program.]*

14A:21-*[14.4]**11.3* Exception for certain measures (No change.)

14A:21-*[14.5]**11.4* Exception for existing supply and installation

(a) Any supply or installation of any program measure that the covered utility was engaged in on November 9, 1978, shall not be subject to the prohibition contained in N.J.A.C. 14A:21-14.1:

1. During such time as applications for determinations with respect to such activity, filed in accordance with 10 C.F.R. 456.507, are pending; and

2. Upon a final determination that such program measure was being supplied or installed on November 9, 1978 by the utility seeking the determination.

(b) Any supply or installation of any program measure which the covered utility had by November 9, 1978, broadly advertised that it would supply or install, or with respect to which the utility had by November 9, 1978, completed substantial preparations for supplying or installing shall not be subject to the prohibition contained in N.J.A.C. 14A:21-14.1:

1.-2. (No change.)

[14A:21-14.6 Waivers]

*(a) Any covered utility may request a waiver of the prohibition contained in 10 C.F.R. 456.502 (a) pursuant to 10 C.F.R. 456.505.

(b) No covered utility shall submit a petition for waiver to the U.S. Department of Energy pursuant to 10 C.F.R. 456.505 unless it first submits a copy of the petition to the Department.

(c) In addition to the requirements of 10 C.F.R. 456.505 and 507, a petition for waiver shall include the following information:

1. A description of the activity to be carried out, including the type of service to be offered and the customers that are to receive the service;

2. A certification that the Governor, the Department and the BPU have been notified of the petition;

3. Evidence that the activity would be carried out at fair and reasonable prices and interest rates; and

4. Evidence that the activity would not involve or result in unfair methods of competition, or unfair or deceptive acts or practices.

(d) If the U.S. Department of Energy waives any prohibition contained in 10 C.F.R. 456.502(a) upon petition by a covered utility pursuant to 10 C.F.R. 456.505, then the prohibition contained in the N.J.A.C. 14A:21-14.1 shall be deemed waived.]*

SUBCHAPTER 12. DISQUALIFICATION FROM HOME HEATING SUPPLIER PARTICIPATION AND MASTER RECORD

14A:21-12.1 Hearing

***No person shall be excluded, disqualified or removed from**

participation in the home heating supplier program or from the Master Record without the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1-1 et seq.*

EMERGENCY ADOPTION

AGRICULTURE

(a)

DIVISION OF DAIRY INDUSTRY

Prohibiting the Sale of Milk Below Cost by Stores

Adopted Emergency New Rules and Concurrent Proposal: N.J.A.C. 2:53-3
Emergency New Rules Adopted: November 19, 1985 by Samuel Garrison, Assistant Secretary, Department of Agriculture

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): November 25, 1985.

Emergency New Rules Filed: November 26, 1985 as R.1985 d.648.

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-20.

Emergency New Rules Effective Date: November 26, 1985.

Emergency New Rules Expiration Date: January 25, 1986.

Concurrent Proposal Number: PRN 1985-692.

Submit comments by January 16, 1986 to:
 Woodson W. Moffett, Jr., Director
 Division of Dairy Industry
 New Jersey Department of Agriculture
 CN 332
 Trenton, New Jersey 08625

These new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency rules are being proposed for reoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The agency emergency new rules and concurrent proposal follows:

Summary

Pursuant to the Milk Control Act of New Jersey, minimum milk prices were fixed from the mid-1930's, except for brief periods until November 1, 1980. In November 1980, the division suspended minimum prices and adopted a strengthened regulation prohibiting the sale of milk below cost. This regulation has remained continuously in effect until November 1, 1985, when it expired pursuant to Executive Order 66(1978). The emergency adoption of the regulation will continue the present arrangements without interruptions.

In order to maintain an adequate supply of milk at reason-

able prices for New Jersey consumers, it is necessary to adopt on an emergency basis these regulations prohibiting sales of milk below cost by stores. Experience in the past has shown that absent regulation of the dairy industry chaotic conditions develop which may result in interruptions in the supply of milk and milk products and ultimately result in higher costs to consumers.

Social Impact

Milk is a highly perishable product in constant demand by consumers. Regulations providing for stable markets and reasonable prices provide consumers with assurance that they have available this important food item in necessary quantity and at favorable prices.

Emergency adoption of these regulations will provide consumers of the State of New Jersey this kind of assurance.

Economic Impact

Emergency adoption of these regulations will continue the benefit of stable milk markets and adequate supplies of milk at reasonable prices to consumers. Milk dealers and stores will be benefited by assuring that they can recover the cost of this product at the consumer level, thus assuring an economically viable dairy industry in New Jersey.

New Jersey consumers should expect to receive milk at prices which are substantially below national average prices and continue the savings, which during the most recent calendar year amounted to an estimated \$32 million, as compared with national average prices.

Full text of the emergency adoption and concurrent proposal follows.

SUBCHAPTER 3. SALES BELOW COST; STORES

2:53-3.1 Sales below cost prohibited

It shall be unlawful and a violation of these regulations for any licensed store to offer for sale or sell milk or milk products at less than the cost thereof as hereinafter defined; but nothing in this regulation shall prevent a store from meeting the price or offer of a competitor for a product or products of like quality sold in similar quantities; provided, however, that the burden of proving and properly documenting the meeting of a competitive price shall rest with the licensee asserting the claim; and provided further that nothing in this subsection shall prohibit bulk, distress or business closing sales if prior notice of such sale has been filed with and approved in writing by the Director, Division of Dairy Industry.

2:53-3.2 Cost defined

The term "cost" as used herein shall include the net invoice cost of the milk and milk products plus all other costs directly or indirectly related to the sale of the milk and milk products. Such cost shall be determined in accordance with generally accepted cost accounting principles and be allocated proportionately to each unit of product sold and shall include without limitation all salaries of executives and officers, all costs of labor, rent, depreciation, selling, maintenance, delivery, license fees, taxes, insurance and all other costs as may be incurred by the store.

MISCELLANEOUS NOTICES

COMMUNITY AFFAIRS

HEALTH

(a)

(b)

DIVISION OF HOUSING AND DEVELOPMENT

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of Petition for a Rule Uniform Construction Code One- and Two-Family Dwelling Construction Subcode

Change of Hospital Bed Additions; Modernization/Renovation, New Construction in Excess of \$10,000,000 Certificate of Need Batching Cycle

On November 4, 1985, a petition for a rule was submitted by the law firm of Irwin, Post and Rosen, P.A., on behalf of Stair-Pak Products Co., Inc., a manufacturer of spiral staircases.

Public Notice

Take notice that the Commissioner of Health, in cooperation with the Health Care Administration Board, has changed the batching cycle scheduled to begin February 15, 1986 for certificate of need applications for hospital bed additions or modernization/renovation and new construction projects in excess of \$10,000,000.

The petitioner seeks to amend the provisions of the One- and Two-Family Dwelling Construction Subcode (CABO One and Two Family Dwelling Code) that concern winders and spiral staircases. Specifically, the petitioner seeks to amend Section R-214.2 to read as follows:

Applications for projects below the \$10,000,000 threshold will not be affected by this notice and will continue to be accepted by the Department of Health. This will allow the processing of projects of relatively minor scope and impact on statewide capital expenditures. Those applications of an emergency nature which address patient safety and licensure deficiencies will also not be effected where the \$10,000,000 cost threshold is not exceeded.

Section R. 214.2(a) Winders. Winders are permitted provided the width of the tread at a point not more than twelve (12) inches from the side where the treads are narrower is not less than nine (9) inches and the minimum width is not less than six (6) inches.

