

NEW JERSEY



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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS*, PAGE 992.

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(Includes rules filed through March 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 **May 15, 1985**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

Diseases of Bees

Acarine Mite Quarantine

Proposed Repeal: N.J.A.C. 2:24-1.1 and 1.2

Authorized By: Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:6-20.

Proposal Number: PRN 1985-199.

Submit comments by May 15, 1985 to:

William W. Metterhouse, Director
Division of Plant Industry
N.J. Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5441

The agency proposal follows:

Summary

The repeal of N.J.A.C. 2:24-1.1 and 1.2 concerning acarine mite quarantine is being proposed because the United States Department of Agriculture has rescinded the Federal quarantine on the interstate transportation of bees suspected of being contaminated by acarine mite. New less restrictive rules con-

cerning tracheal mite quarantine will be proposed as N.J.A.C. 2:24-1.3, 1.4 and 1.5.

Social Impact

The repeal of N.J.A.C. 2:24-1.1 and 1.2 will have a beneficial impact on beekeepers, bee transporters, and New Jersey agricultural growers in that the quarantine is lifted thereby permitting the interstate transport of bees into New Jersey.

Economic Impact

The repeal of N.J.A.C. 2:24-1.1 and 1.2 will have a beneficial economic impact in that the restriction of quarantine is removed thereby permitting bee colonies or nucleus of bees or used bee supplies to move from all states under a certificate of inspection declaring freedom of American Foulbrood, European Foulbrood, tracheal mite disease or other infectious or contagious bee diseases.

Full text of the proposed repeal appears in the New Jersey Administrative Code at N.J.A.C. 2:24-1.1 and 1.2.

DIVISION OF RURAL RESOURCES

State Soil Conservation Committee

Proposals numbered PRN 1985-216 and 217 are authorized by Arthur R. Brown, Jr., Chairman, State Soil Conservation Committee.

NEW JERSEY REGISTER

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

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PROPOSALS

Interested Persons see Inside Front Cover

COMMUNITY AFFAIRS

Submit comments by May 15, 1985 to:
Samuel R. Race, Executive Secretary
State Soil Conservation Committee
CN 330
Trenton, New Jersey 08625

year. The SSCC shall reserve the right to review maximum cost rates and to require adjustments if deemed necessary.

(a)

Soil and Water Conservation Projects: Cost Share Rates

Proposed New Rule: N.J.A.C. 2:90-2.24

Authority: N.J.S.A. 4:24-3 and 4:1C-24.
Proposal Number: PRN 1985-217.

The agency proposal follows:

Summary

The proposed new rule by the State Soil Conservation Committee (SSCC) will identify the rate of State cost-sharing allowable to eligible applicants for installing SSCC approved soil and water conservation projects under the soil and water conservation project cost sharing provision of the Agriculture Retention and Development Act. The new rule provides the basis for establishing local cost schedules for labor and related work involved in the installation of soil and water conservation projects.

Social Impact

The proposed new rule will have a favorable impact by clarifying available cost sharing for participants and provides an equitable and uniform basis for determination of costs which reflect local conditions regarding the installation of soil and water conservation measures on farmlands.

Economic Impact

The proposed new rule will establish a uniform procedure for determining allowable costs for participants who install soil and water conservation practices on farmlands. Such procedure clarification is essential to assure essential minimum accountability for use of public funds on authorized projects.

Full text of the proposed new rule follows.

2:90-2.24 Cost share rates

(a) Projects as identified in N.J.A.C. 2:90-2.5 through 2:90-2.23 shall be cost shared at 50 percent of the actual cost, not to exceed 50 percent of a maximum amount per project as estimated by the district in consultation with the United States Department of Agriculture, Soil Conservation Service District Conservationist and ASCS County Executive Director. Districts shall consult with authorized personnel within the New Jersey Bureau of Forest Management for forestry related practices.

(b) The maximum per project cost shall be based upon the average cost for installation of such practices in the district, as determined from actual ASCS and SCS cost records for similar work under Federal cost share programs. For those practices which are not in the Federal programs, the district shall consult with USDA or Bureau of Forest Management officials in the district to investigate actual costs and establish a suitable average maximum cost reflecting current prices. An average cost schedule developed in accordance with this procedure shall be adopted by the district and filed with the State Soil Conservation Committee on or before January 15 of each

(b)

Soil and Water Conservation Project Cost Sharing: Procedural Rules

Proposed Amendment: N.J.A.C. 2:90-3.6

Authority: N.J.S.A. 4:24-3 and 4:1C-24.
Proposal Number: PRN 1985-216.

The agency proposal follows:

Summary

This proposal will amend N.J.A.C. 2:90-3 to clarify that soil conservation districts may require that serious soil and water management problems be addressed by participating landowners prior to the initiation of other projects not directly related to those problems. The amendment will also clarify that projects which require other protective measures to assure their satisfactory operation must have the protective measures installed in accordance with the sequence prescribed in the approved conservation plan.

Social Impact

The proposed amendment will assure that farmland enrolled in preservation programs is maintained through the use of needed soil and water management practices thereby controlling soil erosion and enhancing agricultural productivity.

Economic Impact

The proposed amendment will have a positive economic impact by assuring the functional life of needed soil and water conservation projects installed on farmlands and that the productivity of such lands is maintained or enhanced.

Full text of the current rules may be found in the April 1, 1985 Register.

Full text of the proposal follows.

2:90-3.6 Preparation of conservation plan

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

(d) If the SCD determines that serious soil and water management problems exist on the applicants' land, it may require that such problems be addressed prior to the initiation of other projects which are not directly related to the observed soil and water management problems. In addition, projects which are dependent upon prior installation of protective practices identified in the plan must be installed in accordance with the plan schedule.

COMMUNITY AFFAIRS

(c)

DIVISION OF HOUSING AND DEVELOPMENT

**Uniform Construction Code
One and Two Family Dwelling Subcode**

COMMUNITY AFFAIRS

PROPOSALS

Proposed Amendment: N.J.A.C. 5:23-3.14
Proposed New Rule: N.J.A.C. 5:23-3.21

Authorized by: John P. Renna, Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-123.
Proposal Number: PRN 1985-220.

A public hearing on this proposal will be held at the offices of the Bureau of Construction Code Enforcement, 3131 Princeton Pike, Lawrenceville, New Jersey, on Thursday, May 2, 1985 at 10:00 A.M.

Submit comments by May 15, 1985 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department proposes to adopt the model code of the Council of American Building Officials known as the CABO One and Two Family Dwelling Code as the one and two family dwelling subcode of the State Uniform Construction Code.

The proposed subcode establishes specifications for the building of one and two family dwellings. These specifications are modified where necessary to conform to the BOCA/National Basic Building Code, which is the building subcode. The building subcode is a performance code, which allows for variations so long as performance standards are met. The proposed one and two family dwelling subcode will set forth specific ways of meeting those performance standards, but it is not intended to be the exclusive way. One and two family dwellings will still be allowed to be built without conforming to the one and two family dwelling subcode so long as they meet the performance standards established by the building subcode.

Social Impact

Adoption of the one and two family dwelling subcode will provide builders and property owners with specific standards that should make it easier for them to build homes with assurance that code requirements are satisfied. Many of the judgment calls made by the enforcing officials which have been necessary when enforcing the performance code will be eliminated by the one and two family dwelling subcode.

Economic Impact

Property owners and builders will realize savings of time and money to the extent that plans can be prepared and approvals obtained quickly because the need to determine whether performance standards have been met will be eliminated.

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

5:23-3.14 Building subcode

- (a) (No change.)
(b) The following articles or sections of the building subcode are modified as follows:
1.-2. (No change.)

3. The following amendments are made to article 3 of the building subcode entitled "Use Group Classification";

i. Section 309.5 is [deleted in its entirety] amended to delete phrase "One and Two Family Dwelling Code listed in Appendix A." on lines 3, 4 and 5 and substitute in lieu thereof "One and Two Dwelling Subcode."

4.-21. (No change.)

Full text of the proposed new rule follows.

5:23-3.21 One and two family dwelling subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c.217, the Commissioner hereby adopts the model code of the Council of American Building Officials known as "The CABO One and Two Family Dwelling Code/1983", including all subsequent revisions and amendments thereto, as the one and two family dwelling subcode for New Jersey subject to the modifications stated in (b) below.

i. Copies of this code may be obtained from BOCA International, 4051 West Flossmoor Road, Country Club Hills, Illinois 60477.

(b) The following articles or sections of the one and two family building subcode are modified as follows:

1. Chapter 1 entitled "Administrative" is amended as follows:

i. Sections R-101 to R-133 are deleted and substitute in lieu thereof UCC regulations:

ii. Section R-144 is amended to change the definitions as follows:

(1) The definition of the term "approved" is deleted and in lieu thereof substitute "approved by the building official or other authority having jurisdiction in accordance with the regulations."

(2) The definition of the term "Approved Agency" is amended to add the phrase "or other authority having jurisdiction in accordance with the UCC regulations" after the word "Official" on line 3.

(3) The definition of the term "Building Official" is deleted and is redefined herein and throughout the subcode as the "building subcode official" as defined in N.J.A.C. 5:23-1.4 unless indicated otherwise.

(4) The definition of the term "Story (first)" is amended to add after the word grade "except that a basement shall be considered as a story above grade when the distance from grade to the finished surface of the floor above the basement is more than 6 feet for more than 50 percent of the total perimeter or more than 12 feet at any point."

2. Chapter 2 entitled "Building Planning" is amended as follows:

i. Sec. R-202.2 is amended to include the following information in Table R-202:

Table with 7 columns: Per, DCA, Zone, Yes, 2' - 6''(s), 3' - 0''(n), Yes, Yes. Row 15: DCA Bulletin #81-9, Zone 1, Yes, 2' - 6''(s), 3' - 0''(n), Yes, Yes.

ii. Sec. R-202.4, increase the minimum lives load for stairs in Table R-202.4 from 40 to 100 psf.

iii. Sec. R-203, in the first and 4th lines, change "three (3) feet" to "six (6) feet."

iv. Sec. 204.2, change in the 6th line "one-tenth (1/10)" to "eight (8) percent."

v. Sec. R-210.1—Opening Protection—Delete and substitute in lieu thereof the following:

PROPOSALS

Interested Persons see Inside Front Cover

EDUCATION

“Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than one and three quarter (1³/₄ inches in thickness or equivalent of 3.4 hour fire resistance rating or better. A raised sill shall also be provided between garage and adjacent interior spaces minimum of four (4) inches.”

vi. Sec. R-213, under the second Exception in the second line, delete the phrase “eight and one-half (8¹/₂) inches” and substitute in lieu thereof “eight (8) inches.”

vii. Sec. R-214.2, in the second paragraph, second line, change “four (4) inches” to “six (6) inches.”

viii. Sec. 215.1, in the 4th line change “four (4) or more risers” to “three (3) or more risers.”

ix. Sec. R-216.1, delete the first sentence and in lieu thereof add “A minimum of one smoke detector per floor including basement and in the immediate vicinity of bedrooms shall be provided and they shall be all interconnected. In split levels, a smoke detector installed on the upper level shall suffice for the adjacent lower level provided the lower level is less than one full story below the upper level. If there is an intervening door between adjacent levels, a smoke detector shall be installed on both levels.”

x. Sec. R-216.2 is amended to delete the words “or in buildings which undergo . . . section” at the end.

xi. Add new Sec. R-221 “Height and Area Limitations” per Table R-221 below:

Table No. R-221

Use Group	Type of Construction		Height limitations (shown in upper figure as stories and feet above grade). Area limitations (shown in lower figure as area in square feet per floor).
	5A	5B	
R-3 Residential One and Two Family	3 st. 40'	2 st. 35'	4,800

xii. Sec. 217.2.4, after the words “foam filled doors” add the phrase “except for fire doors.”

3. Chapter 3 is amended as follows:

i. Sec. R-301.1, delete the words “Sec. R-108” and in lieu thereof insert “UCC regulations N.J.A.C. 5:23-3.6 and 3.7.”

ii. Sec. R-304.4, change Nominal Thickness for Masonry of Solid Units from six (6) inches to eight (8) inches.

iii. Fig. R-303, change 1/2” bolts @ 6’ o.c. to 1/2” bolts @ 8’ o.c.

4. Chapter 4 is amended as follows:

i. Sec. R-402.8, in the second paragraph, 3rd line, change “one thousand (1,000) sq. ft.” to “five hundred (500) sq. ft.”

ii. Sec. R-404.2, in the 4th line, change “one third (1/3)” to “one half (1/2)” (the total thickness).

iii. Sec. 404.11, in the second line, change “three (3) inches” to “four (4) inches.”

5. Chapter 9 is amended as follows:

i. Sec. R-902.3, in the first line, change “two (2) feet” to “three (3) feet.”

ii. Sec. R-902.5 add the following phrase after the word degrees “and embedded in medium duty refractory mortar complying with ASTM C105.” Delete Exception.

iii. Sec. R-904.2, in the last line, change “ten (10) inches” to “twelve (12) inches.”

iv. Sec. R-904.5, second line, change “three-eighth (3/8) inches . . . all imposed loads” to “four (4) inches solid masonry or equivalent.”

v. Sec. R-904.7, second and fourth lines, change “twelve (12) inches” to “four (4) inches.”

vi. Sec. R-905, add item #6: Factory Built Fireplaces shall be listed, labelled and tested according to UL 127.

vii. Sec. R-906.1—Factory Built Fireplace Stoves shall be tested according to UL 737.

6. Part IV—Mechanical, is amended as follows:

i. Sec. M-1104—At the beginning of the paragraph add “When more than one fuel oil burning appliance is installed, a shut off valve shall be installed at the connection to each appliance.”

ii. Sec. M-1106—Delete second paragraph and in lieu thereof insert “Fuel-fired and fuel-burning appliances shall be installed on a non-combustible floor. The non-combustible floor shall extend 12 inches beyond the sides of the appliance. On the burner side, the floor shall extend at least 36 inches.”

iii. Sec. M-1112—At the end of the section, add “Solid fuel burning room heaters shall be tested and labeled in accordance with UL 1482.”

iv. Sec. M-1114—Delete second sentence and in lieu thereof insert “Appliances in private garages shall be installed with a minimum clearance of 6 feet above the floor.”

v. Sec. M-1308.1—At the end of the paragraph, add “When appliances are located within 10 feet of a roof edge or open side with a drop greater than 24 inches, guards shall be provided. A guard rail shall be located a minimum of 36 inches and a maximum of 42 inches above the roof surface.”

vi. Sec. M-1601.1—At the end of the Section, add item #7, “Duct material shall meet the requirements specified in the Mechanical subcode Sec. M-302.1, M-302.2 and M-303.1.”

vii. Sec. M-1602—In the second paragraph, first line, change “three (3) feet” to “six (6) feet.”

viii. Sec. M-1604—At the end of item #9, add the words “and a flame spread of 200 or less.”

ix. Sec. 1905.2—Add a new paragraph “No piping shall be installed in supply air ducts, clothes chutes, chimneys, vents or dumbwaiters.”

x. Sec. M-1909.3—Delete second paragraph.

xi. Sec. M-1916.1—At the beginning of second line delete the word “sweat”. Also add at the end of the paragraph “Only brazed joints shall be permitted.”

xii. Sec. M-1917.1—Add after the first sentence “All pumps shall be listed and labeled by an approved agency.”

7. Part V—Plumbing, is deleted in its entirety. All requirements for plumbing shall be provided in accordance with the Plumbing Subcode listed in N.J.A.C. 5:23-3.15.

8. Parts VI and VII pertaining to Electrical and Energy Conservation are deleted. Requirements for electrical and energy conservation shall be provided in accordance with the respective subcodes, Electrical per N.J.A.C. 5:23-3.16, and Energy per N.J.A.C. 5:23-3.18.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Business Services; State Aid, Asbestos Removal and Encapsulation State Aid

Proposed New Rule: N.J.A.C. 6:20-5.5

ENVIRONMENTAL PROTECTION

PROPOSALS

Authorized By: New Jersey State Department of Education, Saul Cooperman, Secretary.

Authority: N.J.S.A. 18A:4-15, 52:14B-4(c) and Chapter 226, Laws of 1984.

Proposal Number: PRN 1985-205.

Submit comments by May 15, 1985 to:

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

The agency proposal follows:

Summary

The proposed new rule is being presented, pursuant to the authority of N.J.S.A. 18A:4-15 and Chapter 226, Laws of 1984.

On December 28, 1984, Governor Kean signed the "State School Aid Act for Asbestos." This law provides \$10 million State aid to district boards of education which have a current or potential health hazard because of asbestos materials, or which have expended local funds for asbestos removal or encapsulation prior to the effective date of the law. Applications for State aid under this law were mailed to all district boards of education on February 1, 1985 to be submitted no later than May 15, 1985. The May 15, 1985 submission date was established to permit the department to prioritize applications as required by the law and to obligate the State aid funds provided by the Act before the end of the 1984-85 school year. The new rule is being proposed so that the rule will be in effect before the State Board of Education awards the State aid entitlements.