The batching cycle for certificate of need applications scheduled to begin on February 15, 1986 will be deleted. The next deadline for the submission of new or revised certificate of need applications for hospital bed additions or modernization/renovation and construction projects in excess of \$10,000,000 will be on July 1, 1986 for the August 15, 1986 cycle. The change shall have no effect on subsequent batching cycles for certificate of need applications for hospital bed additions or modernization/renovation and construction projects.

Winders are permitted provided the minimum width of any tread is no less than six (6) inches and the average width of any tread is not less than nine (9) inches.

Section R. 214.2(b) Spiral Stairs. Spiral stairways are permitted provided the width of the tread at a point not more than twelve (12) inches from the side where the treads are narrower is not less than nine (9) inches.

The petitioner states that the present language of Section R-214.2 is in conflict with the BOCA/National Basic Building Code. The petitioner's spiral staircases conform to the BOCA/National requirements but not to the CABO requirements and the latter therefore have a substantial adverse impact upon the petitioner.

Before taking action on this petition the Bureau of Construction Code Enforcement wishes to solicit comments from the public concerning the merits of the requested action.

Interested persons may submit comments concerning this petition on or before January 16, 1985. Comments should be addressed to:

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

This deferral of the batching cycle is being implemented in order to provide sufficient time to the Statewide Health Coordinating Council and the Health Care Administration Board to act on an overall hospital capital expenditure policy for New Jersey. The Department is preparing several major policy recommendations in response to the report issued by the Governor's Advisory Council on Capital Expenditures for Health Care Facilities. These recommendations will modify current policies and regulations affecting both reimbursement and health planning procedures.

The central issue facing New Jersey's health care system today is the affordability of new hospital capital expenditures. It is anticipated that in excess of \$600 million in hospital new modernization/renovation projects will be submitted in the next scheduled batching cycle. The Department has researched the issue of the existing level of capital indebtedness in New Jersey and has documented that the rate of capital to non-capital hospital expenditures is 11.35 percent, significantly higher than the 7.4 percent rate estimated nationally. In view

of new federal limitations on capital reimbursement being proposed, it is imperative that a capital policy be established which responsibly addresses these statewide issues.

During the deferral period, final action on the proposed Hospital Policy Manual, N.J.A.C. 8:43E-1.1 et seq (see 17 N.J.R. 1220(a), will be considered. The proposed Hospital Policy Manual currently under consideration will be amended to reflect statewide capital policy which may include an affordability principle, prioritization criteria, and an areawide planning process.

The Department of Health is also currently developing a new acute care bed need methodology in cooperation with the

Statewide Health Coordinating Council. Deferral of the February 15 batching cycle will permit review of Certificate of Need applications based upon current and relevant planning data.

Any inquiries should be addressed to:

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

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the September 3, 1985 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 used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1985 d.300 means the three hundredth rule adopted in 1985.

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. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

N.J.R. CITATION LOCATOR

<u>If the N.J.R. citation is between:</u>	<u>Then the rule proposal or adoption appears in this issue of the Register</u>	<u>If the N.J.R. citation is between:</u>	<u>Then the rule proposal or adoption appears in this issue of the Register</u>
16 N.J.R. 3241 and 3336	December 3, 1984	17 N.J.R. 1461 and 1608	June 17, 1985
16 N.J.R. 3337 and 3518	December 17, 1984	17 N.J.R. 1609 and 1700	July 1, 1985
17 N.J.R. 1 and 140	January 7, 1985	17 N.J.R. 1701 and 1818	July 15, 1985
17 N.J.R. 141 and 236	January 21, 1985	17 N.J.R. 1819 and 1954	August 5, 1985
17 N.J.R. 237 and 338	February 4, 1985	17 N.J.R. 1955 and 2070	August 19, 1985
17 N.J.R. 339 and 502	February 19, 1985	17 N.J.R. 2071 and 2170	September 3, 1985
17 N.J.R. 503 and 634	March 4, 1985	17 N.J.R. 2171 and 2318	September 16, 1985
17 N.J.R. 635 and 762	March 18, 1985	17 N.J.R. 2319 and 2484	October 7, 1985
17 N.J.R. 763 and 858	April 1, 1985	17 N.J.R. 2485 and 2584	October 21, 1985
17 N.J.R. 859 and 1006	April 15, 1985	17 N.J.R. 2585 and 2710	November 4, 1985
17 N.J.R. 1007 and 1158	May 6, 1985	17 N.J.R. 2711 and 2814	November 18, 1985
17 N.J.R. 1159 and 1358	May 20, 1985	17 N.J.R. 2815 and 2934	December 2, 1985
17 N.J.R. 1359 and 1460	June 3, 1985	17 N.J.R. 2935 and 3032	December 16, 1985

<u>N.J.A.C. CITATION</u>		<u>PROPOSAL NOTICE (N.J.R. CITATION)</u>	<u>DOCUMENT NUMBER</u>	<u>ADOPTION NOTICE (N.J.R. CITATION)</u>
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.7	Appearances by out-of-state attorneys	17 N.J.R. 1820(a)	R.1985 d.508	17 N.J.R. 2457(b)
1:2-2.1	Civil Service cases: pre-proposal concerning conference hearings	17 N.J.R. 2072(a)		
1:2-2.1, 2.4	Conference hearings and employee/employer disputes	17 N.J.R. 2712(a)		
1:6A-3.2	Adjournment and Department of Education settlement conferences	17 N.J.R. 2073(a)	R.1985 d.539	17 N.J.R. 2606(a)
1:6A-5.4	Special education hearings: placement of child pending an appeal	17 N.J.R. 2586(a)		
1:7	Emergency Water Supply Allocation Plan cases	17 N.J.R. 1674(a)	R.1985 d.446	17 N.J.R. 2099 (a)
1:10A	Inmate discipline cases	17 N.J.R. 1610(a)	R.1985 d.489	17 N.J.R. 2288(b)

(TRANSMITTAL 13, dated August 19, 1985)

AGRICULTURE—TITLE 2				
2:1-2.3, 3.1, 3.2, 3.4, 3.7, 3.8	Department organization	17 N.J.R. 1614(a)	R.1985 d.447	17 N.J.R. 2100(a)
2:6-1	Control of veterinary biologicals	17 N.J.R. 1617(a)	R.1985 d.448	17 N.J.R. 2102(a)
2:32-2.7	Sire Stakes Program	17 N.J.R. 1956(a)	R.1985 d.521	17 N.J.R. 2535(a)
2:32-2.36, 3	Sire Stakes Program: appeals	17 N.J.R. 2320(a)		
2:48-5	Use of coupons in milk promotions	17 N.J.R. 2486(a)		
2:53-3	Milk sales below cost by stores	Emergency	R.1985 d.648	17 N.J.R. 3014(a)
2:90-1.5, 1.14	Soil conservation plan certifications; minor subdivisions	17 N.J.R. 2172(a)		
2:90-1.13	Soil conservation: extraction activity	17 N.J.R. 1957(a)		

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BANKING—TITLE 3				
3:1-2.24	Modification of Commissioner's Order restricting stock transfers	17 N.J.R. 2487(a)		
3:1-11.1	Savings banks and loans to affiliated persons	17 N.J.R. 2073(b)	R.1985 d.556	17 N.J.R. 2606(b)
3:1-12	Multiple-party deposit accounts	17 N.J.R. 2488(a)		
3:6-15	Savings banks and loans to affiliated persons	17 N.J.R. 2073(b)	R.1985 d.556	17 N.J.R. 2606(b)
3:7-3.3, 3.6, 3.7	Confirmation of loans and deposits	17 N.J.R. 1702(a)	R.1985 d.485	17 N.J.R. 2247(a)
3:17-7.1, 7.3	Small loan licensees: mortgage bankers and brokers business	17 N.J.R. 1703(a)	R.1985 d.486	17 N.J.R. 2247(b)
3:26-4.1	State savings and loan parity with Federal associations	17 N.J.R. 2713(a)		
3:27-4.5, 4.6	Savings and loan associations: asset limitation; service corporations	17 N.J.R. 1619(a)	R.1985 d.484	17 N.J.R. 2248(a)
3:38-5.2	Return of borrower's commitment fee	17 N.J.R. 2488(b)		
3:41	Readoption of Cemetery Board rules	17 N.J.R. 1704(a)	R.1985 d.573	17 N.J.R. 2749(a)

(TRANSMITTAL 27, dated April 15, 1985)

CIVIL SERVICE—TITLE 4

4:1-5.1, 8.26, 8.27	Appeals concerning removal from eligible list for medical reasons	17 N.J.R. 1957(b)		
4:1-12.12	Restorations to promotional lists	17 N.J.R. 645(a)		
4:1-16.7	Suspension, fine and demotion for disciplinary purposes	17 N.J.R. 1360(a)	R.1985 d.456	17 N.J.R. 2103(a)
4:1-23	Grievances and minor discipline	17 N.J.R. 2587(a)		
4:2-12.1, 12.2	Appeals concerning removal from eligible list for medical reasons	17 N.J.R. 1957(b)		
4:2-23	Grievances and minor discipline	17 N.J.R. 2587(a)		
4:3-12.1, 12.2	Appeals concerning removal from eligible list for medical reasons	17 N.J.R. 1957(b)		
4:3-23	Grievances and minor discipline	17 N.J.R. 2587(a)		

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COMMUNITY AFFAIRS—TITLE 5

5:11-6.1	Prior filing of Workable Relocation Assistance Plans	17 N.J.R. 2321(a)	R.1985 d.623	17 N.J.R. 2971(a)
5:14	Neighborhood Preservation Balanced Housing Program	17 N.J.R. 2489(a)		
5:18-1.1, 1.3, 1.4, 1.5, 2.4, 2.5, 2.7, 2.8, 2.12, 3.1, 3.2	Uniform Fire Code	17 N.J.R. 1015(b)	R.1985 d.611	17 N.J.R. 2870(a)
5:18-1.1, 1.4, 1.5, 1.6, 2.3, 4	Uniform Fire Code, Fire Safety Code	17 N.J.R. 1161(a)		
5:18A-2.1—2.4, 2.6, 3.2, 3.3, 4.1, 4.3, 4.4	Fire Code Enforcement	17 N.J.R. 1015(b)	R.1985 d.611	17 N.J.R. 2870(a)
5:18B-3.2	High Level Alarms	17 N.J.R. 1015(b)	R.1985 d.611	17 N.J.R. 2870(a)
5:23-2.14, 4.18, 4.20	UCC: annual construction permits	17 N.J.R. 2490(a)		
5:23-2.15	Uniform Construction Code: contractor seals	17 N.J.R. 1462(a)	R.1985 d.479	17 N.J.R. 2248(b)
5:23-2.15, 2.21	UCC: engineers and architects	17 N.J.R. 1033(a)		
5:23-3.11, 4.22, 4.24, 4.25	Uniform Construction Code: premanufactured construction	17 N.J.R. 1169(a)		
5:23-3.15	UCC: Plumbing Subcode	17 N.J.R. 2714(a)		
5:23-5.4, 5.5	UCC inspectors: experience requirements	17 N.J.R. 1821(a)		
5:23-5.7, 5.11	UCC: license suspensions and revocations	17 N.J.R. 1705(a)	R.1985 d.528	17 N.J.R. 2535(b)
5:23-8	Asbestos Hazard Abatement Subcode	17 N.J.R. 1782(a)	R.1985 d.472	17 N.J.R. 2249(a)
5:24	Condominium and cooperative conversion: readopt rules	17 N.J.R. 1706(a)	R.1985 d.529	17 N.J.R. 2536(a)
5:25	New Home Warranties and Builders' Registration	17 N.J.R. 2816(a)		
5:28	Readopt State Housing Code	17 N.J.R. 1174(a)		
5:31-2.1—2.5, 4.1, 4.2, 7.1—7.7	Local authorities: accounting principles, auditing and budgeting	17 N.J.R. 1823(a)	R.1985 d.511	17 N.J.R. 2537(a)
5:37	Municipal, County and Authority Employees Deferred Compensation Programs	17 N.J.R. 1960(a)	R.1985 d.598	17 N.J.R. 2749(b)
5:51-1.4, 1.5	Local provision of recreational services for handicapped persons	17 N.J.R. 1463(a)	R.1985 d.444	17 N.J.R. 2105(a)
5:80-4	Housing and Mortgage Finance	17 N.J.R. 1174(b)		
5:80-8	Housing and Mortgage Finance Agency: housing project occupancy requirements	17 N.J.R. 1620(a)		
5:80-17, 18	Housing and Mortgage Finance: prevailing wages; debarment from contracting	17 N.J.R. 1174(b)	R.1985 d.559	17 N.J.R. 2607(a)
5:80-20	HMFA housing projects: applicant and tenant income certification	17 N.J.R. 2321(b)		

(TRANSMITTAL 32, dated August 19, 1985)

DEFENSE—TITLE 5A

(TRANSMITTAL 1, dated May 20, 1985)

EDUCATION—TITLE 6

6:3-1.2	Board of school estimate: correction			17 N.J.R. 2753(a)
6:3-1.17, 1.23	School facility planning services	17 N.J.R. 650(a)	R.1985 d.527	17 N.J.R. 2540(a)
6:11-3	Teacher education: Basic Certification Requirements	17 N.J.R. 2181(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
6:11-7	Standards for State approval of teacher preparation	17 N.J.R. 1708(a)	R.1985 d.613	17 N.J.R. 2884(a)
6:20-2	Readopt Local Bookkeeping and Accounting rules	17 N.J.R. 1361(a)	R.1985 d.452	17 N.J.R. 2105(b)
6:21-1	Readopt Pupil Transportation Standards	17 N.J.R. 1365(a)	R.1985 d.451	17 N.J.R. 2107(a)
6:22	School facility planning services	17 N.J.R. 650(a)		
6:27-3	Correction to Administrative Code: Approved Secondary School Summer Sessions	_____	_____	17 N.J.R. 2463(a)
6:28-3.5	Invalidation of "pre-school handicapped" definition and termination of special services rule	_____	_____	17 N.J.R. 2463(b)
6:30-1.4	Fees for GED test	17 N.J.R. 1367(a)	R.1985 d.450	17 N.J.R. 2108(a)