The proposed new rule defines a currently planned asbestos removal or encapsulation project, indicates when a district board of education may apply for reimbursement for a project that has been undertaken or substantially completed and provides that a district board of education shall only be reimbursed for expenditures actually incurred. In addition, district boards of education are required to maintain separate accounting records and to submit reports as required by the commissioner. A district board of education would also have to comply with any requirements established by various State agencies concerning asbestos removal or encapsulation.

Social Impact

The proposed new rule will impact on district boards of education applying for or receiving State aid pursuant to the "State School Aid Act for Asbestos." The rule defines the type of reimbursement for which a district board of education may apply and the requirements which will apply to a district board of education which receives State aid. In addition, the proposed new rule indicates when adjustments to State aid will be made.

Economic Impact

The proposed new rule does have an economic impact on district boards of education since the proposed new rule defines how a district board of education may apply for reimbursement and when adjustments will be made to State aid entitlements. On a whole, the economic impact is positive since the rule ensures that all district boards of education which are eligible for reimbursement, receive State aid funds in an equitable manner.

Full text of the proposed new rule follows.

6:20-5.5 Asbestos removal and encapsulation State aid

(a) A district board of education applying for reimbursement under the provisions of the "State School Aid Act for Asbestos" for a currently planned asbestos removal or encapsulation project shall certify that funds have been budgeted for the project and that such funds are included in the 1984-1985 or 1985-86 school district budget statement.

(b) A district board of education may apply for reimbursement for an asbestos removal or encapsulation project which has been undertaken if the project was begun in the 1984-85 school year and 50 percent or less of the funds budgeted for the project were expended prior to December 28, 1984.

(c) A district board of education may apply for reimbursement for an asbestos removal or encapsulation project which has been substantially completed if the project was begun in the 1984-85 school year and more than 50 percent of the funds budgeted for the project were expended prior to December 28, 1984.

(d) A district board of education may apply for reimbursement for an asbestos removal or encapsulation project which was begun before 1984-85 or which has been completed.

(e) A district board of education shall only be reimbursed under the provisions of the "State School Aid Act for Asbestos" for expenditures actually incurred. State aid reimbursements for projects currently planned, undertaken and substantially completed shall be adjusted when actual expenditures are known. Adjustments shall only be made to the extent State aid funds are available.

(f) A district board of education shall not be reimbursed for an asbestos removal or encapsulation project under both the "State School Aid Act for Asbestos" and the Federal "Asbestos School Hazard Abatement Program."

(g) A district board of education which recovers funds expended for asbestos removal or encapsulation through a legal action shall have its State aid reimbursement adjusted for any such funds recovered.

(h) A district board of education shall maintain separate accounting records which identify all expenditures for which reimbursement is approved.

(i) A district board of education receiving a State aid reimbursement under the provisions of the "State School Aid Act for Asbestos" shall submit reports as required concerning work progress, expenditures or any other factors which the commissioner shall deem necessary.

(j) A district board of education shall comply with all requirements established by the Bureau of Facility Planning Services (N.J.A.C. 6:22), Department of Community Affairs (N.J.A.C. 5:23-8) and the Department of Health (N.J.A.C. 8:60) concerning asbestos removal or encapsulation. State aid funds may be withheld for noncompliance.

ENVIRONMENTAL PROTECTION

Proposals numbered PRN 1985-218 and 219 are authorized by Robert E. Hughey, Commissioner, Department of Environmental Protection.

(a)

DIVISION OF WASTE MANAGEMENT

Discharges of Petroleum and Other Hazardous Substances

Proposed Readoption: N.J.A.C. 7:1E

Authority: N.J.S.A. 58:10-23.11 et seq. and N.J.S.A. 13:1D-1 et seq.

Proposal Number: PRN 1985-218.

DEP Docket No. 016-85-03.

Submit comments by May 15, 1985 to:

Joseph N. Schmidt, Jr., Esq.
Office of Regulatory Services
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:1E expires on April 28, 1985. The Department has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated.

The Department of Environmental Protection proposes to readopt the Discharge of Petroleum and Other Hazardous Substances Regulations (N.J.A.C. 7:1E) ("Regulations"). The Department finds that the Regulations, which cover every discharge of petroleum and other hazardous substances, except those pursuant to and in compliance with the conditions of a valid Federal or State permit, continue to be necessary to protect the economy and environment of the State. The Regulations set forth guidelines and procedures to be followed by all persons in the event of a discharge of petroleum or other hazardous substance and establish certain reporting, design and maintenance requirements for major facilities which handle petroleum products or other hazardous substances. Subchapter 1 of the Regulations establishes the general provisions for the Regulations. Subchapter 2 entitled "Discharge Notification and Response" concerns the notification and response actions required for a "reportable discharge" of hazardous substances. Subchapter 3 entitled "Discharge Cleanup Organization" applies to all persons who engage or intend to engage in the cleanup and removal of discharges of hazardous substances. Subchapter 4 entitled "Major Facilities: Plans, Reports and Standards" applies to major facilities defined pursuant to N.J.A.C. 7:1E-1.3 and requires Departmental approval of Discharge, Prevention, Containment and Countermeasure ("DPCC") Plans and Discharge Cleanup and Removal ("DCR") Plans.

Appendix A of the Regulations establishes a list of hazardous substances for the purposes of the Regulations. Appendix A also has widespread application to other Departmental programs. For example, the Department's Environmental Cleanup Responsibility Act Regulations, N.J.A.C. 7:1-3 also adopts by reference the Appendix A list of hazardous substances to define "hazardous substances".

The Department has carefully reviewed the Regulations. Amendments have continued to be periodically adopted by the Department pursuant to the Administrative Procedures

Act, N.J.S.A. 52:14B-1 et seq., as deemed necessary. The Department now finds that the Regulations, in their present form, are necessary for the protection of the State's environment. The Department has determined that the Regulations should continue in effect, subject to such continuing future modification as may be warranted.

Social Impact

The proposed readoption of the Regulations will allow the Department to continue in full force and effect the beneficial environmental programs resulting from the original promulgation of the Regulations. The proposed readoption of the Regulations would provide the Department with the regulatory structure to enforce its responsibilities mandated pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. The proposed readoption will continue to implement the provisions of the New Jersey Spill Compensation and Control Act. The rule requires the regulated community (which consists of parties who discharge, or who deal with hazardous substances, such as major facilities which store or refine petroleum or hazardous substances) to file the DPCC plans, required at N.J.A.C. 7:1E-4.5, and the DCR plan, required at N.J.A.C. 7:1E-4.21. The definition of a "major facility" appears at N.J.A.C. 7:1E-1.3.

Economic Impact

Since the proposed readoption of the Regulations would only promulgate the existing regulatory program, the Department foresees no additional economic impact. However the present economic impact on the regulated parties will be continued by the readoption. This will include the expenses of compliance with the rule, including the cost of formulating the required plans; as well as minimal expenses for notifying the Department of the plans.

Environmental Impact

The proposed readoption of the Regulations will have the positive environmental impact of continuing the regulatory framework necessary to implement the environmental protection benefits of the New Jersey Spill Compensation and Control Act, N.J.A.C. 58:10-23.11. In the past, the readoption has helped to prevent spills, and to contain and mitigate the effects of spills which did occur as expeditiously as possible, thus protecting the State's environmental resources. These effects are expected to continue in the future with the readoption of the existing rules.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:1E.

(b)

ECRA Requirements for the Sale of Portions of Unsubdivided Industrial Establishments

Petition to Amend N.J.A.C. 7:1-3.11

Petitioner: Society for Environmental, Economic Development, Steven J. Picco, Esq., Attorney for SEED.

Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6.

Take notice that on January 31, 1985 Steven J. Picco, Esq., filed a petition with the Department on behalf of the Society

for Environmental, Economic Development to adopt an amendment to the Interim ECRA Regulations, N.J.A.C. 7:1-3 ("ECRA Regulations") promulgated pursuant to the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. ("ECRA"). The Petitioner requested promulgation of a procedure "whereby a landowner wishing to make a conveyance of less than 20 percent of an otherwise unsubdivided piece of property would be allowed to do so without ECRA attaching to the entire unsubdivided parcel, except in cases where a sampling plan shows that there is contamination on the parcel to be conveyed."

The Petitioner recommends N.J.A.C. 7:1-3.11 be amended to include a new subsection (d) as follows:

7:1-3.11 Criteria for negative declarations

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

(d) Where an owner of an industrial property seeks to convey title to less than 20 percent of the total unsubdivided acreage of the industrial establishment, the Department shall consider the initial such conveyance to be a "limited conveyance." In the case of a limited conveyance, the Department may require a sampling plan of the property to be conveyed pursuant to N.J.A.C. 7:1-3.7(d)14 and N.J.A.C. 7:1-3.9, or make a determination that one is not necessary pursuant to N.J.A.C. 7:1-3.7(d)14viii(1). Where the results of an approved sampling plan indicate that there is no unacceptable contamination of the property, or where the Department has made a determination that no sampling plan is necessary, the Department shall issue a negative declaration covering the limited conveyance within 45 days of its receipt of the sample results, or within 45 days of its determination that no sampling plan is necessary. If these special conditions for a negative declaration are not met, the entire unsubdivided acreage shall be subject to ECRA review as set forth in N.J.A.C. 7:1-3.1 et seq.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
RESPONSE:**

The Petitioner's concept of a "limited conveyance" responds to a common ECRA situation. Industrial establishments have complained that the sale of a small "clean" portion of their property should not trigger ECRA review of the entire property. However, the Department has concerns that this practice may evolve into a "cookie cutter" approach resulting in only the contaminated property remaining unsold without appropriate cleanup conducted by the owner of the industrial establishment. The Department believes that this practice may encourage abandonment of contaminated industrial property. Such a result directly undermines the letter and spirit of ECRA.

The Department acknowledges the Petitioner's concern about the issue of ECRA requirements for the sale of portions of unsubdivided property. However, the Department does not endorse the Petitioner's proposal at this time. Pursuant to this notice, the Department solicits comments on the Petitioner's proposed amendment and the general issue which prompted the petition for rulemaking. Interested persons may submit written comments on the petition for rulemaking until May 30, 1985. Address comments and inquiries to:

Joseph N. Schmidt, Jr., Esq.
Office of Regulatory Services
New Jersey Department of Environmental
Protection
CN 402
Trenton, New Jersey 08625

The Department is not prepared to initiate rulemaking on this issue at this time. Further study and discussions within the Department remain necessary prior to such formal regulatory action. After consideration of comments received, the Department shall address this issue pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(a)

Industrial Survey Project Rules

N.J.A.C. 7:1F

Waiver of Executive Order No. 66(1978).

Authorized By: Governor Thomas H. Kean.

Take notice that the Industrial Survey Project regulations adopted by the Department of Environmental Protection, N.J.A.C. 7:1F, are due to expire on March 27, 1985 pursuant to the sunset provision of Executive Order No. 66(1978). As a result of the expiration there will be a lapse in the Department's authority to obtain information on toxic substances used and emitted from facilities throughout the State.

At the request of Commissioner Hughey, Governor Thomas H. Kean has examined this matter and has found that a lapse in the Department's authority to obtain information on toxic substances would work to the detriment of the health, safety and welfare of the general public. This lapse would impede the effectiveness and enforcement of environmental laws and programs carried out by the Department.

Accordingly, as Governor of the State of New Jersey and by virtue of the authority vested in him by Executive Order No. 66 to grant a waiver of the requirements in that Order with regard to any administrative regulation and having determined that good cause exists, Governor Kean on March 15, 1985, ordered and directed that the provisions of Executive Order No. 66 be waived as regards the Department of Environmental Protection Industrial Survey Project regulations, N.J.A.C. 7:1F, for the period March 27, 1985 through March 27, 1987, inclusive of both dates.

(b)

DIVISION OF PARKS AND FORESTRY

Open Lands Management Program

Proposed New Rule: N.J.A.C. 7:2-12

Authority: N.J.S.A. 13:1B-15.133 et seq., specifically 13:1B-15.137.

DEP Docket No.: 015-85-03.

Proposal Number: PRN 1985-219.

Submit comments by May 15, 1985 to:

Michael P. Marotta
Office of Regulatory Services
NJDEP
CN 402
Trenton, N.J. 08625

The agency proposal follows:

Summary

On January 17, 1984 the Open Lands Management Act (P.L. 1983, c.560, N.J.S.A. 13:1D-15.131 et seq.) became effective. The purpose of the Act is to expand the stock of open land for public recreation at the lowest possible cost and assist in the management and protection of private lands open to public access for recreational purposes. The Act established the Open Lands Management Program within the Department of Environmental Protection to provide private land owners with financial assistance and in kind services for projects designated to develop and maintain their lands for recreational purposes. In turn the land owner would provide a guarantee in the form of an access covenant, that the public would be permitted recreational use of their lands.

The proposed rules are intended to implement the Open Lands Management Program. They would provide standards and criteria for the types of projects and recreational uses funded, eligible applicants, amount of funding and the terms and conditions of the access covenant. Also included are procedures by which the Division of Parks and Forestry will review and approve or deny projects.

Social Impact

As land development increases, opportunities for access to recreational open space are decreasing. The establishment of an Open Lands Management Program will result in an alternate source of access to such lands; thereby benefitting public recreation and awareness of natural resources. It will encourage private landowners to provide public access for recreational purposes and, at the same time, provide financial and other assistance to upgrade and maintain such land. The Department will implement the program by using existing staff and resources.

Economic Impact

It is anticipated that the economic impact on landowners will be positive. As discussed above implementation of the open lands management program will provide for a grant of funds to eligible private landowners to upgrade lands for public recreational use. The program anticipates a minimum of 12 projects. Of available monies, approximately \$170,000 to \$180,000 will be used for funding the projects. An example of a project is the situation in which the owner of farmland who wishes to have the land opened for trails and hiking purposes could apply for funds to obtain average insurance.

Environmental Impact

It is anticipated that this program will result in the establishment of additional lands for public recreational uses. These uses are less environmentally degrading than most other uses to which such lands could be put. The environmental impact will, therefore, be positive, and will improve the environment and encourage the retention of land in its semi-wild state.

Full text of the proposed new rule follows.

SUBCHAPTER 12. OPEN LANDS MANAGEMENT**7:2-12.1 Purpose and scope**

This subchapter implements P.L. 1983, Chapter 560 (N.J.S.A. 13:1B-15.133 et seq.) which directs the Department of Environmental Protection to establish the Open Lands Management Program and provide financial assistance to private landowners for the development and maintenance of their lands for public recreational purposes.

7:2-12.2 Definitions

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

"Access covenant" means an agreement which guarantees public access for a specified period of time, for specified recreational purposes to a specified parcel or parcels of land in return for appropriate and reasonable financial assistance or in kind services, or both, as determined by the commissioner.

"Act" means the Open Lands Management Act, N.J.S.A. 13:1B-15.133 et seq., as amended.

"Agent" means an individual or organization designated by one or multiple property owners involved in a single project to represent them in all transactions with the Department.

"Application" means a request form for financial assistance.

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

"Department" means the Department of Environmental Protection.

"Fee simple" means direct ownership of real property without condition or limitation.

"Project" means those activities described in the application submitted in accordance with the provisions of this subchapter and approved by the Department for the development and maintenance of specific lands for recreational purposes.

"Real Property" means land and that which is affixed to it.

7:2-12.3 General provisions

Any person, including but not necessarily limited to individuals, corporations, clubs, associations and non profit organizations, who owns real property in fee simple, may apply for financial assistance to develop and maintain the real property for certain public recreational purposes as hereinafter provided.

7:2-12.4 Eligible real property

(a) To be eligible for financial assistance, real property shall:

1. Include an open space which is not dominated by buildings, structures or other man-made facilities;
2. Be free of any public health hazards which would affect, or tend to affect, the health, safety and welfare of those using the property;
3. Form a contiguous project area; and
4. Have no lien or other cloud against the title except that the real property may be the subject of a mortgage given by the landowner to secure a portion of the purchase price.

7:2-12.5 Projects eligible for financial assistance

(a) Financial assistance is available for any of the following:

1. Installation, repair or replacement of protective structures, such as fencing, water bars, berms or stiles.
2. Installation, repair or replacement of any facility which provides or improves public recreational access to privately-owned land, such as parking areas, access roads, trails, interpretive signs, picnic areas, rest areas, portable sanitary facilities, boat or canoe launch areas, and signs stating ownership, and use;
3. Planting, restoration or maintenance of trees or shrubs for the purpose of screening or increasing the value of scenic areas;
4. Repair or restoration of any vandalized crops or improvements located on, or adjacent to agricultural land which

is subject to an access covenant provided that the damage occurred as a result of the public use;

5. Installation, repair, replacement and maintenance of litter and trash control facilities;

6. Installation, repair or replacement of facilities which provide or improve recreational access for the handicapped;

7. Stocking of fish and wildlife to provide recreational fishing and hunting;

8. Purchase of additional liability insurance made necessary because of use of the property by the public.

9. Filing fees for access covenant and associated legal fees; and

10. Professional fees for design, survey and construction of project in accordance with the approved application.

(b) Financial assistance is available for other activities, provided that they are directly related to recreational activities listed under N.J.A.C. 7:2-12.6.

7:2-12.6 Recreational activities

(a) Applications for financial assistance shall include a full description of the recreational activities and uses to which the real property will be put.

(b) The following types of activities are encouraged to be included in projects for which financial assistance will be provided:

1. Trail uses for hiking, jogging, nature observation, ski-touring, bicycling, horseback riding, and off-road motorized vehicles;

2. Water-related activities including boating, canoeing, swimming, fishing, and ice-skating;

3. Area-wide outdoor recreational uses including primitive camping, hunting, orienteering, and picnicking;

4. Outdoor recreational activities promoting knowledge and appreciation of the State's earth, water and biotic resources.

(c) The following types of activities shall not be eligible for financial assistance:

1. Court and field games including but not necessarily limited to baseball, basketball, football, soccer and softball;

2. Firearm or archery ranges;

3. Motor vehicle events including but not limited to automobile or motorcycle racing; and

4. Any activity requiring major construction or clearing of land, permanent installation of public utilities or enclosed structures.

7:2-12.7 Application and review procedures

(a) The landowner, or the landowner's agent designated by a properly executed Power of Attorney shall submit an application for financial assistance on a form provided by the Department. In the case of multiple landowners one agent, designated by all such landowners shall submit an application.

1. An applicant may request from the Department a preliminary determination of eligibility by submitting a letter to the Department which contains identification of landowner, general description of the proposed project, approximate amount of land to be affected, project cost estimates and a general location map showing the real property and proposed affected area;

2. The Department will review the letter and make a preliminary determination as to the eligibility of landowner, real property, project activities and estimated costs. If a preliminary determination of eligibility has been made, the applicant will be so notified and provided with the proper form so that full application may be made.

3. If the Department determines that the project is not eligible then the applicant will be notified of this finding and of the specific deficiencies upon which this determination is based.

(b) The applicant shall forward, by certified mail, a copy of the application to the clerks of the county and the municipality within which the real property is located.

(c) The Department may at any time during its review or at the request of the applicant meet with the applicant to discuss the proposed project, inspect the property and recommend any changes it deems necessary.

(d) Within 30 days of receipt of the application the Department will either deny the application citing the reasons for denial or grant preliminary approval. The Department will forward copies of its decision to clerks of the county and the municipality within which the project is located.

(e) Final approval shall be specifically contingent upon compliance by the applicant, with the following terms and conditions:

1. Receipt by the landowner of all permits which may be necessary in order to implement the proposed project as described in the approved application;

2. Execution by the Department and the landowner, of an agreement in accordance with the provisions of N.J.A.C. 7:2-12.9 which sets forth the substantive terms and conditions by which all financial assistance will be disbursed;

3. Execution by the landowner and the Department, of an access covenant in accordance with the provisions of N.J.A.C. 7:2-12.10 which assures public access for a specified time period; and

4. Submittal by the applicant, of any additional information which the Department may require.

7:2-12.8 Factors supporting grant approval

(a) The factors which the Department will consider in its determination of eligibility of a proposed project include but are not limited to the following:

1. Project allows for more than one encouraged recreational use;

2. Project provides ease of operation and maintenance;

3. Project involves the protection and appreciation of natural resources;

4. Project provides for long term use and public access;

5. Site is currently used by the public for an encouraged recreational use;

6. There is a lack of similar facilities within the immediate area;

7. Project minimizes new land clearing to an amount appropriate for the proposed use;

8. Project use does not distract from or have a negative impact on surrounding areas;

9. Site is an integral part of a larger public recreational activity.

7:2-12.9 Terms of financial assistance

(a) All financial assistance granted pursuant to this subchapter shall be disbursed in accordance with the terms and conditions of an agreement executed by the Department and the landowner for this purpose on a form provided by the Department. The agreement shall contain the following:

1. Amount of grant;

2. The approved application, incorporated by reference, which sets forth the proposed activities for which financial assistance is being provided;

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Interested Persons see Inside Front Cover

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3. A schedule setting forth the time requirements for the completion of each specific proposed activity and setting forth the amount of the grant to be paid to the applicant upon such completion; and

4. Any other requirement which the Department deems necessary;

(b) Project approval and the award of all grant monies shall be conditioned upon compliance, by the landowner and applicant, if other than the landowner, with the terms of the agreement and the access covenant and with all applicable local, county, regional and State laws, rules and regulations.

(c) All sums shall be made payable to the landowner or landowners or the designated agent.

(d) Financial assistance shall be awarded in a sum to be determined by the Department but in no case shall said sum exceed \$10,000.00 for a single project.

7:2-12.10 Access covenant

(a) The access covenant shall be a covenant executed by and between the Department and the landowner for a specified period of time as required by the Department, by which the landowner shall, in exchange for financial assistance or in-kind services from the Department in accordance with this subchapter, grant public access to specified parcels of real property for specified recreation activities.

(b) The access covenant shall be recorded with the clerk of the county in which the real property is located along with the deed to the real property in the same manner as the deed was originally recorded. If there is more than one deed to the real property, then an original access covenant shall be recorded with each deed.

(c) The landowner shall maintain liability and property damage insurance for the period coinciding with the effective period of the access covenant with an insurance company registered to do business in the State of New Jersey in an amount not less than \$1,000,000 for combined personal liability and property damage coverage.

(d) Facilities shall not be used for the sole purpose of the landowner or invited guests.

(e) The landowner may restrict the number, duration and frequency of visits so as not to exceed the capacity of the facility. Such restrictions shall be incorporated as part of the access covenant and shall not discriminate on the basis of race, color, religion, sex or affiliation.

(f) Real property covered under the terms of the covenant shall not be diverted to other uses during the extent of the time period without prior approval of the commissioner. Such change in status may cause termination of the covenant and reimbursement to the Department of all or part of the grant monies awarded.

(g) Fees charged for admittance or use of facilities shall be reasonable, non-discriminatory and consistent with costs for maintenance and repair of the property.

(h) Signs shall be posted and maintained stating ownership of the area, allowed use, and appropriate rules of conduct.

(i) The Department may include additional conditions in the access covenant which would be specific to the particular use and location of the project.

(j) The covenant between the landowner and the Department shall run for a period of one or more years as determined by the Department.

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Proposal numbered PRN 1985-196 is authorized by J. Richard Goldstein, M.D., Commissioner, Department of Health.

Proposals numbered PRN 1985-210, 211, 212 and 213 are authorized by Allen N. Koplun, M.D., M.P.H., Acting Commissioner, Department of Health; with the approval of the Health Care Administration Board.

(a)

PARENTAL AND CHILD HEALTH SERVICES

Newborn Hearing Screening Program

Proposed Readoption with Amendments: N.J.A.C. 8:19

Authority: N.J.S.A. 26:2-101 et seq.

Proposal Number: PRN 1985-196.

Submit comments by May 15, 1985 to:

Susan Lenox Goldman, Acting Chief
Special Child Health Services Program
CN 364
Trenton, N.J. 08625

The agency proposal follows:

Summary

Under the provisions of Executive Order No. 66, 1978 (which provides for the expiration of amended or new rules within five years), Subchapter 1, Newborn Hearing Screening Program of Chapter 19 of the Public Laws of 1977 will expire July 1, 1985. The Department of Health, pursuant to the authority of N.J.S.A. 26:2-101 et seq., proposes to readopt this subchapter with amendments, as they are necessary, adequate, and proper.

A review of the existing rules and proposed amendments follows:

N.J.A.C. 8:19-1.1: This section directs hospitals in the State to disseminate literature on hearing development, provided by the Department, to all parents or legal guardians of newborns. The proposed amendment accurately describes the content of the literature being distributed and specifies the units within a hospital responsible for disseminating the literature.

N.J.A.C. 8:19-1.2(a): This subsection requires registered nurses in hospital nurseries to complete a Newborn Hearing Screening Report Form on all newborns in their facility. It also describes the Newborn Hearing Screening Report Form as containing seven high risk categories associated with hearing loss. An amendment is proposed to require the completion of the Newborn Hearing Screening Form by registered nurses in neonatal intensive care units on newborns discharged. This change is being proposed because some of the risk factors are associated with conditions arising in the perinatal period which may not have occurred or been evident prior to a newborns transfer to a neonatal intensive care unit. This proposed amendment will increase the identification of newborns at risk for hearing impairments. The proposed amendment to require the completion of the Newborn Hearing Screening Form only on live newborns being discharged is made to decrease the reporting of deceased newborns and reduce the

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possibility of subsequent follow-up correspondence to the family of the deceased infant by the Newborn Hearing Screening Program.

N.J.A.C. 8:19-1.2(b): This subsection identifies the hospitals' responsibility for the disposition of all completed copies of the Newborn Hearing Screening Report Form. An amendment is proposed to identify the specific units within a hospital responsible for the disposition of completed Newborn Hearing Screening Forms. The change from a monthly to weekly time line for forwarding completed reports is proposed to reduce the concentrated influx of forms into the Program. The address has been changed to that of the Special Child Health Services Program which now has administrative responsibility for the Newborn Hearing Screening Program. Another proposed amendment is the disposition of the third copy of the Newborn Hearing Screening Report Form which will be given to the parent or legal guardian. This change is being proposed to increase parental awareness of the presence of a risk factor and because the identity of the infant's post discharge physician is frequently not known.

N.J.A.C. 8:19-1.2(c): This subsection describes the hospitals' responsibility to provide parents of high risk newborns with literature describing the Newborn Hearing Screening Program. The proposed change is made to accurately describe the content of the literature.

N.J.A.C. 8:19-1.2(d): This is a proposed additional subsection which details the disposition of Newborn Hearing Screening Report Forms completed on newborns determined to have no apparent risk associated with hearing loss. This proposed new subsection would require Newborn Hearing Screening Forms completed on newborns with no apparent risk factor for hearing loss to be placed only in the newborn's permanent medical record. Currently, hospitals are required to forward one copy of the Newborn Hearing Screening Report Form to the Program on all newborns in their facility regardless of the presence or absence of a risk factor. This additional proposed subsection will eliminate the reporting of non-risk newborns to the Program.

N.J.A.C. 8:19-1.2(e): This is a proposed additional subsection which requires the hospital nursery or neonatal intensive care unit to document the completion of the Newborn Hearing Screening Report Form in the Nursery Log Book for every live newborn. This proposed additional subsection is to provide the Program a means of monitoring hospital compliance with these rules.

N.J.A.C. 8:19-1.2(f): This additional proposed subsection gives the Department's Special Child Health Services personnel the authority to review the Nursery Log Book and medical records to verify compliance to these regulations.

N.J.A.C. 8:19-1.3: This section requires a specific State agency to maintain a registry of infants identified as being at risk for hearing impairment for the purpose of reminding the parent(s) of the need for a six month medical evaluation and other necessary follow-up recommended by a licensed physician.

The changes to this section are being proposed to specify the nature of the six month evaluation and to include licensed audiologist or person(s) under the direction of a licensed physician or licensed audiologist as appropriate professionals to screen/assess the hearing of a high risk infant. Both professionals are appropriately licensed for such evaluations.

N.J.A.C. 8:19-1.4: This section requests the physician completing the six month medical evaluation of high risk infants to report their findings to the Maternal and Child Health Program in the Department of Health on forms provided by the Maternal and Child Health Program.

The proposed change requires the physician, audiologist or person under their direction to report the findings of the six month auditory screening/assessment to the Special Child Health Services Program in the Department of Health on forms which are provided, free of charge by the Department, to the parent(s) or other persons requesting such forms. These changes are being proposed to assure that necessary information is forwarded to the Program so that appropriate follow-up can be provided to all infants identified or suspected of having a hearing loss and to provide a data base to evaluate the effectiveness of the Newborn Hearing Screening Program. This is no change in principle, but reflects the new administrative location of the program, and the fact that audiologists will also have to report their findings.

N.J.A.C. 8:19-1.5: This section enumerates the conditions which places a newborn at risk for hearing impairments. The proposed changes would amend the risk categories to specific conditions or events in the pre- or perinatal period and a family history of hearing loss which occurred in childhood.

The current risk categories are so broad as to identify newborns with conditions that are not correlated with hearing loss. The proposed changes in the risk categories are specific and sensitive to known causal factors of hearing impairments. The proposed risk factors are similar to those recommended by the Joint Committee on Infant Hearing of the American Speech Languages and Hearing Association, American Academy of Otolaryngology, and American Academy of Pediatrics. The exceptions are: a five minute Apgar Score of 6 or less, administration of ototoxic drugs to the infant and evidence of intracranial hemorrhage. These risk factors were included at the recommendation of the Hearing Evaluation Council.

N.J.A.C. 8:19-1.6: This section assures confidentiality of reports sent to the Department and provides only for the release of information to local health agencies for follow-up. Parents are provided with the option to deny release of such information.

A minor change is being proposed to correct a technicality of wording.

Social Impact

The Newborn Hearing Screening Program has had a positive impact on the public by promoting and facilitating the early detection of hearing impaired infants. The early detection of hearing impairments within the first year of life allows for the initiation of early treatment during the critical language acquisition period from birth to two and a half years of age. There is mounting evidence that the early identification, amplification and application of specific training techniques enhance a child's ability to communicate which has a positive effect on academic achievement. The readoption of the rule is necessary in order that these beneficial impacts may continue in the future.

The proposed amendments do not alter the basic intent of the existing rules. They are written to continue to identify those newborns at risk for a hearing loss which may be so significant as to interfere with the normal development of speech and language. The changes being made are to update and improve procedures based on the previous experience of this and other newborn screening programs.

Economic Impact

Readoption of these rules will not impose any additional cost to the hospitals completing the initial evaluation or to the Department of Health which will continue to provide the literature, forms and costs of maintaining the registry. The cost of administering the program to the Department of

Health has been approximately \$50,000 per year, and is expected to remain at this level.

Some reduction of the mailing costs incurred by hospitals is expected with the proposed amendment requiring hospitals to forward Newborn Hearing Screening Report Forms to the Department on only those newborns found to be a risk, which is an estimated eight percent of live newborns. Hospital expenses connected with forms will decline, as fewer forms will be required.

Some cost connected with the proposed amendment may be incurred by the parents of an infant with a risk factor for auditory screening/assessment. Auditory screening charges are frequently not covered by third party payers. Charges for assessment may be covered by third party payers. For families without third party coverage and without the personal financial resources to pay for such service, auditory screening/assessment services are available on a sliding fee scale basis through a limited number of facilities receiving funding from the Special Child Health Services Program.

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

SUBCHAPTER 1. GENERAL PROVISIONS

8:19-1.1 Hearing development literature supplied to parents

Prior to **the discharge of a live newborn** from any hospital in the State of New Jersey, the hospital **nursery or neonatal intensive care unit** shall provide all parents or legal guardians of the newborn with literature provided by the Department describing the normal development of auditory function. Such literature will be designed to provide parents with an understanding of [the need for effective auditory system and provide a checklist for normal auditory development] **the implications of hearing loss on the development of speech-language and provide information regarding normal auditory behavior**. All literature shall be furnished free of charge to hospitals by the Department of Health.

8:19-1.2 Newborn hearing screening report form required

(a) [The] **All hospital nurseries, including neonatal intensive care units**, shall complete a Newborn Hearing Screening Report Form on **all live newborns [in] being discharged from** their facility. This Newborn Hearing Screening Report contains [seven] high risk categories that are associated with possible hearing impairment. These high risk categories are defined in section 5 of this subchapter. The Newborn Hearing Screening Report Form is composed of three identical copies. Registered nurses in the hospital nursery **or neonatal intensive care unit** shall complete the Newborn Hearing Screening Report Form.

(b) The hospital **nursery and neonatal intensive care unit** where discharge of **a live newborn** occurs shall forward one copy of [all completed Newborn Hearing Screening Report Forms to the Maternal and Child Health Program, New Jersey State Department of Health, Box 1540, Trenton, New Jersey 08625, on a monthly basis] **the Newborn Hearing Screening Report Form, for those infants identified as having a risk factor, to the Special Child Health Services Program, New Jersey State Department of Health, CN 364, Trenton, New Jersey 08625, within one week of the infant's discharge**. The second copy of the Newborn Hearing Screening Report Form shall be placed in the newborn's permanent medical record. The third copy shall be given to the infant's [physician] **parent(s) or legal guardian**.

(c) Parents of newborns with one or more high risk factors shall be provided with literature describing [the high risk

registry program prior to discharge from the hospital] **the Newborn Hearing Screening Program prior to discharge of the live newborn from the hospital nursery or a neonatal intensive care unit**. Such literature shall be provided free of charge to the hospitals by the Department.

(d) **For those children who have no risk factors, a completed Newborn Hearing Screening Report Form shall be placed in the newborns permanent medical record**.

(e) **The evaluation shall be documented in the Nursery Log Book for each live newborn being discharged from the hospital nursery or a neonatal intensive care unit**.

(f) **Special Child Health Services Program personnel shall have the authority to review, on site, the Nursery Log Book and medical records**.

8:19-1.3 High risk infant registry

The [Maternal and Child Health Program] **Special Child Health Services Program** shall maintain a registry of high risk infants for hearing impairment so as to remind parents of (high risk) infants for the need for six month [medical evaluation] **auditory screening/assessment** of the high risk infant by a licensed physician or **licensed audiologist or person(s) under their direction**. [The physician will determine necessary follow-up procedures for these high risk infants.]