(TRANSMITTAL 33, dated August 19, 1985)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-4	Fee schedule for Environmental Cleanup Responsibility Act	17 N.J.R. 1622(a)	R.1985 d.487	17 N.J.R. 2260(a)
7:1-7	Hazardous substance discharges: reports and notices	17 N.J.R. 1826(a)		
7:1E-3.2	Information filing address for Division of Waste Management	_____	_____	17 N.J.R. 2463(c)
7:1F	Industrial Survey Project rules: waiver of Executive Order No. 66	17 N.J.R. 866(a)		
7:1G	Worker and Community Right to Know Act: U.S. Court of Appeals decision	_____	_____	17 N.J.R. 2794(b)
7:2-12	Open lands management	17 N.J.R. 866(b)		
7:7-2.2	Wetlands maps in Ocean County	17 N.J.R. 1710(a)		
7:7E	Revisions to Coastal Resources and Development rules	17 N.J.R. 1466(a)		
7:7E	Coastal Resource and Development revisions: extension of comment period	17 N.J.R. 1797(b)		
7:7E	Coastal Resource and Development Policies: correction to Code and proposed revisions	17 N.J.R. 1797(c)		
7:9-4, Index D	Surface water classifications: Hackensack and Hudson rivers	17 N.J.R. 1625(a)	R.1985 d.466	17 N.J.R. 2109(a)
7:9-15	Restoration of publicly-owned freshwater lakes	17 N.J.R. 2182(a)		
7:12-2.7	Hard clam relay program	17 N.J.R. 2185(a)	R.1985 d.634	17 N.J.R. 2971(b)
7:13-7.1	Flood hazard area along Long Brook and Manasquan River	17 N.J.R. 2324(a)		
7:13-7.1(c)29	Floodway delineations within Maurice River Basin	17 N.J.R. 2186(a)		
7:13-7.1(d)14	Flood hazard along Lamington River in Morris County	17 N.J.R. 2324(a)		
7:13-7.1(d)47	Redelineation of Pine Brook in Bergen County	17 N.J.R. 2074(a)		
7:13-7.1(d)49	Floodway delineations in Union County	17 N.J.R. 1965(a)		
7:13-7.1(d)53	Floodway delineations in Raritan Basin (Project H)	17 N.J.R. 2492(a)		
7:13-7.1(h)	Floodway delineations in Hackensack Basin	17 N.J.R. 1175(a)		
7:13-7.1(i)	Floodway delineations in Central Passaic Basin Projects G and R	17 N.J.R. 1176(a)		
7:19-6.10	Water supply management in critical areas	17 N.J.R. 1966(a)	R.1985 d.596	17 N.J.R. 2753(b)
7:19A-1.4	Emergency water supply: residential and nonresidential users defined	17 N.J.R. 1967(a)	R.1985 d.595	17 N.J.R. 2754(a)
7:19B-1.3	Emergency water supply: residential and nonresidential users defined	17 N.J.R. 1967(a)	R.1985 d.595	17 N.J.R. 2754(a)
7:25-2.20	Higbee Beach Wildlife Management Area	Emergency	R.1985 d.514	17 N.J.R. 2459(a)
7:25-4.6	Nongame and exotic wildlife: possession permit fees	17 N.J.R. 2589(a)		
7:25-5.12	Use of steel-jaw leghold traps	17 N.J.R. 2714(b)		
7:25-6	1986-87 Fish Code	17 N.J.R. 2187(a)	R.1985 d.646	17 N.J.R. 2972(a)
7:25-14	Readopt rules on Crab Pots	17 N.J.R. 1830(a)	R.1985 d.560	17 N.J.R. 2608(a)
7:25-15.1	Hard clam relay program	17 N.J.R. 2191(a)	R.1985 d.633	17 N.J.R. 2976(a)
7:25-16.1	Defining freshwater fishing lines	17 N.J.R. 2193(a)	R.1985 d.597	17 N.J.R. 2755(a)
7:25-17	Disposal and possession of dead deer	17 N.J.R. 2715(a)		
7:25-19	Atlantic Coast harvest season	17 N.J.R. 2494(a)		
7:26-1.4, 1.6, 9.1, 12.1	Tolling agreements and reclamation of hazardous waste	17 N.J.R. 1968(a)		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:26-1.4, 7.4, 9.1, 12.1, 12.8	Reuse of hazardous waste	17 N.J.R. 2716(a)	
7:26-1.4, 9.3	Above-ground tank storage of hazardous waste	17 N.J.R. 1501(a)	R.1985 d.620
7:26-1.7	Waste management: on-site disposal of construction debris	17 N.J.R. 1040(a)	17 N.J.R. 2885(a)
7:26-1.7	Solid waste disposal: exemption from registration	17 N.J.R. 1368(a)	
7:26-2.6, 2.7	Disposal of asbestos waste	17 N.J.R. 2719(a)	
7:26-3	Waste management: readopt Collection and Haulage rules	17 N.J.R. 1041(a)	R.1985 d.558
7:26-6.5	Solid waste flow: Hunterdon County	17 N.J.R. 517(a)	R.1985 d.503
7:26-6.5	Solid waste flow: Ocean County	17 N.J.R. 2590(a)	17 N.J.R. 2388(a)
7:26-6.5	Solid waste flow: Camden County	17 N.J.R. 2591(a)	
7:26-7.4, 8.3, 8.15, 9.2, 10.6, 10.	Restriction of land disposal of hazardous waste	17 N.J.R. 779(a)	
7:26-12.9	Correction to Administrative Code: Short-term permit for hazardous waste treatment	_____	_____
7:26-14	Resource Recovery grants and loans	16 N.J.R. 3385(b)	
7:26-14	Resource Recovery grants and loans: extension of comment period	17 N.J.R. 242(a)	
7:26-16.4	Solid and hazardous waste: transporters and facilities	17 N.J.R. 518(a)	
7:27-14.3	Diesel-powered motor vehicles: idle standard	16 N.J.R. 2887	R.1985 d.610
7:27-15.6	Gas-fueled motor vehicle: idle standard	16 N.J.R. 2889	R.1985 d.610
7:27-16	Air pollution by volatile organic substances	17 N.J.R. 1969(a)	17 N.J.R. 2887(a)
7:27B-3	Determination of volatile organic substances from source operations	17 N.J.R. 2194(a)	
7:27B-4.6	Lead test paper procedure	17 N.J.R. 781(a)	
7:28-1.4, 17	Industrial and nonmedical radiology	17 N.J.R. 1626(a)	R.1985 d.502
7:28-19.2, 19.3, 19.4, 19.6, 19.9, 19.10	Podiatric x-ray technology	17 N.J.R. 1632(a)	R.1985 d.501
7:30	Pesticide Control Code	17 N.J.R. 242(b)	R.1985 d.557
7:38	Wild and scenic rivers system	17 N.J.R. 1986(a)	R.1985 d.510
7:45	Delaware Raritan Canal State Park: Review Zone rules	17 N.J.R. 1711(a)	17 N.J.R. 2609(b)
7:50-2.11, 4.12-4.92	Pinelands comprehensive management	17 N.J.R. 1918(a)	R.1985 d.494

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HEALTH—TITLE 8

8:7-1	Licensure of persons for public health positions	17 N.J.R. 1926(a)	R.1985 d.476	17 N.J.R. 2265(a)
8:9-1.11	State Sanitary Code: disposal of unclaimed cremains	17 N.J.R. 2325(a)		
8:9-1.11	Disposal of cremains: public hearing	17 N.J.R. 2835(a)		
8:13-2.1, 2.4, 2.6—2.11, 2.13, 2.14	Depuration of soft shell clams	17 N.J.R. 1370(a)		
8:21-7	Frozen dessert products	17 N.J.R. 1986(b)	R.1985 d.591	17 N.J.R. 2755(b)
8:31-26.3, 26.4	Health care facilities: employee physicals; child abuse	16 N.J.R. 3249(a)	R.1985 d.440	17 N.J.R. 2100(a)
8:31-26.5	Family planning facilities: licensure fee	17 N.J.R. 1999(a)	R.1985 d.581	17 N.J.R. 2768(a)
8:31A-9.1, 9.2	SHARE economic factor	17 N.J.R. 2495(a)		
8:31B-3	Hospital reimbursement: procedure and methodology	17 N.J.R. 2000(a)	R.1985 d.551	17 N.J.R. 2633(a)
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	17 N.J.R. 2464(a)		
8:31B-4	Hospital reimbursement: financial elements and reporting	17 N.J.R. 2004(a)	R.1985 d.550	17 N.J.R. 2637(a)
8:33	Certificate of Need application and review process	17 N.J.R. 1190(a)	R.1985 d.498	17 N.J.R. 2403(a)
8:33A-2.6	Surgical facilities: criteria for review and approval	17 N.J.R. 2497(a)		
8:33B	Extracorporeal Shock Wave Lithotripsy (ESWL)	17 N.J.R. 1728(a)	R.1985 d.497	17 N.J.R. 2431(a)
8:34-1.31	Licensing of nursing home administrators	17 N.J.R. 2212(a)		
8:43-1	Residential health care facilities	17 N.J.R. 2498(a)		
8:43-3.22	Fire safety in residential health care facilities	17 N.J.R. 1731(a)	R.1985 d.513	17 N.J.R. 2553(b)
8:43-4.13	Residential health care: personal needs allowance	17 N.J.R. 1731(b)	R.1985 d.512	17 N.J.R. 2554(a)
8:43A	Licensure of ambulatory care facilities	16 N.J.R. 3254(a)	R.1985 d.438	17 N.J.R. 2110(b)