8:19-1.4 Six month [medical evaluation] **auditory screening/assessment report**

[New Jersey physician completing six month medical evaluations on infants at high risk for hearing impairment are requested to report their results to the Maternal and Child Health Program, New Jersey State Department of Health, Box 1540, Trenton, New Jersey 08625. Response forms shall be provided to New Jersey physicians by the Maternal and Child Health Programs.] **Physician(s) or audiologist(s) or person(s) under their direction completing the six month auditory screening/assessment of infants at high risk for hearing impairment shall report their results to the Special Child Health Services Program, New Jersey State Department of Health, CN 364, Trenton, New Jersey 08625. Response forms shall be provided at no cost by Special Child Health Services Program to the parents of infants at high risk and to any other persons who may request such forms**.

8:19-1.5 High risk conditions

(a) The literature required by section 2 of this subchapter shall describe the following high risk conditions:

[1. Family history of deafness which affected an individual during childhood;

2. Rubella or other non-bacterial intrauterine fetal infections;

3. Malformed, low set or absent pinnae; cleft palate or lip (includes submucous cleft), any residual abnormality of the otorhinolaryngeal system;

4. Serum bilirubin level of 20 mg/100 and over;

5. Newborn in Intensive Care Unit;

6. Ototoxic drugs in pregnancy or newborn (gentamycin or kanamycin);

7. Physical or mental abnormalities (i.e. Cerebral Palsy, Mental Retardation, Downs Syndrome, etc.)

1. **Five minutes Apgar Score of 6 or less.**

2. **Meningitis.**

3. **Congenital or perinatal infections (such as rubella, herpes, toxoplasmosis, syphilis, cytomegalovirus, TORCH complex).**

4. **Defects of head or neck (such as cranio-facial syndromal abnormalities, overt or submucous cleft palate, morphologic abnormalities of the pinna) exclusive of isolated skin tags.**

- 5. Elevated bilirubin exceeding indication for exchange transfusion.
- 6. Family history of childhood hearing impairment.
- 7. Birthweight less than 1,500 grams.
- 8. Ototoxic drugs (such as gentamicin or kanamycin) were administered to the infant for 14 or more days or multiple courses of therapy.
- 9. Evidence of intracranial hemorrhage.

8:19-1.6 Confidentiality of reports

Any forms and reports furnished to the Department as required by these regulations shall not be made public so as to disclose the identity of the person to whom they relate. Information obtained from forms and reports furnished to the Department will be confidentially shared with participating local health service agencies to provide follow-up for high risk infants. All parents shall have the option to deny release [to] of any information to local health service agencies.

HOSPITAL REIMBURSEMENT

For proposals numbered PRN 1985-210 and 212, submit comments by May 15, 1985 to:

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

(a)

**Procedural and Methodological Regulations
Periodic Adjustments**

Proposed Amendment: N.J.A.C. 8:31B-3.72

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

Proposal Number: PRN 1985-210.

The agency proposal follows:

Summary

The Federal Health Care Financing Administration approved extension of Waivers of Medicare reimbursement principles effective January 1, 1985 through December 31, 1987 on December 31, 1984. In order to secure the continuation of New Jersey's Waiver of Medicare reimbursement principles for the all-payer hospital rate setting system established under N.J.S.A. 26:2H-1 et seq., it was necessary to provide certain assurances to the United States Health Care Financing Administration (HCFA) pursuant to 42 U.S.C.A. §1395 ww(c). One of these assurances was that, during the period of the three-year waiver, the total amount of payments made by the Medicare programs using the State's system will not exceed the total amount which would otherwise be made using standard reimbursement principles under Title XVIII and Title XIX of the Social Security Act. Specified quarterly ratios of State controlled Medicare payments relative to what would have been spent by Medicare were developed based on existing Federal Medicare principles. The agreement requires interim withholding of specified amounts of Medicare payment if these ratios are exceeded in the aggregate by more than two percent in a quarter.

To reduce the possibility of terminating the waiver prior to its expiration, or of recouping excess payments from hospitals after its expiration, HCFA and the State agreed that the State would provide a regulatory means for HCFA to withhold amounts equal to excess Medicare payments or return monies previously withheld should the State system reestablish savings relative to the Federal system during the waiver period. The State also agreed to provide, by statute or legally binding regulation, that any reduced payments to hospitals due to their exceeding the agreed to amounts will constitute full and final Medicare payment for the services rendered by the hospitals to Medicare beneficiaries during the period covered by the reduced payments, but subject to the adjustments allowed to return previously withheld payments. The proposed regulation is intended to enable the State to support this assurance and secure the waiver for the continued operation of its all-payer system.

Social Impact

This regulation will provide important assistance in supporting New Jersey's application for the Waiver of Medicare reimbursement principles necessary for the continuation of the State's all-payer hospital rate setting system. Maintenance of the waiver for the system serves the goals and intent of the Health Care Facilities Planning Act to bring about effective containment of the cost of hospital services. The Department of Health would monitor and oversee the withholding of amounts of funds identified as Medicare overpayments. The health care consumer would not be impacted.

Economic Impact

There is a potential for a reduction in the hospital rates set by the Department of Health to be reimbursed by Medicare over a three-year period because of the potential activation of this regulation. However, any reduction would be made merely to equate the total payments from Medicare to the level of payments which would ordinarily have been made to hospitals under standard Medicare reimbursement principles. The health care consumer will not be economically impacted.

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

8:31B-3.72 Periodic adjustments

(a) Certain periodic adjustments are made to the Schedule of Rates which are not dependent upon new submissions of reports. These adjustments are made independently of the yearly reconciliations of the Schedule of Rates, but will affect the calculation of Commission Approved Revenue. Periodic adjustments are made for any adjustments explicitly ordered by the Commission pursuant to N.J.A.C. 8:31B-3.64, Modification of Proposed Schedule of Rates. The following periodic adjustments will be implemented by the Commission and the affected hospitals pursuant to N.J.A.C. 8:31B-3.42, Implementation.

1. (No change.)

2. Other adjustments:

i. Payers reimbursing institutions on the basis of a period intermittent payment system shall adjust for significant changes in actual case-mix on a quarterly basis (accounting for seasonal variation) and at appropriate intervals for any payer adjustments set forth in N.J.A.C. 8:31B-3.39, 3.40 [and] , 3.41 and 3.72(a)2iii.

ii. (No change.)

iii. In no event shall the aggregate amount of rates to be reimbursed by Medicare over the three-year period beginning January 1, 1985 exceed the aggregate amount of payments

which would otherwise have been made by Medicare under methodological principles of reimbursement which would ordinarily apply under Title XVIII of the Social Security Act. In the event that quarterly payments exceed the agreed to ratios of State waiver spending relative to what would have been spent by Medicare absent the waiver, interim adjustments to implement waiver assurance shall be initiated in a timely fashion pursuant to N.J.A.C. 8:31B-3.72(a)(2)(i).

iv. Reduced Medicare payments to hospitals shall be made in accordance with N.J.A.C. 8:31B-3.72(a)(2)(i) and in accordance with the methodology approved by the Commission in order to comply with the Medicare waiver letter of agreement. Such reduced payments shall be Medicare's full and final payment for services rendered on behalf of Medicare beneficiaries during the period covered by the reduced payments, but subject to the adjustments permitted the State to subsequently increase hospital payments when savings relative to the Federal System are reestablished during the waiver period.

v. Nothing in these regulations shall prohibit the State Department of Health from recommending and the Commission from approving aggregate increases in Medicare payments to individual hospitals up to the amount previously withheld should aggregate savings relative to what the Federal Medicare System would pay be reestablished. Provided however, that such increases should in no event result in Medicare payments in any quarter in excess of those which would otherwise have been made by Medicare following Federal Medicare reimbursement principles.

- (1) (No change.)
- 3. (No change.)

(a)

**Procedural and Methodological Regulations
Use of Findings**

Proposed Amendment: N.J.A.C. 8:31B-3.79

Authority: N.J.S.A. 26:2H-1, et seq., specifically 26:2H-5b, and 26:2H-18d.
Proposal Number: PRN 1985-212.

The agency proposal follows:

Summary

The proposed amendment to the Procedural and Methodological Regulations allows the Hospital Rate Setting Commission to establish rates recognizing two levels of patients requiring post-acute nursing care while awaiting placement for continued care. Currently, patients awaiting placement for continued care are reimbursed at the Skilled Nursing Facility (SNF) per diem rate. However, Federal Medicaid Regulations, CFR 447.253(b)(1)(B), in compliance with the Medicaid Title XIX statute, requires reimbursement of both the SNF and ICF levels of care, as determined by the appropriate Utilization Review Organization (URO).

The proposed methodology enables compliance with the manner in which Medicaid reimburses post-acute care patients in hospitals. Compliance with Federal Medicaid Regulations is required by the Health Care Financing Administration (HCFA) in order for New Jersey Medicaid to obtain approval of their proposed State Plan. The approval of the Medicaid State Plan by HCFA, is a condition under which New Jersey

was granted an inpatient Waiver under Section 1886(c)(5) of the Social Security Act (P.L. 97-21).

The present Procedural and Methodological Regulations recognize the SNF and ICF levels of care but did not provide for a means of calculating both rates. This proposed amendment is intended to clarify the initial intent of this section (8:31B-3.79(b)2.ii(1) and (2)) of the Regulations.

Social Impact

The proposed amendment will not impact upon the hospital's behavior in caring for these patients, since the monetary incentive to transfer patients to an extended care facility will not be altered significantly. The proposed amendments will not affect the health care consumer.

Acute care hospitals will continue to be required to place their patients, needing less than acute care, in an appropriate Skilled or Intermediate Nursing Facility and document this continuing effort.

Economic Impact

The proposed amendment will result in approximately a one percent (\$136,179) reduction in reimbursement to acute care hospitals for inpatients classified at a post-acute level of care (SNF or ICF). Based upon the hospitals' reported Skilled (SNF) and Intermediate (ICF) level of care days in 1982, reimbursement of the ICF days at the lower ICF rate would have resulted in decreased reimbursement of \$136,179, in 1985 dollars, using 1985 per diem rates (\$59.03 SNF and \$52.32 ICF). The proposed amendment will not economically impact upon the health care consumer.

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

8:31B-3.79 Use of findings

- (a) Typical cases:
 - 1.-3. (No change.)
- (b) Atypical cases:
 - 1. (No change.)
 - 2. Adjustment of payments: Outliers
 - i. (No change.)
 - ii. Inappropriate level of care:
 - (1) (No change.)

[(2) Reimbursement will be made for each eligible patient at the statewide weighted average per diem rate of Medicaid participating long-term care facilities in effect as of July 1 of each year. The statewide weighted average per diem rate will be calculated by multiplying the Medicaid Skilled Nursing Facility (Level 3) payment rates of each nursing home in effect July 1 by the total Medicaid patient days of the nursing home as reported on the most recent cost report (a 12-month period). The total dollars will then be divided by the total actual Medicaid patient days to arrive at the weighted average per diem. This will then be adjusted by a one-half year global economic factor and used prospectively for the next calendar year as the final rate.]

(2) Reimbursement for each eligible patient will be based upon a Statewide weighted average SNF or ICF per diem rate of Medicaid participating long-term care facilities, in effect as of January 1 of the rate year. Separate Statewide weighted average per diem rates will be calculated for both the Skilled (SNF) and Intermediate (ICF) levels of care patients as follows:

(A) Multiply the SNF payment rate, of each Medicaid long-term care facility, in effect as of January 1 of the rate year by the total Medicaid SNF patient days as reported on the most recent Medicaid cost report (12-month period). The

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Statewide Medicaid total SNF dollars are divided by the total Statewide Medicaid SNF days to arrive at a weighted average SNF per diem. The ICF per diem is calculated following the same steps using total Medicaid ICF days and costs. These SNF and ICF rates will be final for billing purposes and final reconciliation.

iii. (No change.)

(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-1.4

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

Proposal Number: PRN 1985-211.

Submit comments by May 15, 1985 to:

Robert W. Seiz
Health Planning Specialist
Health Planning Services
CN 360
Trenton, N.J. 08625

The agency proposal follows:

Summary

Current Department of Health rules are periodically updated based upon the changing requirements for quality hospital and related health care services throughout the State.

In reviewing current rules for planning and certification of need or regional end-stage renal disease services, the Commissioner obtained the recommendations of the Statewide Health Coordinating Council.

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) which is known as the Sunset Law. The entire rule was presented for public review during the thirty-day comment period (November 19–December 18, 1984). Section 8:33F-1.4, which addresses acute hemodialysis standards, is proposed amendment at this time.

The Department of Health is especially concerned about the quality of acute dialysis services which are provided to patients, particularly those acute services delivered through the Inter-Hospital Hemodialysis Outreach Program (IHOP). An acute dialysis treatment is considered to be a more delicate and hazardous procedure than a chronic hemodialysis treatment. In addition, the provision of acute dialysis services through an IHOP requires a detailed contractual agreement between an approved End-Stage Renal Disease (ESRD) center or facility, and a non-ESRD approved hospital.

The proposed amendments focus on specific criteria which are designed to assure the quality of acute hemodialysis treatment and provided guidance to decision-makers in the certificate of need process. N.J.A.C. 8:33F-1.4(b) is now being identified as section 8:33F-14(c) and N.J.A.C. 8:33F-1.4(b) is being amended to contain the proposed quality of care ele-

ments. The amendments establish the quality of care for acute dialysis through the delineation of staffing requirements and qualifications, and specify the types of staff needed to be available during acute dialysis treatment. The qualifications and availability during treatment of the nephrologist, patient's primary care physician, nephrology nurse, and the patient's primary care registered nurse, are discussed. In addition certification requirements for IHOP as well as non IHOP participant hospitals are addressed.

Social Impact

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

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

An acute dialysis treatment is much more dangerous and hazardous than chronic treatments. It should be done only under ideal situations, usually in an acute-care area, with emergency equipment and medical specialist readily available. The patient is more acutely ill, usually with other systems complications, and there are no vascular accesses such as shunts or fistulae available. The nephrologist must initiate the dialysis treatment directly into the circulatory system using femoral or subclavian catheters and must be available throughout the entire treatment. The medical expertise and back-up required is extensive and is not always available in small, less experienced hospitals. Both nephrologist and nurse must be well trained, experienced and alert to any signs of complications or emergency.

The amendments will make services more available to patients in non-ESRD approved hospitals. Individual hospitals in the IHOP program will not have to develop their own end stage program. The Department of Health will receive quarterly data reports, and will perform data collection and monitoring to ascertain whether the quality of care is upheld.

Economic Impact

The proposed amendments specifically address the element of quality of care in the provision of acute hemodialysis services. There are, however, issues of cost which are also of concern to the Department and are being explored particularly in regards to the Inter-Hospital Hemodialysis Outreach Program configuration.

The IHOP arrangement allows a non-ESRD approved hospital to purchase individual acute dialysis service from an ESRD approved center or facility on a demand basis. This contractual agreement enables the critically ill patient, who can not be transferred to an approved renal center, to receive

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acute dialysis treatment. This arrangement does not financially burden the non-ESRD approved hospital with the establishment of its own acute dialysis service when it, in actuality, may be only occasionally utilized, thus reducing health care expenditures.

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

8:33F-1.4 Acute hemodialysis standards

(a) Acute hemodialysis is defined herein as the rendering of dialysis to a non-ESRD patient with previously life-supporting renal function who has sustained abrupt loss of kidney function. Recovery of kidney function is expected in such cases. The amount of time required to prepare both the patient and equipment for service is generally adequate to transfer most patients to a hospital ESRD dialysis center. Therefore, the department generally does not support the provision of acute hemodialysis services in non-ESRD approved facilities as this service is provided in all hospital ESRD dialysis centers.

(b) Any applicant for acute hemodialysis services only must provide written documentation of the following quality of care assurances:

1. Acute hemodialysis must be delivered by a qualified team consisting of:

i. The board certified or eligible nephrologist must be acceptable to the hospital which will be providing the services. The nephrologist must be present in the facility during the entire treatment.

ii. A registered professional nurse with one year experience in providing renal dialysis services must be present during the entire treatment. A minimum of one registered professional nurse will be assigned per acute dialysis patient. This registered professional is to perform only those duties directly related to dialysis care and treatment. A registered professional nurse with the above qualifications must be available on call 24 hours a day, seven days a week.

2. The following ancillary personnel must be provided:

i. The patient's primary care physician must be available on call to the nephrologist during the entire dialysis treatment.

ii. The patient's primary care registered professional nurse must be present during the entire dialysis treatment to perform those nursing duties not directly related to dialysis care and treatment.

3. Acute hemodialysis will be performed only in Intensive Care Units or Coronary Care Units.

4. Each acute patient shall have a medical record in accordance with Hospital Licensure Standards. This medical record shall be available to dialysis personnel during the entire dialysis treatment. A copy of dialysis records will be returned to the hospital providing the service for joint review by the Medical Director of the hospital providing these services and the treating nephrologist for the monitoring of care. The qualified team shall be responsible for recording clinical observations relevant to dialysis care and treatment.

5. All equipment used in the dialysis treatment shall be tested periodically with records of test results and equipment maintenance maintained by the provider. Water used for dialysis will be treated in an approved manner.

6. The licensing standards for acute inpatient hospital dialysis must be satisfied.

7. The applicant for acute hemodialysis must have a formal, written agreement with an approved hospital ESRD dialysis center to provide mutually agreed upon educational and training services, as well as to provide for inter-hospital transfer arrangements when necessary.

8. Any applicant proposing to perform acute hemodialysis is required to report utilization data on a quarterly basis directly to the Department of Health's Division of Health Planning and Resources Development.

9. The following must be provided with 24 hour capability by the recipient hospital: Cardiologist and thoracic surgeon, resuscitation team, coagulation laboratory, nuclear medicine and/or ultrasound.

[(b)] (c) Applications for certificate of need from non-ESRD approved facilities proposing to offer only acute hemodialysis services will be considered only under the following conditions:

1. The non-ESRD approved facility proposing to provide acute hemodialysis during an inpatient stay must document at least 11,250 inpatient medical/surgical and/or intensive/coronary care admissions annually. In the case of multihospital systems, the 11,250 inpatient admissions must occur at one hospital in the system and may not be the sum of admissions at all hospitals comprising the system.

2. To provide acute hemodialysis services, with its own resources, the applicant hospital with 11,250 inpatient medical/surgical and/or intensive/coronary care admissions must present written certification [of the following to the Department of Health:] that the proposed service is needed. In so doing, the applicant must provide written documentation of a minimum of 24 acute cases during the previous 12 months within the applicant institution. The 24 cases shall be limited to kidney disease patients and shall exclude those due to drug overdose and poisoning.

[i. That is has, or will have, before beginning the service, an agreement with a certificate of need approved Inter-Hospital Hemodialysis Outreach Program with a hospital ESRD dialysis center or an ESRD dialysis facility for a qualified team to deliver the service. The team must consist of a board certified or eligible nephrologist on staff, a nursing staff qualified and with six months experience in providing renal dialysis services, have ready access to dialysis equipment, and must satisfy the licensing standards for acute inpatient hospital dialysis. Nursing staff must be available 24 hours per day to provide hemodialysis as needed, or

ii. That it is able to provide the service with its own resources which must include a board certified or eligible nephrologist on staff and nursing staff qualified and with 6 months experience in providing renal dialysis services. Nursing staff must be available 24 hours per day to provide hemodialysis as needed. In this event the application must have a formal, written agreement with an approved hospital ESRD dialysis center to provide mutually agreed upon educational and training services, as well as to provide for interhospital transfer arrangements when necessary. The licensing standards for acute inpatient hospital dialysis must also be satisfied.]

3. The non-ESRD approved facility with less than 11,250 inpatient medical/surgical and/or intensive/coronary care admissions and proposing to provide acute hemodialysis services must provide substantive data that the proposed acute hemodialysis service is needed. In so doing, the applicant must provide written documentation of a minimum of 24 acute cases during the previous 12 months within the applicant institution. The 24 cases shall be limited to kidney disease patients and shall exclude those due to drug overdose and poisoning. A hospital participating in an Inter-Hospital Hemodialysis Outreach Program shall be exempt from the minimum 24 case requirement; and

4. The applicant with less than 11,250 annual inpatient admissions also must demonstrate that in the absence of the

proposed service, the population to be served will be denied reasonable access based upon medical necessity to an approved hospital ESRD dialysis center providing inpatient dialysis. Reasonable access shall be interpreted to mean not more than 20 straight miles travel from the point of origin of the patients. The length of time it takes to confirm that a patient needs acute dialysis and to arrange the logistics of such treatment is such that a patient can easily be transferred to a hospital ESRD dialysis center during the time this is occurring and without jeopardy to the patient. A hospital participating in an Inter-Hospital Hemodialysis Outreach Program for acute hemodialysis shall be exempt from the aforementioned 20 straight miles travel requirements.

[5. The applicant with less than 11,250 inpatient medical/surgical and/or intensive/coronary care admissions annually must provide written documentation of the same agreements and/or staffing patterns as in paragraph 2i. or ii. above.]

(d) Applications for certificates of need to provide acute dialysis services to non-approved facilities through an IHOP arrangement will only be accepted from approved ESRD Centers. New IHOPs are required to follow the full certificate of need process. Each IHOP, which has already received a certificate of need, shall undergo the administrative review process each time it adds a hospital so long as it does not propose to serve a hospital outside a radius of thirty miles from its facility (N.J.A.C. 8:33-3). An existing IHOP proposing to serve a facility beyond the thirty mile radius shall be required to follow the full certificate of need process.

(a)

DIVISION OF NARCOTICS AND DRUG ABUSE CONTROL

**Controlled Dangerous Substances:
Persons Entitled to Issue Prescriptions**

Proposed Amendment: N.J.A.C. 8:65-7.3

Authority: N.J.S.A. 24:21-9.
Proposal Number: PRN 1985-213.

Submit comments by May 15, 1985 to:
Lucius A. Bowser, RP, MPH
Chief, Drug Control Program
CN 362
Trenton, NJ 08625

The agency proposal follows:

Summary

The current regulation, N.J.A.C. 8:65-7.3, indicates that a practitioner may communicate a controlled substance prescription to a pharmacist for filling. It does not specify an alternative to that permissive "may". The proposed amendment would make it mandatory that only a practitioner communicate a controlled substance prescription to a pharmacist for filling because of the nature of the controlled substance and the significant need for a pharmacist to be ready to answer any professional questions from the practitioner. The amendment would also enhance the practitioner's status with his patient and would ensure a greater means of preventing diversion of controlled substances.

Social Impact

The proposed amendment would ensure greater protection for the patient being served by the practitioner in safeguarding the accuracy of the communication of drug information between practitioner and pharmacist. It would have no adverse impact on the continuum of good medical care for the patient.

Economic Impact

The proposed amendment would not negatively impact economically on a practitioner. He would be in full command of what he wishes to prescribe and be available to answer questions from the pharmacist, thus ensuring the accuracy of the communicated prescription. This procedure may help prevent improper medication and dosage frequency. The amendment would not impact economically upon a patient other than to ensure that proper information has been communicated to the pharmacist to benefit the patient.

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

8:65-7.3 Persons entitled to issue prescriptions

(a) A prescription for a controlled substance may be issued only by an individual practitioner who is:

1. Authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession; and

2. Either register or exempted from registration pursuant to the Code of Federal Regulations, Title 21, part 1301.24(c) or 1301.25.

(b) A prescription issued by an individual practitioner [may] **shall** be communicated to a pharmacist by the individual practitioner.

HUMAN SERVICES

Proposals numbered PRN 1985-201, 202, 203, 204, 207, 208 and 209 are authorized by George J. Albanese, Commissioner, Department of Human Services.

(b)

DIVISION OF MENTAL RETARDATION

**Administration
Appeal Procedure**

Proposed New Rule: N.J.A.C. 10:48

Authority: N.J.S.A. 30:4-1 et seq. and N.J.A.C. 10:6-1 et seq.

Proposal Number: PRN 1985-202.

Submit comments by May 15, 1985 to:
Administrative Practice Officer
Division of Mental Retardation
CN 700
Trenton, NJ 08625

The agency proposal follows:

Summary

The Commissioner, Department of Human Services, pursuant to the authority of N.J.S.A. 30:4-1 et seq., proposes to

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adopt N.J.A.C. 10:48 to delineate the steps to be taken when disagreements arise between citizens and the Division of Mental Retardation. The Division's previous appeal procedure, N.J.A.C. 10:48, was allowed to expire in accordance with Executive Order No. 66(1978). In the interim, the Division has been following the procedures established in N.J.A.C. 10:6 (effective February 21, 1984) which outlines the standards applicable to all Department of Human Services hearings. This proposed rule delineates the Division of Mental Retardation's appeal procedures which are in conformity with the standards established in N.J.A.C. 10:6. There are two significant differences from the expired Division rule. First, the proposed rule differentiates between contested matters, which must be heard by the Office of Administrative Law, and non-contested matters, which may be heard by the Division in Administrative Review. Secondly, the proposed rule streamlines the Divisional appeal process by limiting it to a two step review rather than the previous three step review.

Social Impact

The proposal is expected to have a positive social impact since it will bring disagreements to a speedier resolution than the expired rule. The proposal will also provide complainants with a third-party hearing when there is a contention that legal rights, duties and benefits are involved since such appeals will be heard by the Office of Administrative Law rather than by the Division itself.

Economic Impact

This proposal is expected to have no negative economic impact on the Department's applicants, recipients or providers, nor on any other members of the public at large.

Full text of the proposed new rule follows.

**CHAPTER 48
ADMINISTRATION**

SUBCHAPTER 1. APPEAL PROCEDURE

10:48-1.1 General provisions

(a) The purpose of this procedural rule is to delineate the steps to be taken when disagreements arise between citizens and the Division of Mental Retardation (DMR). Its aim is to encourage and permit the early resolution of disputes and, where that is not possible, to identify the steps to be taken for review by the appropriate authority.

(b) The rule pertains to all disputes and disagreements with service components of the Division of Mental Retardation involving members of the public, clients of the Division and/or their authorized representatives, grantees, licensees and prospective licensees, all herein referred to as complainants.

(c) It is expected that, in most disputes between complainants and service components, the complainant will know the identity of the service component with whom there is disagreement. Where the precise service component is not known, such information may be obtained by calling the information office of DMR (609) 984-5525.

(d) Appeals relating to decisions on educational program issues involving clients of legal school age shall be submitted to the Department of Education.

10:48-1.2 Definitions

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

"Administrative hearing" shall mean the proceeding which will be conducted by an Administrative Law Judge upon

receipt of an appeal determined to be a contested matter or an appeal of a non-contested matter that is referred to the Office of Administrative Law by the Division Director for resolution.

"Administrative review" shall mean the informal proceeding which may be scheduled at the discretion of the Division Director to review a non-contested matter upon receipt of an appeal of the first level informal conference decision. This process may take the form of an Administrative Paper Review of relevant records, correspondence, etc. or an Administrative Review Conference with involved parties present.

"Contested matter" shall mean a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decision, determinations or orders addressed to them, or disposing of their interests, after opportunity for an agency hearing (N.J.S.A. 52:14B-2(b), N.J.A.C. 1:1-1.1 et seq.).

"Informal conference" shall mean a meeting in which the respective parties may informally attempt to resolve the issues at hand.

"Involved parties" shall mean the complainant, his/her representative, if any, and the service component.

"Service component" shall mean the operational unit of the Division of Mental Retardation (e.g., Developmental Center, region, bureau, etc.) which has responsibility for the disputed matter.

10:48-1.3 Initial step: Informal Conference

(a) Disagreements between complainants and service components of the Division shall be reviewed informally between the complainant and the service component where a decision is being challenged. This shall be initiated upon request by the complainant to the head of the service component who shall schedule the conference within 7 working days of receipt of the request. Extension of the conference date beyond 7 working days may only occur upon mutual agreement of both parties.

(b) The head of the service component, or his/her designee, shall prepare a written report of the Informal Conference that summarizes the matter in dispute and the results of the conference. This report shall be retained in the files of the service component and shall be made available in the event of further appeal.

(c) A written response of the results of the conference shall be provided to the complainant within 20 working days.

(d) Complainants appealing issues thought to be "contested matters" may elect to waive the initial step Informal Conference and proceed directly to the final step delineated in 10:48-1.5.

(e) Representation and procedure:

1. Neither the complainant nor the service component designee shall have legal representation at the Informal Conference.

2. Only those persons who have direct knowledge of the issues involved shall be admitted.

3. The Rules of Evidence shall not be strictly enforced.

4. No transcripts of the proceedings shall be made.

10:48-1.5 Final step: Administrative Review or Administrative Hearing

(a) Should resolution not be possible at the Informal Conference level, the complainant may submit a written request to the Director, Division of Mental Retardation, for administrative appeal.

HUMAN SERVICES

PROPOSALS

1. Written requests for administrative appeal shall be made within 15 calendar days of the mailing of the written response.

2. If the issue being appealed is thought to be a "contested matter" and the complainant elects to waive the Informal Conference, the written request shall be made within 15 calendar days of the date the head of the service component was notified of the initial step waiver.

3. The request for administrative appeal shall contain the name, address and telephone number of the complainant; name and address of the client (if different from complainant); the complainant's relationship to client; the date of the complaint; a brief statement of the complaint; witnesses, if any to be called; and reference to the law, rule, regulation, policy or procedure alleged to be violated, if applicable.

4. Failure to file an appeal within the time limits specified herein shall render the agency action final.

(b) The Director, Division of Mental Retardation, or his/her designee shall review the complaint and determine if it is a contested or non-contested matter.

10:48-1.5 Contested cases

(a) Those matters determined to be contested, shall be referred to the Office of Administrative Law (OAL).

1. While contested cases are being prepared for transmittal to OAL, further efforts may be made to resolve the issue informally.

2. The Director, Division of Mental Retardation may, at his or her discretion, transmit a non-contested matter to the OAL (N.J.S.A. 52:14F-5(o)).

(b) A decision rendered by the OAL shall be adopted, rejected or modified by the Director, Division of Mental Retardation, within 45 days of its receipt (N.J.S.A. 52:4B-10(c)). This shall be construed as constituting the final administrative decision of the matter under appeal.

(c) Upon issuance, the final administrative decision shall be sent to the involved parties with notice that any further appeal must be to the Appellate Division of the Superior Court of New Jersey.

10:48-1.6 Non-contested cases

(a) If the matter is determined to be non-contested, the Director, Division of Mental Retardation, at his or her discretion, shall:

1. Dismiss the case, notifying the complainant that further appeal may be made to the Appellate Division of the Superior Court; or

2. Refer the case back for an Informal Conference, if such a conference has not been held or has been waived pending determination whether the matter is contested or non-contested.

3. Refer the case to a designated Review Officer who shall determine if a paper review without the parties appearing, or an Administrative Review Conference with the parties present, is appropriate.

(b) Administrative paper review:

1. This review shall take place within 10 working days of the date of receipt of the appeal.

2. A written decision shall be forwarded to the involved parties within 10 working days of the review. This shall be considered the Recommended Decision.

(c) Administrative review conference:

1. The Review Officer shall schedule an Administrative Review Conference within 20 working days of receipt of the appeal.

2. The involved parties shall be notified at least 5 working days prior to the Review of the time and place of the conference.

3. The Review Officer shall forward to the involved parties a written decision within 20 working days of the Review Conference. This shall be considered the Recommended Decision.

(d) Written comments, objections or exceptions to the Recommended Decision, if any, shall be submitted to and received by the Division Director's office within 10 working days from the date of the Recommended Decision.

(e) After review of the Recommended Decision and any comments, objections or exceptions that may have been submitted in response to it, the Division Director shall issue a final decision in writing, within 20 working days of the close of the comment period.

(f) Upon issuance, the Final Decision shall be sent to the parties with notice that any further appeal must be to the Appellate Division of the Superior Court of New Jersey.

(g) Representation and procedure:

1. At the Administrative Review Conference, the complainant may be represented by an attorney or spokesperson and may present documentation and such witnesses as have direct knowledge of the issues involved.

2. The service component shall be represented by personnel designated by the head of the service component and may produce documentation and such witnesses as have direct knowledge of the issues involved.

3. A verbatim transcript of the proceedings shall be made.

DIVISION OF PUBLIC WELFARE

For proposals numbered PRN 1985-203, 204, 207, 208 and 209, submit comments by May 15, 1985 to:

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

(a)

Public Assistance Manual Sending Data to Receiving County When Client has Moved

Proposed Amendment: N.J.A.C. 10:81-3.27

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

Proposal Number: PRN 1985-203.

The agency proposal follows:

Summary

With regard to recipients of public assistance under the Aid to Families with Dependent Children (AFDC) program (Title IV-A of the Social Security Act), it is the responsibility of the income maintenance IV-A Unit in the county welfare agency to send all pertinent case data to the receiving county when a client has moved. The case information that is transmitted to the receiving county should also include case information on child support and paternity (CSP) so that immediate action can be taken, as necessary. Form CSP-158 (Case Preparation Information Sheet) contains the kind of child support information that is needed by the receiving county CSP IV-D Unit (Child Support and Paternity Program, Title IV-D of the Social Security Act). Therefore, this amendment will require that the document, Form CSP-158 be included in the IV-A referral package.

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

Social Impact

The inclusion of a IV-D Case Information Sheet in the referral package should assure continuity of the IV-D case. The receiving county would have available the basic information needed to perpetuate the case action, which in turn benefits the client.

Economic Impact

If continuity of case activity is maintained from county to county, problems with child support collections should become known much sooner than would occur if Form CSP-158 is not sent and information has to be newly developed.

Administrative expenditures relative to acquiring similar support data will be eliminated; and on cases with support orders, beneficiary changes to the correct CWA can be accomplished more expeditiously.

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

10:81-3.27 Change of county residence

(a) (No change.)

(b) A temporary visit by either the recipient family or any member thereof shall not be considered to be a change of county residence until that visit has continued for more than a three-month period. (See N.J.A.C. 10:81-3.32 and 3.34.)

1.-2. (No change.)