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N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:43B-1.14	Hospital facilities: psychiatric patient rights	17 N.J.R. 665(a)	
8:43B-5	Licensure of hospital facilities: personnel	17 N.J.R. 2501(b)	
8:43B-5, 15, 16	Standards for licensure of Hospital Facilities: waiver of sunset provision	17 N.J.R. 2501(a)	
8:43B-8.16	Obstetric and newborn services: use of oxytocic agents	17 N.J.R. 2213(a)	
8:43B-8.33—8.44	Newborn care services: physical plant standards	17 N.J.R. 519(a)	
8:43B-15	Hospital facilities: renal dialysis services	17 N.J.R. 2503(a)	
8:43B-16	Hospital facilities: nurse-midwifery services	17 N.J.R. 2512(a)	
8:43E-1	Hospital Policy Manual: Certificate of Need rules	17 N.J.R. 1220(a)	
8:44-2.10	Reportable occupational and environmental diseases and poisons	17 N.J.R. 1831(a)	
8:51-1-6	Local boards: recognized public health activities and minimum standards	17 N.J.R. 1633(a)	R.1985 d.477 17 N.J.R. 2270(a)
8:53	Implementation of Local Health Services Act	17 N.J.R. 2836(a)	
8:57-1.13	Reportable occupational and environmental diseases and poisons	17 N.J.R. 1831(a)	R.1985 d.518 17 N.J.R. 2554(b)
8:57-1.19, 1.20, -6	Cancer registry	17 N.J.R. 2836(b)	
8:60	Asbestos licenses and permits	17 N.J.R. 1676(a)	R.1985 d.468 17 N.J.R. 2275(a)
8:65-1	Controlled Dangerous Substances: readopt Registration rules	17 N.J.R. 1508(a)	R.1985 d.459 17 N.J.R. 2132(a)
8:65-5	Controlled dangerous substances: records and reports of registrants	17 N.J.R. 524(a)	R.1985 d.606 17 N.J.R. 2890(a)
8:65-6	Controlled dangerous substances: Federally-required order forms	17 N.J.R. 528(a)	R.1985 d.457 17 N.J.R. 2135(a)
8:65-7.3	Controlled dangerous substances: issuing of prescriptions	17 N.J.R. 876(a)	R.1985 d.461 17 N.J.R. 2138(a)
8:65-8	Controlled dangerous substances: manufacture, distribution, disposal and nondrug use	17 N.J.R. 2721(a)	
8:65-10.1	Add 3-Methylfentanyl to Schedule I	17 N.J.R. 1511(a)	R.1985 d.458 17 N.J.R. 2138(b)
8:65-10.1	Controlled dangerous substances: 3, 4-methylenedioxymethamphetamine	17 N.J.R. 2214(a)	
8:65-10.5	Reschedule Buphenorphine to Schedule V	17 N.J.R. 1234(a)	R.1985 d.460 17 N.J.R. 2138(c)
8:65-11.2	Narcotic treatment programs: registration fee	17 N.J.R. 359(a)	
8:71	Additions to generic drug list (see 17 N.J.R. 1295(a), 1562(a), 2043(a))	17 N.J.R. 158(a)	R.1985 d.516 17 N.J.R. 2556(a)
8:71	Generic drug list additions (see 17 N.J.R. 2042(b), 2556(b))	17 N.J.R. 1043(a)	R.1985 d.580 17 N.J.R. 2769(a)
8:71	Generic drug list additions (see 17 N.J.R. 2557(a))	17 N.J.R. 1733(a)	R.1985 d.579 17 N.J.R. 2769(b)
8:71	Generic drug list additions	17 N.J.R. 2842(a)	

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HIGHER EDUCATION—TITLE 9

9:2-1	Minority Faculty Advancement Loan Program	17 N.J.R. 1512(a)	R.1985 d.567 17 N.J.R. 2640(a)
9:2-2	Fund for Improvement of Collegiate Education: policies and procedures	17 N.J.R. 2724(a)	
9:2-4.1	Eligibility for Alternate Benefit Program	17 N.J.R. 1635(a)	R.1985 d.588 17 N.J.R. 2770(a)
9:2-11	Veterans Tuition Credit Program	17 N.J.R. 2844(a)	
9:2-12.1, 12.2	Teacher education: degree standards	17 N.J.R. 1515(a)	R.1985 d.589 17 N.J.R. 2771(a)
9:2-12.2	Teacher education: curriculum	17 N.J.R. 22(b)	
9:5-1, 2	Tuition policies at public institutions	17 N.J.R. 2326(a)	
9:7-2.9	Student assistance programs: award combinations	17 N.J.R. 2725(a)	
9:7-3.1	Tuition Aid Grants: 1985-86 Award Table	17 N.J.R. 2050(a)	R.1985 d.572 17 N.J.R. 2643(a)
9:7-3.3, 5.9, 6.8	Student assistance program revisions	17 N.J.R. 1734(a)	R.1985 d.571 17 N.J.R. 2644(a)
9:7-4.1	Garden State Scholars: eligibility	17 N.J.R. 2007(a)	R.1985 d.570 17 N.J.R. 2644(b)
9:7-4.1, 4.2, 4.3, 4.5, 4.8	Garden State Scholarship Program	17 N.J.R. 2726(a)	
9:7-8	Vietnam Veterans Tuition Aid Program	17 N.J.R. 1735(a)	R.1985 d.569 17 N.J.R. 2645(a)
9:8	Jobs, Science and Technology Bond Act: policies and procedures	17 N.J.R. 1516(a)	R.1985 d.566 17 N.J.R. 2646(a)
9:9-1.2	Guaranteed Student Loan Program: second borrowing	17 N.J.R. 1518(a)	R.1985 d.568 17 N.J.R. 2648(a)
9:9-1.6	Guarantee Student Loans and payment of insurance fee	17 N.J.R. 2727(a)	
9:9-1.16	Interest liability on defaulted student loans	17 N.J.R. 2728(a)	
9:9-9.2	Direct PLUS program and co-signer requirement	17 N.J.R. 2728(b)	
9:11, 12	Educational Opportunity Fund Program rules	17 N.J.R. 2214(b)	

(TRANSMITTAL 28, dated August 19, 1985)