3. The county of origin shall initiate and the receiving county shall, on request, immediately cooperate in accomplishing a full investigation of the circumstances surrounding the move. If the move is permanent, each county shall execute its respective responsibilities in accordance with this paragraph.

i. The county of origin has the responsibility to:

(1) Transfer, within five working days from the date it is notified of the actual move, a copy of pertinent case material to the receiving county. Such material shall include, at a minimum, a copy of the first application and the most recent PA-1J form; the most recent CODES 105A and B forms; Social Security numbers or copies of SS-5 forms; **a copy of Form CSP-158, Case Preparation Information Sheet** (see N.J.A.C. 10:81-11.9(e)); all birth verifications; and, where ongoing [recoupment] **recovery of overpayments** is involved, the amounts and net balances;

(2)-(3) (No change.)

ii.-iv. (No change.)

(a)

**Public Assistance Manual
Minimum Support Assessment
Recommendation**

Proposed Amendment: N.J.A.C. 10:81-11.18

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

Proposal Number: PRN 1985-209.

The agency proposal follows:

Summary

N.J.A.C. 10:81-11.18 provides the county welfare agencies with a standardized methodology for determining the minimum amount of support to be recommended in support pro-

ceedings against absent parents. In that determination, adjustments are applied against the absent parent's income for members of his or her second family if he or she is married and living with other dependents. This is done in recognition of his or her obligation to such persons in addition to his or her children who are in receipt of public assistance through Aid to Families with Dependent Children (AFDC). The adjustments are based on the payment standards in AFDC used to determine eligibility and payment levels. Since the support determination is computed on a weekly basis, the figures used for this adjustment are likewise weekly figures. Since the Department, in this issue of the Register, is proposing a five percent increase in AFDC payment levels, the support adjustment figures in Table II are also proposed for revision proportionately.

Social Impact

County welfare agencies seeking support orders against absent parents on or after July 1, 1985 will, when the absent parent resides with a second family, allow deductions from his or her income in amounts slightly higher than those currently in effect.

Economic Impact

This proposal is expected to have insignificant or no economic impact.

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

10:81-11.18 Support assessment

(a) The CWA shall recommend a minimum amount of support for consideration in support proceedings in accordance with individual county procedures. The recommended minimum weekly support amount shall be determined in accordance with the following steps.

1.-4. (No change.)

5. The amount remaining is the absent parent's adjusted income. This amount is compared to Table I. The amount indicated for the number of persons for whom support is sought is the minimum recommended support amount.

TABLE I
SUPPORT ASSESSMENT
(No change.)

TABLE II
WEEKLY SECOND FAMILY ADJUSTMENT

Number of Dependents (Excluding Absent Parent)	Adjustment Amount
1	\$[34.00] 36.00
2	[67.00] 71.00
3	[89.00] 93.00
4	[102.00] 107.00
5	[116.00] 121.00
6 +	add \$[13.00] 14.00 for each additional dependent

(a)

**Assistance Standards Handbook
Increase in AFDC Allowance Standards and
Legally Responsible Relative Schedule**

**Proposed Amendment: N.J.A.C. 10:82-1.2,
2.13, 3.11, and 5.11**

Authority: N.J.S.A. 44:7-6 and 44:10-3.
Proposal Number: PRN 1985-207.

The agency proposal follows:

Schedule I AFDC-C AFDC-F	Number in Eligible Unit	Schedule II AFDC-N
\$[147] 154	1	[\$ 98] 103
[292] 307	2	[195] 205
[385] 404	3	[257] 269
[443] 465	4	[295] 310
[501] 526	5	[334] 351
[559] 587	6	[373] 391
[617] 648	7	[411] 432
[675] 709	8	[450] 473
[733] 770	9	[489] 513
[791] 831	10	[527] 554
add \$[58] 61 each person	more than 10	add \$[39] 41 each person

Summary

Last year the Department increased Aid to Families with Dependent Children (AFDC) payment standards by seven percent, the first such increase since 1980. This year, in order to maintain AFDC payments at levels compatible with health and decency, the Department proposes to increase payment levels by five percent. All tables and schedules directly related to AFDC payment standards are being proposed for revision to reflect a five percent increase.

By law (N.J.S.A. 44:4-101), certain relatives of public assistance recipients are legally responsible to support such recipients if they have sufficient ability. These relatives are the parents of recipients under the age of 18 and the children and spouse of a recipient of AFDC. A person aged 55 or over is responsible only in regard to his or her spouse and children under the age of 18 years. The tables used to determine the capacity of a legally responsible relative to support an AFDC recipient are being revised. Part A reflects the AFDC payment levels proposed for July 1, 1985 combined with average medical costs and the standard work expense deduction applicable for the AFDC program. Part B, for other legally responsible relatives is updated by the four percent increase in the cost of living since the time the standards were last revised in July 1984.

Social Impact

The increase in AFDC payments will provide recipient families with assistance benefits more closely approximating actual need. This will improve the ability of AFDC recipient parents to provide for the needs of the children for whom this aid is intended.

Economic Impact

The total cost of the increase in AFDC standards is estimated for Fiscal Year 1986 to be \$28.2 million, of which the Federal government will pay \$13.9 million. The State and county shares of this cost are \$10.7 million and \$3.6 million, respectively.

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

10:82-1.2 Schedule of allowances

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

(c) Public Assistance Allowance Standards AFDC Program.

(d) AFDC eligibility shall not exist for any month if the total income of the eligible unit exceeds the amount indicated in Schedule III for the appropriate eligible unit size and program segment. For this purpose, total income shall include all income of the eligible unit (without benefit of the disregards in N.J.A.C. 10:82-4.4 or 4.5) including the income of stepparents and alien sponsors determined available to the eligible unit in N.J.A.C. 10:82-2.9 and 3.13. Total income includes the earned income of the AFDC children except for earnings disregarded by provisions of N.J.A.C. 10:82-4.7(g). Child support payments, except for the first \$50.00 monthly current child support received on behalf of the eligible unit, whether received directly by the household or collected through the CSP process, shall be counted in the determination of total income. See N.J.A.C. 10:82-2.13(f) for companion cases.

1. The AFDC grant shall not be considered as income for this purpose.

2. Funds exempted under N.J.A.C. 10:82-1.7 and 3.2(b)6 through 10 and monies disregarded under N.J.A.C. 10:82-4.6 shall not be considered income for this purpose.

**Schedule III
Maximum Income Levels**

AFDC-C AFDC-F	Number in Eligible Unit	AFDC-N
\$[272] 285	1	[\$181] 191
[540] 568	2	[361] 379
[712] 747	3	[475] 498
[820] 860	4	[546] 574
[927] 973	5	[618] 649
[1034] 1086	6	[690] 723
[1141] 1199	7	[760] 799
[1249] 1312	8	[833] 875
[1356] 1425	9	[905] 949
[1463] 1537	10	[975] 1025
Add \$[107] 113 each person	More than 10	Add \$[72] 76 each person

10:82-2.13 Companion cases

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

(e) When any member of the eligible unit has income, earned or unearned, proceed as follows:

1.-2. (No change.)

3. Deduct the total income from the total allowance to determine the adjusted allowance (and grant) for the eligible unit.

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Delete existing table in N.J.A.C. and replace with the following table:

Per Capita Table for Companion Cases Number in -C or -F Segment									
Total Eligible Unit	1	2	3	4	5	6	7	8	9
2	\$154								
3	135	269							
4	116	233	349						
5	105	210	316	421					
6	98	196	293	391	489				
7	93	185	278	370	463	555			
8	89	177	266	355	443	532	620		
9	86	171	257	342	428	513	599	684	
10	83	166	249	332	416	499	582	665	748

Number in -N Segment									
Total Eligible Unit	1	2	3	4	5	6	7	8	9
2	\$103								
3	90	179							
4	78	155	233						
5	70	140	211	281					
6	65	130	196	261	326				
7	62	123	185	247	309	370			
8	59	118	177	237	296	355	414		
9	57	114	171	228	285	342	399	456	
10	55	111	166	222	277	332	388	443	499

(f) The Maximum Income Level: Per Capita Tables below shall be used to determine AFDC income eligibility for companion cases of two to 10 members. For cases of more than 10 members the maximum income level shall be the per capita of the standard for the total eligible unit on Schedule III, N.J.A.C. 10:82-1.2, multiplied by the number of members in that segment.

Delete existing table in N.J.A.C. and replace with the following table:

Maximum Income Level-Per Capita Table Number in -C or -F Segment									
Total Eligible Unit	1	2	3	4	5	6	7	8	9
2	\$284								
3	249	498							
4	215	430	645						
5	195	389	584	778					
6	181	362	543	724	905				
7	171	343	514	685	856	1028			
8	164	328	492	656	820	984	1148		
9	158	317	475	633	792	950	1108	1267	
10	154	307	461	615	769	922	1076	1230	1383

Number in -N Segment

Total Eligible Unit	1	2	3	4	5	6	7	8	9
2	\$190								
3	166	332							
4	144	287	431						
5	130	260	389	519					
6	121	241	362	482	603				
7	114	228	342	457	571	685			
8	109	219	328	438	547	656	766		
9	105	211	316	422	527	633	738	844	
10	103	205	308	410	513	615	718	820	923

10:82-3.11 Determining amount of support

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

(d) The method for determining capacity to support is: 1.-5. (No change.)

6. The LRR's obligatory contribution shall not exceed the per capita share of the eligible unit's adjusted allowance for the person(s) for whom the LRR is liable.

Schedule IV—Monthly Income Standards

Part A Parents of AFDC children		Family size	Part B All other LRRs
\$[375]	405	1	[\$1075] 1120
[500]	540	2	[1500] 1560
[625]	675	3	[1930] 2010
[690]	740	4	[2360] 2455
[755]	810	5	[2715] 2825
[820]	875	6	[3005] 3125
[885]	945	7	[3290] 3420
[950]	1015	8	[3575] 3720
plus \$[65]70		Each additional person	plus \$[285]300

Schedule V (No change.)

10:82-5.11 AFDC supplemental payments

(a)-(g) (No change.)

(h) AFDC supplement payment eligibility standards.

AFDC-C AFDC-F	Number in Eligible Unit	AFDC-N
\$103	1	\$ 69
205	2	137
269	3	179
310	4	207
351	5	234
391	6	261
432	7	288
473	8	315
513	9	342
554	10	369
Add \$41 each person	more than 10	Add \$27 each person

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

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[AFDC-C AFDC-F	Number Eligible in Unit	AFDC-N
\$ 98	1	\$ 65
195	2	130
257	3	171
295	4	197
334	5	223
373	6	249
411	7	274
450	8	300
489	9	326
527	10	351
Add \$39 each person	more than 10	Add \$26 each person]

(a)

**General Assistance Manual
Increase in General Assistance Standards and
Legally Responsible Relative Schedules**

**Proposed Amendment: N.J.A.C. 10:85-4.1
and 9.4**

Authority: N.J.S.A. 44:8-111(d).
Proposal Number: PRN 1985-208.

The agency proposal follows:

Summary

In July of 1984, the Department increased General Assistance payment levels by seven percent. This was the first such increase since 1974. This year, in order to maintain General Assistance payment levels compatible with health and decency, the Department proposes to increase payment levels by five percent. The allowance schedules at N.J.A.C. 10:85-4.1, for employable as well as unemployable General Assistance recipients, are revised to reflect this five percent increase.

Under the law (N.J.S.A. 44:4-101) certain relatives of public assistance recipients are legally responsible to support such recipients if they have sufficient ability. These relatives are the parents of recipients under the age of 18 and the children and spouse of a recipient of General Assistance. A person aged 55 or over is responsible only in regard to his or her spouse and children under the age of 18 years. The schedule used to determine the capacity of those relatives to support General Assistance recipients is being revised so as to comport with similar schedules proposed for update in the Aid to Families with Dependent Children program. (proposed in this issue of the Register).

Social Impact

The proposed five percent increase in General Assistance payment levels will provide recipients with increased expendable income and thus increase their ability to purchase shelter and other necessities.

Economic Impact

The full cost of the five percent increase in General Assistance payment levels will be \$2.5 million for Fiscal Year 1986. Of that, the cost to the State will be \$1.7 million. The cost to municipalities will be \$.8 million.

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

10:85-4.1 State and local responsibilities
(a)-(b) (No change.)

Schedule I

Monthly Assistance Allowances
(Limited to persons determined unable to accept employment)

Number in Household	Eligible Unit	
	1	2
1	\$[190] 200	
2	[131] 138	[261] 275
3	[118] 124	[235] 248
4	[105] 110	[210] 221
5	[97] 102	[193] 204
6	[91] 96	[182] 191
7	[78] 82	[155] 164
8	[75] 79	[149] 158
9	[71] 75	[142] 149
10	[68] 71	[136] 143
11	[67] 70	[134] 141
12	[66] 69	[132] 139
13	[64] 67	[128] 134
14	[63] 66	[126] 132
15	[62] 65	[124] 130

Schedule II

Monthly Assistance Allowances
(For eligible units in which at least one person is employable)

Delete existing table in the N.J.A.C. and replace with the following table:

Number in Household	Number in Eligible Unit														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1	\$133														
2	92	183													
3	77	155	232												
4	67	134	200	267											
5	61	122	183	244	305										
6	57	114	172	229	286	343									
7	54	108	162	217	271	325	379								
8	52	104	156	208	260	312	364	416							
9	50	100	149	199	249	299	348	398	448						
10	48	96	143	191	239	287	335	382	430	478					
11	47	94	140	187	234	281	328	375	421	468	515				
12	46	92	138	184	230	276	321	367	413	459	505	551			
13	45	91	136	182	227	272	318	363	408	454	499	545	590		
14	44	89	133	178	222	267	311	355	400	444	489	533	578	622	
15	44	87	131	174	218	261	305	348	392	435	479	522	566	609	653

In eligible units of more than 15, add [\$29] **\$30** for each additional member.

(c) (No change.)

10:85-9.4 Determining amount of support
(a)-(b) (No change.)

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

Schedule IV—Monthly Income Standards

Part A		Family Size	Part B	
Spouse[,] or Parent of Child Under Age 18			All Other LRR['s]	
\$[375]	405	1	\$[1075]	1120
[500]	540	2	[1500]	1560
[625]	675	3	[1930]	2010
[690]	740	4	[2360]	2455
[755]	810	5	[2715]	2825
[820]	875	6	[3005]	3125
[885]	945	7	[3290]	3420
[950]	1015	8	[3575]	3720
+ \$[65] 70		Each Additional Person	+ \$[285] 300	

Schedule V
(No change.)

(a)

**Food Stamp Program
Verification Cross-Checks for Duplicate Participation; Delay Caused by Household in Processing Application; Expedited Service for Migrant Household; Collection of Multiple Food Stamp Overissuance Claims**

Proposed Amendment: N.J.A.C. 10:87-2.21, 2.24, 2.28, 2.31, 2.35, 9.7 and 11.29

Authority: N.J.S.A. 30:4B-2; 7 CFR 273.2(i)(4)(iii)(B); 7 CFR 274.1(d).

Proposal Number: PRN 1985-204.

The agency proposal follows:

Summary

The Department is submitting the following proposal which reflects Federal policy revisions and clarifications and several technical amendments to the Food Stamp Program.

To ensure that an individual does not receive food stamp benefits on more than one food stamp case, revised Federal regulations at 7 CFR 274.1(d) require that each food stamp household member be checked for duplicate participation by name and Social Security number (SSN) at time of certification, recertification and whenever a change in household composition occurs. However, the United States Department of Agriculture has granted the State of New Jersey a waiver to eliminate duplicate participation checks at time of recertification since duplicate participation cross-checks using Social Security numbers are handled automatically without worker involvement through the computerized Social Security Number Verification System. Therefore, this proposal addresses amendments relevant to duplicate participation verification at time of initial certification and whenever a change in household composition occurs. N.J.A.C. 10:87-2.21 is amended to state that prior to initial certification, all household members must be checked by name through the ALFX file. Language is being inserted at N.J.A.C. 10:87-2.24 which explains the

function of the ALFX file, the alphabetical name file used in locating specific cases on the State's computerized Central Operation for Data Exchange and Services (CODES) system. Additionally, N.J.A.C. 10:87-2.28 is amended to provide that when a change in household composition occurs, the CWAs must also check through the ALFX system for duplicate participation.

Households applying for food stamp benefits are not always able to provide all necessary verifications at the time of the initial interview. If the missing verification is provided within 30 days of application, benefits are provided retroactive to the date of application. However, if the household does not provide the necessary verification within 30 days, it loses entitlement to benefits for the month of application and the case is placed in pending status. Since this pending process can encompass three different months and the policy regarding proration of initial months benefits must be applied, additional clarification is necessary at N.J.A.C. 10:87-2.31. The United States Department of Agriculture has provided such clarification in Policy Memo 84-31, which states that when the delay in certifying a household is the fault of the household and the household is found eligible in the second or third 30-day period, such households are entitled to benefits only from the date the household took the required action. For example, a household makes application on January 25, but does not provide needed verification until March 20. The household is only entitled to benefits from March 20, the date the necessary action was taken by the household.