HUMAN SERVICES—TITLE 10

N.J.A.C. CITATION	DESCRIPTION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
10:30	Organization of Division of Mental Health and Hospitals	Organizational	R.1985 d.515	17 N.J.R. 2558(a)
10:36-1	Patient supervision at State psychiatric hospitals	17 N.J.R. 2593(a)		
10:37	Community Mental Health Services	17 N.J.R. 2222(a)	R.1985 d.605	17 N.J.R. 2894(a)
10:42	Developmental Disabilities: Emergency Mechanical Restraint	17 N.J.R. 1832(a)		
10:47	Private Licensed Facilities for Developmentally Disabled	16 N.J.R. 2902(a)	R.1985 d.540	17 N.J.R. 2648(b)
10:48	Division of Mental Retardation: appeal procedures	17 N.J.R. 876(b)		
10:49-1.1	Administration Manual: retroactive Medicaid eligibility	17 N.J.R. 2729(a)		
10:49-1.4	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)		
10:49-7	Reinstatement of Medicaid provider	17 N.J.R. 1519(a)	R.1985 d.463	17 N.J.R. 2139(a)
10:50	Transportation Services: HCFA Common Procedure Coding System	17 N.J.R. 1519(b)		
10:50-1.5, 1.6	Reimbursement for ambulance and invalid coach services	17 N.J.R. 1637(a)	R.1985 d.473	17 N.J.R. 2271(a)
10:51-1, 2	Pharmacy Manual: pharmaceutical services and billing procedures	17 N.J.R. 2223(a)	R.1985 d.594	17 N.J.R. 2772(a)
10:51-1.13, 1.14, 3.12, App. A	Pharmaceutical services: "vaccine" reimbursement	17 N.J.R. 1237(a)	R.1985 d.533	17 N.J.R. 2559(a)
10:51-1.14, 5.16	Pharmaceutical services: ineligible prescription drugs	17 N.J.R. 2730(a)		
10:51-4	Consultant Pharmacist Services	17 N.J.R. 2731(a)		
10:51-5.1, 5.16	PAAD: diabetic testing material	17 N.J.R. 1521(a)	R.1985 d.462	17 N.J.R. 2139(b)
10:52-1.1, 1.20	Ambulatory surgical centers	16 N.J.R. 3153(a)	R.1985 d.532	17 N.J.R. 2894(b)
10:52-1.16	Termination of pregnancy in licensed health care facilities	17 N.J.R. 1375(a)		
10:52-1.17	Out-of-state inpatient hospital services	17 N.J.R. 2225(a)		
10:52-1.21	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)		
10:53-1.1, 1.16	Ambulatory surgical centers	16 N.J.R. 3153(a)	R.1985 d.532	17 N.J.R. 2894(b)
10:53-1.14	Termination of pregnancy	17 N.J.R. 1375(a)		
10:54	Physician Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:54-1.23	Termination of pregnancy	17 N.J.R. 1375(a)		
10:54-3	Procedure Code Manual: fees for laboratory services	17 N.J.R. 1376(a)	R.1985 d.531	17 N.J.R. 2560(a)
10:55	Prosthetic-Orthotic Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:57	Podiatry Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:58	Nurse Midwifery Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:59	Medical Supplier Manual: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:59-1.11	Medical Supplier Manual: repair of durable medical equipment	17 N.J.R. 2516(a)		
10:59-1.12	Medical Supplier Manual: correction			17 N.J.R. 2691(c)
10:59-2.1—2.11	Medical Supplier Manual: billing procedures	17 N.J.R. 2326(b)	R.1985 d.628	17 N.J.R. 2977(a)
10:60	Readopt Home Care Services Manual	17 N.J.R. 28(a)	R.1985 d.488	17 N.J.R. 2433(a)
10:60-1.1, 1.2, 2.2, 2.3, 3.1	Personal care assistant services: hours per week and rate of reimbursement	17 N.J.R. 2327(a)		
10:60-2.2, 3.1	Personal care assistant services: procedure codes	17 N.J.R. 2330(a)		
10:61	Independent Laboratory Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:62	Vision Care: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:63-1.5, 1.6, 1.8, 1.13, 2.5, 2.7	Long term care facilities: certification and plan of care	17 N.J.R. 2075(a)		
10:63-3	Vision Care Manual: billing procedures	17 N.J.R. 2731(b)		
10:63-3.2, 3.5, 3.10, 3.19	Reimbursement to long-term care facilities	17 N.J.R. 2331(a)		
10:63-3.17	Long Term Care Services: adjustments to base period data	17 N.J.R. 1736 (a)		
10:64	Hearing Aid Services: Common Procedure Coding System	17 N.J.R. 1519(b)		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
10:66	Independent Clinic Services: Common Procedure Coding System		
10:66-1.1, 1.2, 1.3, 1.6, 1.7, 1.9	Ambulatory surgical centers	17 N.J.R. 1519(b)	
10:66-1.2, 1.6, 3.3	Narcotic and drug abuse treatment centers	16 N.J.R. 3153(a)	R.1985 d.532 17 N.J.R. 2894(b)
10:66-1.6	Termination of pregnancy	17 N.J.R. 1235(a)	
10:66-1.6, 3.3	Personal care assistant services: hours per week and rate of reimbursement	17 N.J.R. 1375(a)	
10:66-3.3	Personal care assistant services: procedure codes	17 N.J.R. 2327(a)	
10:67	Psychological Services: Common Procedure Coding System	17 N.J.R. 2330(a)	
10:69A-1.1, 1.2, 2.1, 4.1, 4.4, 5.3, 6.2, 6.4, 6.10	PAAD: eligibility standards	17 N.J.R. 1519(b)	
10:81-2.7, 3.18	PAM: continued absence; WIN registration	17 N.J.R. 2332(a)	
10:81-2.16, 3.18	PAM: photo IDs; ex-WIN children	17 N.J.R. 2333(a)	
10:81-10.7	PAM: eligibility for refugee and entrant programs	17 N.J.R. 2335(a)	
10:81-11.2, 11.7, 11.9, 11.20	PAM: child support and paternity	17 N.J.R. 2227(a)	
10:81-11.3, 11.9	PAM: Social Security numbers; restriction of information	17 N.J.R. 2845(a)	
10:81-11.9	PAM: reimbursement by counties to State	17 N.J.R. 2516(b)	
10:81-11.9	Public Hearing: County reimbursement to State for Tax Setoff Program for child support enforcement	17 N.J.R. 369(a)	
10:81-11.19	PAM: distribution of arrearage payments for child support	17 N.J.R. 1526(a)	
10:82-1.2	AFDC payment levels: comments	17 N.J.R. 1238(a)	R.1985 d.585 17 N.J.R. 2774(a)
10:82-1.7, 2.3	Correction to Administrative Code	17 N.J.R. 880(a)	R.1985 d.341 17 N.J.R. 2272(a)
10:82-1.10, 1.11	ASH: retrospective budgeting and monthly reporting	17 N.J.R. 2518(a)	17 N.J.R. 2917(a)
10:82-2.19	ASH: recovery of overpayments	17 N.J.R. 2847(a)	
10:82-3.2	ASH: exempt resources	17 N.J.R. 2518(b)	
10:82-3.11	ASH: correction to Administrative Code		17 N.J.R. 2691(b)
10:82-3.13	ASH: eligibility of sponsored alien and sponsor's income	17 N.J.R. 1523(a)	R.1985 d.491 17 N.J.R. 2440(a)
10:82-5.3	ASH: child care	17 N.J.R. 1835(a)	R.1985 d.586 17 N.J.R. 2774(b)
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2336(a)	
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2337(a)	
10:82-5.10	Correction to Administrative Code: Assistance Standards Handbook		17 N.J.R. 2464(b)
10:85-3.2	GAM: determination of unemployability	17 N.J.R. 547(a)	
10:85-3.2	GAM: nursing home patients from out-of-state	17 N.J.R. 2338(a)	
10:85-3.3	GAM: unearned income exclusion	17 N.J.R. 2849(a)	
10:85-3.3, 5.2	GAM: hospital notices and billings	17 N.J.R. 2519(a)	
10:85-3.4	GAM: disposal of resources	17 N.J.R. 2339(a)	
10:85-3.4	GAM: eligibility in other programs	17 N.J.R. 2520(a)	
10:85-4.1	General Assistance payment levels: comments	17 N.J.R. 882(a)	R.1985 d.342 17 N.J.R. 2272(a)
10:85-5.2, 11.2	GAM: inpatient hospital care	17 N.J.R. 2521(a)	
10:85-5.3	GAM: outpatient mental health care	17 N.J.R. 1836(a)	R.1985 d.565 17 N.J.R. 2665(a)
10:85-6.4	GAM: final reporting requirements	17 N.J.R. 1837(a)	R.1985 d.584 17 N.J.R. 2775(a)
10:85-10.1	GAM: "Workfare" defined	17 N.J.R. 2849(b)	
10:85-10.8	GAM: work registration violations and Food Stamp recipients	17 N.J.R. 1838(a)	R.1985 d.618 17 N.J.R. 2900(a)
10:86	Repeal obsolete AFDC Work Incentive Program rules	17 N.J.R. 1838(b)	
10:87-1.14	Food Stamp Program: disclosure of information	17 N.J.R. 1377(b)	R.1985 d.475 17 N.J.R. 2273(a)
10:87-2.38, 5.9	Food Stamp Program: elderly or disabled defined; JTPA income exclusion	17 N.J.R. 2521(b)	
10:87-12.1, 12.2	Food Stamp Program: income deductions, maximum coupon allotments	17 N.J.R. 2564(a)	R.1985 d.647 17 N.J.R. 2978(a)
10:87-12.3, 12.4, 12.7	Food Stamp Program: maximum allowable income	17 N.J.R. 1793(a)	R.1985 d.480 17 N.J.R. 2273(b)
10:89	Home Energy Assistance Handbook	17 N.J.R. 1737(a)	R.1985 d.492 17 N.J.R. 2441(a)
10:89-2.2, 2.3, 3.2, 3.3, 3.4, 3.6, 4.1, 5.1	Home energy assistance	Emergency	R.1985 d.593 17 N.J.R. 2791(a)