N.J.A.C. 10:87-2.35 is amended to include verification procedures involving expedited certification for migrant households. Under current regulations, households which are eligible for expedited processing of their food stamp application are permitted to postpone verification of eligibility factors if such verification cannot be accomplished within the expedited processing time frames. However, such households must provide postponed verification prior to the issuance of any additional benefits. Federal regulations were revised at 7 CFR 273.2(i)(4)(iii)(B) to allow migrant farm workers certified under expedited processing rules additional time to provide postponed verification. Migrant farm workers are often in need of food assistance when they arrive at a new worksite and obtaining verification from their previous residence (which may well be out-of-State) may be difficult and time consuming. This proposal states that migrant households certified under expedited processing rules after the 15th of the month must be advised, in writing, of their obligation to provide postponed verification from in-State sources prior to the issuance of the second full month's benefits and verification from out-of-State sources must be provided prior to the issuance of the third full month's benefits. Postponement of out-of-State verification may be granted only once in a season. Additionally, if verification, when received, results in a change in eligibility or benefit level, the change will be effected without advance notice of adverse action. N.J.A.C. 10:87-9.7, containing relevant regulations, is also being amended to include the provision for no advance notice of such change in eligibility or benefit level.

In accordance with clarification provided by the United States Department of Agriculture in Policy Memo 83-16, N.J.A.C. 10:87-11.29(a)3 is amended to include the provision that if a household has more than one claim for the repayment of overissuance of food stamps against it, only one intentional program violation claim and one inadvertent household error claim may be recovered at the same time without client consent.

Social Impact

The purpose of the regulation requiring verification cross-checks for duplicate participation in the Food Stamp Program is to eliminate recipient fraud in the area of receipt of multiple food stamp benefits and to preserve the integrity of the Food Stamp Program.

The impact of the revision dealing with delays caused by a household in processing an application is expected to clarify policy for county welfare agency staff involved in the determination of food stamp eligibility and benefit level in order to provide for the effective and efficient administration of the program.

Some of the hardship experienced by migrant farm workers, as they follow the work stream and sometimes arrive at a new work site before work is available, is hoped to be alleviated by the provision allowing additional time for migrant households to provide verification of eligibility criteria without being deprived of expedited service in the Food Stamp Program.

With regard to the collection of multiple food stamp overissuances, it is the purpose of the amended regulation to assure that households with more than one food stamp overissuance claim against them do not experience undue hardship in the repayment of claims.

Economic Impact

Amendments at N.J.A.C. 10:87-2.21 and 2.28 ensure conformity with Federal regulations at 7 CFR 274.1(d) regarding required cross-checks for duplicate participation in the Food Stamp Program. Some savings in federally funded benefits may be anticipated as the possibility of duplicate participation in the Food Stamp Program is greatly reduced by the cross-checking requirements.

Amendments at N.J.A.C. 10:87-2.31 regarding delays in application processing will have no impact on eligibility or benefit level of recipients, since these amendments serve only to clarify existing policy.

The economic impact of the amendment at N.J.A.C. 10:87-2.35 will be to provide food stamp benefits to newly arrived migrant worker households who are in need of assistance but are unable to readily provide verification of eligibility factors.

The amendment at N.J.A.C. 10:87-11.29 is concerned with limiting the degree to which a CWA may withhold benefits from the monthly coupon allotment of a household with more than two claims against it at one time. Inasmuch as only one intentional program violation and one inadvertent household error may be recovered simultaneously, claims are not repaid as quickly as they would be if recovery were unrestricted.

These amendments will not have an adverse economic impact on the Department or county welfare agencies administering the program.

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

10:87-2.21 Mandatory verification

(a) The CWA shall verify the following information prior to certification for households initially applying for food stamp benefits.

1.-9. (No change.)

10. Duplicate participation cross-checks: The CWAs shall check each household member by name through the ALFX file to verify that each individual is not already participating in the Food Stamp Program as part of another household (see N.J.A.C. 10:87-2.24).

10:87-2.24 [Reserved] ALFX file

The ALFX file is an alphabetical listing, within the State's computerized Central Operation for Data Exchange and Services (CODES) system, of the names of all individuals receiving AFDC and food stamp benefits in New Jersey. The ALFX file is available on computer terminal, and enables a worker to locate an individual's case record, when the case number is not known, by alphabetic cross-reference to all cases and recipients in the State.

10:87-2.28 Verification subsequent to initial certification

(a) At recertification, the CWA shall verify a change in income, medical expenses [of] or actual utility expenses claimed by a household if the source has changed or the amount has changed by more than \$25.00 since the last time they were verified.

1. (No change.)

2. Changes: Changes reported during the certification period shall be subject to the same verification procedures that apply at initial certification, except that the CWA is not required to verify income, medical expenses or actual utility expenses if the source has not changed and the amount has changed by \$25.00 or less since the last time they were verified.

i. Change in household composition: If the change reported is a change in household composition, the CWA shall verify through the ALFX system that no household member is participating in the Food Stamp Program as part of another household (see N.J.A.C. 10:87-2.24).

3. (No change.)

10:87-2.31 Delays in processing

(a) If the CWA does not determine a household's eligibility and provide an opportunity to participate within 30 days of the date the application was filed, the CWA shall take action as indicated below.

1.-3. (No change.)

4. Delays caused by the household: If, by the 30th day, the CWA cannot take any further action on the application due to the fault of the household, the household shall lose its entitlement to benefits for the month of application.

i. (No change.)

ii. Households found eligible in second 30-day period: If the household was at fault for the delay in the first 30-day period but is found to be eligible during the second 30-day period, the CWA shall provide benefits only from the [month following the month of application] **date the household took the required action.** [The household is not entitled to benefits for the month of application when the delay was the fault of the household.]

5. (No change.)

6. Delays beyond 60 days: The following procedures apply as appropriate when a delay occurs in the second 30-day period.

i. Complete case record: If the CWA is at fault for not completing the application process by the end of the second 30-day period, and the case record is otherwise complete, the CWA shall continue to process the original application until an eligibility determination is reached.

(1) (No change.)

(2) Household fault in initial delay: If the initial delay was the household's fault, the household shall receive benefits retroactive [only to the month following the month of application] **to the date the household took the required action.**

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The CWA shall use the original application to determine the household's eligibility in months following the 60 day period.
ii.-iii. (No change.)

10:87-2.35 Special procedures for expediting service

(a) The CWA shall use the following procedures when expediting certification and issuance.

1. Verification procedure: In order to expedite the certification process, the CWA shall use the following verification procedures:

i.-iv. (No change.)

v. **Migrant households determined eligible for expedited service after the 15th of the month and assigned a certification period of more than one month shall be notified in writing of the following:**

(1) **Postponed verification from sources within the State must be provided before the second full month's benefits will be issued.**

(2) **Postponed verification from out-of-State sources must be provided before the third full month's benefits will be issued.**

vi. **Migrant households shall be entitled to a postponement of out-of-State verification only once each season. If the household has already been granted a postponement of out-of-State verification, such verification may be postponed for the initial month's benefits only.**

vii. **If verification results in a change in the household's eligibility or benefit level, the CWA shall act on the change without advance notice.**

2.-5. (No change.)

10:87-9.7 Changes

(a) When changes occur within the certification period which affect a household's eligibility or coupon allotment, action must be taken to adjust the household's eligibility. Household and CWA responsibilities are outlined below:

1. (No change.)

2. CWA responsibilities: The CWA shall not impose any food stamp reporting requirements on households except as noted above. Neither shall the CWA treat the submission of the report of change as a waiver of the household's right to a notice of adverse action.

i. (No change.)

ii. Action on reported change: The CWA shall advise the household of its responsibilities to report changes within the required time period. The CWA is required to take prompt action on all changes reported by the household to determine if the change affects the household's eligibility or allotment. Even if there is no change in allotments, the CWA shall document the change in the case record, provide another change report form to the household, and notify the household of the receipt of the change report and the effect of the change, if any, on its benefits. Restoration of lost benefits shall be provided to any household if the CWA fails to take action on a change which increases benefits within the time limits specified below.

(1) (No change.)

(2) Changes which increase benefits and require issuance of a supplementary ATP: For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of \$50.00 or more in the household's gross monthly income, the [State agency] CWA shall make the changes effective not later than the first allotment issued 10 days after the date the change was reported. However, in no event shall these changes take effect any later than

the month following the month in which the change is reported. Therefore, if the change is reported after the 20th of a month and it is too late for the CWA to adjust the following month's allotment, the CWA shall issue a supplementary ATP by the 10th day of the following month.

(A)-(C) (No change.)

(3) (No change.)

iii. (No change.)

(b) (No change.)

(c) Changes not requiring advance notice: Individual notices of adverse action are not required when:

1.-10. (No change.)

11. The household is a migrant worker household entitled to expedited processing for which verification was postponed and verification, when received, results in a change in eligibility or benefit level.

10:87-11.29 Methods of collection

(a) The CWA shall collect intentional program violation, inadvertent household error and administrative error claims as provided below:

1.-2. (No change.)

3. Allotment reduction: The CWA shall collect payments for inadvertent household error and intentional program violation claims from households currently participating in the program by reducing the household's food stamp allotment.

i. (No change.)

ii. Prior to reducing the household's monthly allotment, the CWA shall advise the household of the appropriate formula to be used to determine the amount of food stamps to be recovered each month, the effect on the coupon allotment and the availability of other methods of repayment. If the household does not select another method of repayment, the CWA shall determine the amount to be recovered each month as follows:

(1)-(4) (No change.)

(5) If the household has multiple claims against it, only one intentional program violation claim and one inadvertent household error claim may be collected at one time without client consent.

4.-7. (No change.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Child Abuse Prevention and Treatment Act of 1974 Requirements Confidentiality of Child Abuse Records in Compliance with Federal Requirement

Proposed New Rule: N.J.A.C. 10:129-2

Authority: N.J.S.A. 30:4C-4, 30:1-12, 9:6-8.10a and 9:6-8.15.

Proposal Number: PRN 1985-201.

Submit comments by May 15, 1985 to:

Raymond Wolfinger
Office of Regulatory and Legislative Affairs
Division of Youth and Family Services
1 South Montgomery Street
CN 717
Trenton, New Jersey 08625

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The agency proposal follows:

Summary

In 1974 the Federal Government passed the Child Abuse Prevention and Treatment Act (the Act). The Act set certain national standards for the handling of child abuse and neglect cases by the various states, and made available funds to those states which would adopt state standards in compliance with the standards outlined in the Act and adopted in regulation form by the Secretary of Health, Education and Welfare (now Health and Human Services). In conjunction with the Act, and pursuant to the availability of federal monies, in 1974 and in 1977 New Jersey amended and expanded many of its child abuse and neglect reporting and recordkeeping statutes in Title 9 of the New Jersey statutes. Periodically, the Federal Government promulgates new regulations to respond to changes in the Act as well as to increase the effectiveness of the federal standards, and the various states must amend either their laws or regulations in order to remain in compliance with these federal standards so that they can continue to receive federal monies thereunder.

Recently, the Division of Youth and Family Services has been informed by the federal Regional Office that certain parts of the confidentiality statute governing child abuse and neglect records were not sufficiently specific, and certain provisions concerning the protection of the identity of referrants of abuse and neglect were not sufficient to meet federal standards. Therefore, the Department of Human Services is proposing new regulations which will explicate in more detail the meaning of the involved statutes, and the procedure that must be followed in order to protect the confidentiality of the names of referrants of child abuse and neglect cases.

Social Impact

This rule will be beneficial in two primary ways. First, by remaining in compliance with federal requirements New Jersey will continue to receive federal funds through the National Center on Child Abuse and Neglect (NCCAN). Also, by establishing child abuse and neglect regulations, DYFS will not only be able to respond to the specific requests for changes in the law presented by the Federal Government in this case, but, in the future, DYFS will also be able to respond to other such requests by proposing or amending the regulations in this section.

Economic Impact

The economic impact on the State of New Jersey will be to continue New Jersey's compliance with federal regulations thereby enabling New Jersey to continue to receive federal funds in this area. Since the regulations merely explain in more detail the requirements of existing statutes dealing primarily with reporting, investigating and recordkeeping in child abuse neglect cases, these regulations will have not other economic impact.

Full text of the proposed new rule follows.

SUBCHAPTER 2. CONFIDENTIALITY OF CHILD ABUSE RECORDS IN COMPLIANCE WITH FEDERAL REQUIREMENT

10:129-2.1 Confidential reporting and releasing requirements

(a) All records of child abuse reports made pursuant to section 3 of the P.L. 1971, c.437 (C. 9:6-8.10), all information obtained by the Division of Youth and Family Services in investigating such reports including reports received pursuant

to section 20 of P.L. 1974, c.119 (C. 9:6-8.40), and all reports of findings forwarded to the central registry pursuant to section 4 of P.L. 1971, c.437 (C. 9:6-8.11) shall be kept confidential and may be disclosed only under the circumstances expressly authorized in subsection (b) below.

(b) The division may release the records and reports referred to in subsection (a), or part thereof, to:

1. A public or private child protective agency authorized to investigate a report of child abuse or neglect;

2. A police or other law enforcement agency investigating a report of child abuse or neglect;

3. A physician who has before him a child who he reasonably suspects may be abused or neglected;

4. A physician, a hospital director or his designate, a police officer or other person authorized to place a child in protective custody when such person has before him a child who he reasonably suspects may be abused or neglected and requires the information in order to determine whether to place the child in protective custody;

5. An agency authorized to care for, treat, or supervise a child who is the subject of a child abuse report; or an agency authorized to care for, treat, or supervise a parent, guardian or other person who is responsible for the child's welfare, when the information is needed in connection with the provision of care, treatment, or supervision to such child or such parent, guardian or other person by the agency;

6. A court, upon its finding that access to such records may be necessary for determination of an issue before the court, and such records may be disclosed by the court in whole or in part to the law guardian, attorney or other appropriate person upon a finding that such further disclosure is necessary for determination of an issue before the court;

7. A grand jury upon its determination that access to such records is necessary in the conduct of its official business;

8. Any appropriate State legislative committee acting in the course of its official functions, provided, however, that no names or other information identifying persons named in the report shall be made available to the legislative committee unless it is absolutely essential to the legislative purpose;

9. Any person engaged in a bona fide research purpose, provided, however, that no names or other information identifying persons named in the report shall be made available to the researcher unless it is absolutely essential to the research purpose and provided further that the prior written approval of the director of the Division of Youth and Family Services shall first have been obtained.

(c) Any individual agency, court, grand jury or legislative committee which receives from the division the records, and reports referred to in subsection (a), shall keep such records and reports, or parts thereof, confidential.

(d) Whenever information is disclosed pursuant to any of the exceptions enumerated in (b)(1) through (9) above, the identity of the referrant and any other person shall be protected and not disclosed by the division where the disclosure of such information would be likely to endanger the life or safety of the referrant or other person.

1. The determination as to whether the disclosure of such information would be likely to endanger the life or safety of the referrant or other person shall be based upon the case-worker's and supervisor's evaluation of the nature and seriousness of the case and an assessment of the propensity for violence and harm.

2. This procedure shall apply to all instances in which information (records and reports) is requested, but particularly when information is requested by an agency authorized to

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care for, treat or supervise the child's parent, guardian or other person responsible for the child's welfare when the information is needed in connection with the provision of care, treatment or supervision of the parent, guardian or other person responsible for the child's welfare.

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Proposals numbered PRN 1985-221 and 222 are authorized by Hazel Frank Gluck, Commissioner, Department of Insurance.

Submit comments by May 15, 1985 to:
Verice M. Mason, Director
Regulatory and Legislative Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625

(a)

DIVISION OF LIFE AND HEALTH

Replacement of Life Insurance and Annuities

Proposed Repeal: N.J.A.C. 11:4-2

Proposed New Rule: N.J.A.C. 11:4-2

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

Proposal Number: PRN 1985-221.

The agency proposal follows:

Summary

The proposed repeal removes from the Administrative Code a rule which has, through the test of time, been determined to be ineffective. Requirements placed upon agents and insurers were cumbersome and may have served to deter replacements which may have been in the best interest of the policyholder.

At the time that the original rule was promulgated, in 1972, replacements were generally not considered to be in the best interest of insureds. Due to changes in the economy and development of new products, this generalization can no longer be made. Therefore, the Department of Insurance proposes to remove the rule from the code. A new rule, more sensitive to the current state of the marketplace, has been developed to replace it.

The new rule deletes the comparison forms which have done little to assist consumers in making knowledgeable decisions about life insurance purchases. In addition, replacing insurers are no longer required to notify the existing insurers of proposed replacements. This change has been precipitated by complaints from consumers that they consider the notification to be an invasion of their privacy and that agents of existing insurers are harassing them for an opportunity to conserve the existing contracts.

As a result of the deletion of the comparison forms and notification to the existing insurer, the Notice Regarding Replacement has been revised to be more informative and to encourage applicants to contact the existing insurer for advice. Furthermore, a mechanism by which an applicant can

notify his existing company and request a policy summary, if he so wishes, has been developed. This mechanism provides the applicant the opportunity to obtain valuable information about his current policy without forcing the information upon him.

N.J.A.C. 11:4-2.1 states the purpose for the new subchapter which is to establish minimum standards of conduct to be observed in replacement transactions.