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N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
10:90-2.2, 2.3, 2.4, 2.6, 3.3, 4.1—4.10, 5.1, 5.2, 5.6, 6.1, 6.2, 6.3	Monthly Reporting Policy Handbook	17 N.J.R. 1839(a)	
10:94-1.6, 3.14	Medicaid Only: ineligible individuals	17 N.J.R. 2522(a)	
10:94-3.6	Medicaid Only: change of county of residence	17 N.J.R. 2523(a)	
10:94-4.1	Medicaid Only: resource eligibility	17 N.J.R. 2524(a)	
10:94-4.5, 4.6, 4.7	Medicaid Only: resource eligibility and limits	17 N.J.R. 1525(a)	R.1985 d.474 17 N.J.R. 2274(a)
10:94-5.5	Medicaid Only: deeming of income	17 N.J.R. 2732(a)	
10:94-7, 8, 9	Medicaid Only program for aged, blind and disabled	17 N.J.R. 2340(a)	
10:129-2	Child abuse prevention	17 N.J.R. 2735(a)	

(TRANSMITTAL 31, dated August 19, 1985)

CORRECTIONS—TITLE 10A

10A:31-3.7, 3.12	Adult county facilities: new inmate processing	17 N.J.R. 2229(a)	R.1985 d.604	17 N.J.R. 2901(a)
10A:31-3.12, 3.15	Adult county facilities: medical screening of new inmates	17 N.J.R. 2343(a)		
10A:34	County correctional facilities	17 N.J.R. 2525(a)		

(TRANSMITTAL 11, dated May 20, 1985)

INSURANCE—TITLE 11

11:1-5	Administrative Orders and Declarations: correction of sunset date	16 N.J.R. 2677(a)	R.1984 d.426	17 N.J.R. 2566(a)
11:1-16	Request for rate decrease	16 N.J.R. 3169(a)	Expired	
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)		
11:1-20	Property and casualty/liability coverage: cancellations, nonrenewals and mid-term premium increases	17 N.J.R. 2460(a)	R.1985 d.627	17 N.J.R. 2978(b)
11:1-20.1	Property and casualty/liability coverage	Emergency	R.1985 d.626	17 N.J.R. 2915(a)
11:1-21	Property/casualty insurers: preparation of annual loss reserve opinions	17 N.J.R. 2596(a)		
11:2-19	Approval of insurance schools and company training programs	16 N.J.R. 2920(b)	R.1985 d.608	17 N.J.R. 2901(b)
11:2-23	Advertisement of life insurance and annuities	16 N.J.R. 2926(a)	R.1985 d.600	17 N.J.R. 2776(a)
11:3-7	Automobile Reparation Reform Act rules	16 N.J.R. 3417(a)		
11:3-10	Auto physical damage claims	16 N.J.R. 3170(a)	R.1985 d.629	17 N.J.R. 2988(a)
11:3-17	Automobile rate filings	16 N.J.R. 2936(a)	R.1985 d.609	17 N.J.R. 2905(a)
11:3-20	Reporting excess profits	17 N.J.R. 370(a)		
11:3-20	Automobile insurers: financial disclosure and excess profit reporting	17 N.J.R. 2597(a)		
11:3-21	Reduced PIP premium charges	16 N.J.R. 3286(a)		
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 887(a)		
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 2344(a)		
11:4-24	Smoker and nonsmoker mortality tables	17 N.J.R. 2348(a)	R.1985 d.617	17 N.J.R. 2907(a)
11:4-25	Social security disability offset	16 N.J.R. 3287(a)		
11:4-26	Annuity mortality tables	17 N.J.R. 2349(a)	R.1985 d.616	17 N.J.R. 2908(a)
11:5-1.3	Licensing of real estate brokers and salespeople	17 N.J.R. 2350(a)		
11:5-1.15	Real estate advertising	17 N.J.R. 2351(a)		
11:5-1.15, 1.25	Advertising of real estate; sale of interstate property	17 N.J.R. 666(a)		
11:5-1.20	Payment of fees prescribed by Real Estate License Act	17 N.J.R. 2353(a)		
11:5-1.28	Approved real estate schools: requirements	17 N.J.R. 376(a)		
11:5-1.29	Real estate license applicants: record checks	17 N.J.R. 2230(a)	R.1985 d.601	17 N.J.R. 2779(a)
11:16	Provider verification of services	17 N.J.R. 47(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	17 N.J.R. 1045(b)		

(TRANSMITTAL 30, dated August 19, 1985)

LABOR—TITLE 12

12:15-1.3	Maximum weekly benefit rates for Unemployment Compensation and State Plan Disability	17 N.J.R. 2079(a)	R.1985 d.545	17 N.J.R. 2666(a)
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12:15-1.4	Taxable wage base subject to Unemployment Compensation contributions	17 N.J.R. 2079(b) R.1985 d.546	17 N.J.R. 2667(a)
12:15-1.5	Unemployment Compensation contribution rate for government units	17 N.J.R. 2079(c) R.1985 d.543	17 N.J.R. 2667(b)
12:15-1.6	Base week for unemployment compensation and temporary disability	17 N.J.R. 2007(b) R.1985 d.525	17 N.J.R. 2461(a)
12:15-1.6	Base week for Unemployment Compensation and State Plan Disability claims	17 N.J.R. 2080(a) R.1985 d.544	17 N.J.R. 2667(c)
12:15-1.7	Alternate earnings test for benefits eligibility	17 N.J.R. 2080(b) R.1985 d.542	17 N.J.R. 2668(a)
12:16-4.8	Determining employee's 1986 taxable wage base	17 N.J.R. 2850(a)	
12:16-4.10	Temporary disability payments under private plans	17 N.J.R. 2850(b)	
12:16-5.2	Due dates of employer's combined Forms UC-27/WR-30	17 N.J.R. 2851(a)	
12:17-10	Refund for unemployment benefits	17 N.J.R. 2525(b)	
12:17-11	Unemployment compensation and pension offset	17 N.J.R. 2736(a)	
12:56	Readopt Wage and Hour rules	17 N.J.R. 2008(a) R.1985 d.524	17 N.J.R. 2461(b)
12:57	Readopt Wage Orders for Minors	17 N.J.R. 2009(a) R.1985 d.523	16 N.J.R. 2461(c)
12:58	Readopt Child Labor rules	17 N.J.R. 2009(b) R.1985 d.522	17 N.J.R. 2461(d)
12:70	Field sanitation for seasonal farm workers	17 N.J.R. 1860(a)	
12:105	Board of Mediation: arbitration	17 N.J.R. 2526(a)	
12:120	Asbestos licenses and permits	17 N.J.R. 1676(a) R.1985 d.468	17 N.J.R. 2275(a)
12:235	Practice and procedure before Division of Workers' Compensation	17 N.J.R. 2081(a)	
12:235-1.5	Maximum weekly benefit rate for Workers' Compensation	17 N.J.R. 2090(a) R.1985 d.541	17 N.J.R. 2668(b)

(TRANSMITTAL 23, dated August 19, 1985)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a) R.1985 d.421	17 N.J.R. 2683(a)
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LAW AND PUBLIC SAFETY—TITLE 13

13:19-10.1	Motor vehicle driver violations: point assessment	17 N.J.R. 2231(a) R.1985 d.599	17 N.J.R. 2780(a)
13:19-13.1, 13.2, 13.3	Motor vehicle insurance surcharges	17 N.J.R. 893(a) R.1985 d.482	17 N.J.R. 2281(a)
13:20-32.16	Motor vehicle reinspection centers	17 N.J.R. 676(a)	
13:20-33.6	Glazing inspection standards for motor vehicles	17 N.J.R. 894(a)	
13:20-36.1, 36.2	Special National Guard Plates	17 N.J.R. 2602(a)	
13:21-2	Motor Vehicle Licensing Service: Statutory Language Interpretation	17 N.J.R. 2090(b) R.1985 d.576	17 N.J.R. 2780(a)
13:21-5.11	Registration of vehicles subject to Federal Heavy Vehicle Use Tax	17 N.J.R. 2737(a)	
13:21-11.13	Temporary initial registration of motor vehicles	17 N.J.R. 1863(a) R.1985 d.520	17 N.J.R. 2562(a)
13:21-15.6	Auto dealers: acceptance of altered title documents	17 N.J.R. 169(a)	
13:21-20	Motor home title certificates	17 N.J.R. 2353(b) R.1985 d.644	17 N.J.R. 2991(a)
13:27	Rules of Board of Architects	17 N.J.R. 2851(b)	
13:27-8.11	Certified landscape architects: title block contents	17 N.J.R. 1864(a) R.1985 d.538	17 N.J.R. 2668(c)
13:28-4.1	Board of Beauty Culture Control fee schedule	17 N.J.R. 1638(a) R.1985 d.464	17 N.J.R. 2139(c)
13:29-1.4	Change of address by licensed accountants	17 N.J.R. 1639(a)	
13:29-1.11	Fee for CPA certificate	17 N.J.R. 2092(a)	
13:29-2.1	Applicants for registered municipal accountant's test	17 N.J.R. 2092(b)	
13:30-8.1	Board of Dentistry: fee schedule	17 N.J.R. 378(a)	
13:30-8.3, 8.14	Board of Dentistry licensee requirements	17 N.J.R. 1864(b) R.1985 d.548	17 N.J.R. 2669(a)
13:34-1.1	Marriage counseling: annual license fees and charges	17 N.J.R. 1527(a) R.1985 d.549	17 N.J.R. 2669(b)
13:35-1A.4	Clinical clerkships for foreign medical graduates	17 N.J.R. 2010(a) R.1985 d.564	17 N.J.R. 2670(a)
13:35-2.4	Approval of colleges of chiropractic	17 N.J.R. 2231(b) R.1985 d.631	17 N.J.R. 2991(b)
13:35-2.15	Physician-nurse anesthetist standards	17 N.J.R. 796(a)	
13:35-4.2	Termination of pregnancy	17 N.J.R. 1865(a) R.1985 d.530	17 N.J.R. 2562(b)
13:35-4.2	Termination of pregnancy	17 N.J.R. 2738(a)	
13:35-6.4	Pre-proposal: professional conduct of Medical Board licensees	17 N.J.R. 894(b)	
13:35-6.6	Directly dispensed medication by physicians and podiatrists	17 N.J.R. 1866(a) R.1985 d.505	17 N.J.R. 2442(a)

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13:37-1.2, 1.21, 1.23-1.25	Programs in nursing education	17 N.J.R. 1528(a)	R.1985 d.483	17 N.J.R. 2282(a)
13:37-1.4	Nursing licensees: reporting unlawful conduct	17 N.J.R. 2232(a)	R.1985 d.607	17 N.J.R. 2908(b)
13:37-2.1, 2.3, 3.5, 4.1, 4.3-4.6, 5.1, 5.5	Licensing of nurses	17 N.J.R. 1529(a)	R.1985 d.592	17 N.J.R. 2781(a)
13:37-6.2	Delegation of nursing tasks by RPNs	17 N.J.R. 2354(a)		
13:38-3.2	Board of Optometrists: reexamination	17 N.J.R. 677(a)		
13:38-3.2	Reexamination for optometry licensure	17 N.J.R. 1639(b)	R.1985 d.504	17 N.J.R. 2443(a)
13:39-3.10	Practice of pharmacy: qualifying examinations	17 N.J.R. 2528(a)		
13:39A-1	Board of Physical Therapy: organization and administration	17 N.J.R. 2355(a)		
13:39A-2	Authorized practice by physical therapists	17 N.J.R. 2356(a)		
13:39A-3	Unlawful practices by physical therapists	17 N.J.R. 2358(a)		
13:39A-3.2	Pre-proposal: fee splitting and kickbacks by physical therapists	17 N.J.R. 2360(a)		
13:39A-4	Unlicensed practice of physical therapy	17 N.J.R. 2361(a)		
13:39A-5	Physical therapy applicants: required credentials	17 N.J.R. 2362(a)		
13:40-1, 2	Title block contents on drawings, site plans and land surveys	17 N.J.R. 2602(b)		
13:40-3.2, 4.1, 5.1	Professional engineers and land surveyors: Board rules	17 N.J.R. 799(a)	R.1985 d.465	17 N.J.R. 2140(a)
13:40-6.1	Professional engineers and land surveyors: application, examination, and licensing fees	17 N.J.R. 2860(a)		
13:41-3.2	Board of Professional Planners: fee schedule	17 N.J.R. 1061(a)	R.1985 d.443	17 N.J.R. 2141(a)
13:41-4	Board of Professional Planners: readopt preparation of site plan rules	17 N.J.R. 1240(a)		
13:42-1.5	Psychological Board licensees: notification of current address	17 N.J.R. 896(a)	R.1985 d.621	17 N.J.R. 2909(a)
13:44-1.2, 1.3, 1.4, 2.4, 2.9, 2.14, 2.15, 6	Veterinarian licensure	17 N.J.R. 1739(a)	R.1985 d.622	17 N.J.R. 2909(b)
13:44C-1.1	Audiology and Speech Language Pathology Advisory Committee: fees and charges	17 N.J.R. 1062(a)		
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