N.J.A.C. 11:4-2.2 provides definitions for the terms used within the proposed subchapter and section 11:4-2.3 outlines those transactions which are exempted from the requirements of the proposed new rule.

N.J.A.C. 11:4-2.4, 2.5, 2.6 and 2.7 set forth the duties of agents and brokers, all insurers, insurers that use agents and brokers, and insurers with respect to direct response sales, respectively. N.J.A.C. 11:4-2.8 establishes penalties for failure to comply with the requirements of this subchapter and, lastly, a severability provision is found at N.J.A.C. 11:4-2.9.

Appendixed to the proposed subchapter, identified as Exhibits A and B are the Notices Regarding Replacement to be used in replacement transactions completed through agents or brokers and direct response sales.

Social Impact

The repeal of the current replacement rules will facilitate the process of proper replacement of life insurance. The new rule will insure that proper disclosure is made and avenues are available for the life insurance purchaser to obtain data to make an informed choice.

Some companies may experience an increase in replacement activity. The applicants will no longer find themselves being contacted by their existing insurer unless they so desire.

Economic Impact

The repeal of N.J.A.C. 11:4-2 would possibly result in a greater volume of replacements of certain companies' policies thereby reducing the premium income of the existing insurers. The promulgation of a new replacement regulation, simultaneous to the repeal of the existing rule, should lessen this effect. Insurers will incur some expenses in printing the new Notices Regarding Replacement. There is no economic impact to either insureds or the Department of Insurance.

Full text of the proposed repeal appears in the New Jersey Administrative Code at N.J.A.C. 11:4-2.

Full text of the proposed new rule follows.

SUBCHAPTER 2. REPLACEMENT OF LIFE INSURANCE AND ANNUITIES

11:4-2.1 Purpose

The purpose of this subchapter is to protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by:

1. Assuring that purchasers receive information with which a decision can be made in his or her own best interest;
2. Reducing the opportunity for misrepresentation and incomplete disclosures; and
3. Establishing penalties for failure to comply with requirements of this subchapter.

11:4-2.2 Definitions

"Conservation" means any attempt by the existing insurer or its agent or broker to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include routine administrative procedures such

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as late payment reminders, late payment offers or reinstatement offers.

“Direct-response sale” means any sale of life insurance or annuity where the insurer does not utilize an agent in the sale or delivery of the policy.

“Existing insurer” means the insurance company whose policy is or will be changed or terminated as described within the definition of “replacement.”

“Existing life insurance or annuity” means any life insurance or annuity in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.

“Replacement” means any transaction in which new life insurance or a new annuity is to be purchased, and where it is known or should be known to the proposing agent or broker, or to the proposing insurer if there is no agent, that by reason of such transaction existing life insurance or annuity has been or is to be:

1. Lapsed, forfeited, surrendered, or otherwise terminated;
2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
3. Amended so as to effect a reduction either in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
4. Reissued with any reduction in cash value; or
5. Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding 25 percent of the loan value set forth in the policy.

“Replacing insurer” means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.

“Registered contract” means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts issued by life insurance companies which are or should be registered with the Federal Securities and Exchange Commission.

11:4-2.3 Exemptions

(a) Unless otherwise specifically included, this subchapter shall not apply to transactions involving:

1. Credit life insurance;
2. Group life insurance or group annuities;
3. An application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised; and
4. Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company.

(b) Registered contracts are exempt from the requirements of N.J.A.C. 11:4-2.6(b)2 and 3 requiring provisions of Policy Summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular are required in lieu thereof.

11:4-2.4 Duties of agents and brokers

(a) Each agent or broker who initiates the application shall submit the following items to the insurer to which an application for life insurance or annuity is presented, with or as part of each application:

1. A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction; and

2. A signed statement as to whether the agent or broker knows replacement is or may be involved in the transaction.

(b) Where a replacement is involved, the agent or broker shall:

1. Present to the applicant, not later than at the time of taking the application, a “Notice Regarding Replacement” in the form as described in Exhibit A, on “No Carbon Required” paper, color coded, in triplicate. The Notice shall be signed by both the applicant and the agent or broker and the bottom two pages left with the applicant. The reverse side shall contain space and the agent or broker shall insert into it the name and address of the existing insurer whose policy is being replaced. It shall also be affixed with a “no postage necessary” stamp. Additional forms shall be used for each existing insurer whose policy is being replaced.

2. Obtain with or as part of each application a list of all existing life insurance and/or annuity policies to be replaced. Each item must be properly identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

3. Leave a policy summary with the applicant not later than at the time of taking the application.

4. Leave with the applicant the original or a copy of written or printed communications used for presentation to the applicant.

5. Submit to the replacing insurer with the application a copy of the Replacement Notice provided pursuant to (b)1 above.

(c) Each agent or broker who uses written or printed communications in a conversation shall leave with the applicant the original or a copy of such materials used.

11:4-2.5 Duties of all insurers

(a) Each insurer shall inform its field representatives and other personnel responsible for compliance with this subchapter of the requirements of this subchapter.

(b) Each insurer shall require with or as a part of each completed application for life insurance or annuity a statement signed by the applicant as to whether such proposed insurance or annuity will replace existing life insurance or annuity.

(c) Where a replacement is proposed, the replacing insurer shall delay issuance of the policy for a period of 30 days from the date of application. In the event that the insured dies within this 30 day period the replacing insurer shall honor the claim so long as the insured was found to be insurable as of the date of application. The first annual premium to fund death benefits may be deducted from the benefit by the company.

11:4-2.6 Duties of insurers that use agents or brokers

(a) Each insurer that uses an agent or broker in a life insurance or annuity sale shall require with or as part of each completed application for life insurance or annuity, a statement signed by the agent or broker as to whether he or she knows replacement is or may be involved in the transaction.

(b) Where a replacement is involved, each insurer using an agent or broker in a life insurance or annuity sale shall:

1. Require from the agent or broker with the application for life insurance or annuity:

- i. A list of all of the applicant’s existing life insurance or annuity to be replaced. Such existing life insurance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed; and

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ii. A copy of the Replacement Notice provided the applicant pursuant to N.J.A.C. 11:4-2.4(b)1.

2. Each existing insurer or such insurer's agent or broker shall, within 20 days from the date a Notice Regarding Replacement is received, from the policyholder, furnish the policyowner with a Policy Summary for the existing life insurance or a ledger statement containing Policy Data on the existing policy and/or annuity. Such Policy Summary or ledger statement shall be completed in accordance with the provisions of N.J.A.C. 11:4-11.1 *et seq.* except that information relating to premiums, cash values, death benefits and dividends, if any, shall be computed from the current policy year of the existing life insurance. The Policy Summary or ledger statement shall include the amount of any outstanding indebtedness, the sum of any dividend accumulations or additions, and may include any other information that is not in violation of any regulation or statute. Cost indices and equivalent level annual dividend figures need not be included unless requested by the applicant. When annuities are involved, the disclosure information shall contain comparable data. The replacing insurer may request the existing insurer to furnish it with a copy of the Summaries or ledger statement, which shall be furnished within five working days of the receipt of the request.

3. In the case of transactions where the replacing insurer and existing insurer are the same, a Policy Summary or ledger statement for the existing life insurance shall be furnished to the policyowner if it is indicated on the Notice Regarding Replacement that he or she wishes to receive it.

(c) The replacing insurer shall maintain evidence of the "Notice Regarding Replacement", the Policy Summary, and any ledger statements used, and a replacement register, cross indexed, by replacing agent or broker and existing insurer to be replaced. The existing insurer shall maintain evidence of Policy Summaries or ledger statements used in any conservation. Evidence that all requirements were met shall be maintained for at least five years or until the conclusion of the next succeeding regular examination by the Insurance Department of its state of domicile, whichever is earlier.

(d) The replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within a period of 20 days commencing from the date of delivery of the policy.

11:4-2.7 Duties of insurers with respect to direct response

(a) If in the solicitation of a direct response sale, the insurer did not propose the replacement, and a replacement is involved, the insurer shall send to the applicant with the policy a Notice Regarding Replacement as described in Exhibit B.

(b) If the insurer proposed the replacement it shall:

1. Provide to applicants or prospective applicants with or as a part of the application a Replacement Notice as described in Exhibit B, in triplicate. The reverse side shall contain space in which the applicant can insert the name and address of existing insurers and shall be affixed with a "no postage necessary" stamp.

2. Obtain from the applicant with or as part of the application, a list of all existing life insurance or annuity policies to be replaced and properly identified by name of insurer, the insured, and contract number. If a contract number has not yet been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be obtained.

11:4-2.8 Penalties

(a) A violation of this subchapter shall occur if an agent, broker or insurer recommends the replacement or conservation of an existing policy by use of a substantially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any. Any insurer, agent, representative, officer or employee of such insurer failing to comply with the requirements of this subchapter shall be subject to such penalties as may be appropriate under the insurance laws of this State.

(b) Patterns of action by policyowners who purchase replacement policies from the same agent or broker, after indicating on applications that replacement is not involved, shall be deemed prima facie evidence of the agent's or broker's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall be deemed prima facie evidence of the agent's or broker's intent to violate the provisions of this subchapter.

(c) This subchapter does not prohibit the use of additional material other than that which is required that is not in violation of this subchapter or any other statute or regulation.

11:4-2.9 Severability

If any section or portion of a section of this subchapter, or the applicability thereof to any person or circumstance, is held invalid by a court, the remainder of this subchapter, or the applicability of such provision to other persons, shall not be affected thereby.

**EXHIBIT A
NOTICE REGARDING REPLACEMENT**

**IMPORTANT MESSAGE FROM THE NEW JERSEY
INSURANCE DEPARTMENT:**

Just as with any other large purchase, such as a house or a car, comparison shopping for life insurance could save you a substantial sum of money. If you are thinking of buying a new policy or discontinuing or changing an existing policy your decision could be a good one—or a mistake.

New Jersey law has provided the mechanism for you to understand the facts. It is up to you to take advantage of this opportunity or you may misspend thousands of dollars.

Below is a list of items to consider when determining whether or not to replace your existing insurance. **TAKE TIME TO READ IT.**

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1. If the policy coverages are basically similar, premiums for a new policy *may* be higher because rates increase as your age increases.
2. Cash value and dividends, if any, *may* grow slower under a new policy initially because of the initial costs of issuing a policy.
3. Your present insurance company may be able to make a change on terms which *may* be more favorable if you replace existing insurance with new insurance.
4. If you borrow against an existing policy to pay premiums on a new policy, death benefits payable under your existing policy will be reduced by the amount of unpaid loan, including unpaid interest.
5. Current interest rates are not guaranteed. Guaranteed interest rates are usually considerably lower than current rates. What rates are guaranteed?
6. Are premiums guaranteed or subject to change—up or down?

INSURANCE

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7. Participating policies pay dividends that may materially reduce the cost of insurance over the life of the contract. While dividends are not guaranteed, you can ask to review the company's dividend payment history to get an idea of how much it pays.

8. When a new policy is issued the suicide and incontestable provisions, which could enable an insurer to deny your claim, run for a two year period from the issue date. If your existing policy is more than two years old, these provisions have expired.

9. An agent typically earns the majority of his commission from the first year's premium of a new policy, and thus has an incentive to propose a new policy.

CAUTION: You are urged not to take action to terminate, assign or alter your existing life insurance coverage until you have been issued the new policy, examined it and have found it to be acceptable to you.

REMEMBER: You have twenty (20) days following receipt to examine the contents of any individual life insurance policy or annuity. If you are not satisfied with it for any reason, you have the right to return it to the insurer as its home or branch office, or to the agent through whom it was purchased, for a full refund of premium.

_____ Applicant's Signature	_____ Date	_____ Agent's Signature	_____ Date
_____ Applicant's Name and Address (printed)	_____ Agent's Name and Address, Telephone Number and License Number (printed)		

ORIGINAL AND BOTTOM SHEET TO APPLICANT COPY TO REPLACING INSURER

NOTE: The New Jersey Insurance Department urges you to contact your existing insurer and/or other insurers to comparison shop for your life insurance. By folding the extra copy of this Notice and dropping it in the mail, a policy summary and cost index information, if you so indicate, will be provided to you by your existing insurer. Obtaining this information will enable you to compare your present coverage with that which the agent has proposed. **FAILURE TO DO SO MAY COST YOU MONEY.**

In the event your new coverage is provided by the same company as your existing policy, you can obtain a policy summary for the existing policy by checking the box below.

I do want a policy summary or ledger statement for my existing policy. _____
Yes No

I would like cost index information, also. _____

**EXHIBIT B
NOTICE REGARDING REPLACEMENT**

IMPORTANT MESSAGE FROM THE NEW JERSEY INSURANCE DEPARTMENT:

Just as with any other large purchase, such as a house or a car, comparison shopping for life insurance could save you a substantial sum of money. If you are thinking of buying a new policy or discontinuing or changing an existing policy your decision could be a good one—or a mistake.

New Jersey law has provided the mechanism for you to understand the facts. It is up to you to take advantage of this opportunity or you may misspend thousands of dollars.

Below is a list of items to consider when determining whether or not to replace your existing insurance. **TAKE TIME TO READ IT.**

ITEMS TO CONSIDER

1. If the policy coverages are basically similar, premiums for a new policy *may* be higher because rates increase as your age increases.
2. Cash value and dividends, if any, *may* grow slower under a new policy initially because of the initial costs of issuing a policy.
3. Your present insurance company may be able to make a change on terms which *may* be more favorable if you replace existing insurance with new insurance.
4. If you borrow against an existing policy to pay premiums on a new policy, death benefits payable under your existing policy will be reduced by the amount of unpaid loan, including unpaid interest.
5. Current interest rates are not guaranteed. Guaranteed interest rates are usually considerably lower than current rates. What rates are guaranteed?
6. Are premiums guaranteed or subject to change—up or down?

7. Participating policies pay dividends that may materially reduce the cost of insurance over the life of the contract. While dividends are not guaranteed, you can ask to review the company's dividend payment history to get an idea of how much it pays.

8. When a new policy is issued the suicide and incontestable provisions, which could enable an insurer to deny your claim, run for a two year period from the issue date. If your existing policy is more than two years old, these provisions have expired.

CAUTION: You are urged not to take action to terminate, assign or alter your existing life insurance coverage until you have been issued the new policy, examined it and have found it to be acceptable to you.

REMEMBER: You have twenty (20) days following receipt to examine the contents of any individual life insurance policy or annuity. If you are not satisfied with it for any reason, you have the right to return it to the insurer as its home or branch office, or to the agent through whom it was purchased, for a full refund of premium.

ORIGINAL AND BOTTOM SHEET TO APPLICANT COPY TO REPLACING INSURER

NOTE: The New Jersey Insurance Department urges you to contact your existing insurer and/or other insurers to comparison shop for your life insurance. By inserting the name and address of your existing insurer(s) in the space provided on the reverse side of this Notice, folding the extra copy of this Notice and dropping it in the mail, a policy summary and cost index information, if you so indicate, will be provided to you by your existing insurer(s). Obtaining this information will enable you to compare your present coverage with that which the agent has proposed. **FAILURE TO DO SO MAY COST YOU MONEY.**

I would like cost index information also. _____

(a)

DIVISION OF ACTUARIAL SERVICES

Limited Death Benefit Forms

Proposed Readoption with Amendments:

N.J.A.C. 11:4-21

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17B:25-18.

Proposal Number: PRN 1985-222.

Pursuant to Executive Order 66(1978), N.J.A.C. 11:4-21 expires on June 5, 1985. The readoption of the existing rule becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of adoption. The amendments to the existing rule become effective upon publication in the Register of a notice of adoption.

The agency proposal follows:

Summary

N.J.A.C. 11:4-21 entitled, Limited Death Benefit Forms, was originally filed and became effective on June 5, 1980 as R.1980, d.265. This rule established various requirements for life insurance policies which limit death benefits at early durations as an alternative to underwriting. An administrative review has been conducted and a determination made that the rule should be continued. It has also been determined that, due to social and economic changes in the marketplace, substantive amendments to the rule are needed to strengthen the disclosure made to prospects both before and after the issuance of individual limited death benefit policies. At the same time, the proposed amendments relax some of the restrictions which had been placed upon companies issuing individual limited death benefit policies. In addition, this proposal includes technical and editorial modifications to the existing rule.

N.J.A.C. 11:4-21.1, as amended, restates the purpose of the rule, which is to make life insurance available to people not otherwise eligible, reduce the likelihood of misunderstanding, make an applicant aware of the existence of similar, full coverage policies at lower premiums, and set standards for advertising of limited death benefit policies. Historical references contained in the purpose section also have been deleted.

N.J.A.C. 11:4-21.2 provides that the rule shall apply to all individual limited death benefit policy forms. The section has been amended to require that revised advertising materials and sales presentations for previously filed limited death benefit policy forms be submitted to the Department. A historical reference to previously filed forms has been removed.

The proposal, at N.J.A.C. 11:4-21.3, adds a definition section to the subchapter. The definitions are designed to clarify the meaning of key terms such as "prominently" which is used in the existing and amended text of the rule.

N.J.A.C. 11:4-21.4 (originally codified at N.J.A.C. 11:4-21.3) contains requirements for the filing of individual limited death benefit policy forms. Subsection (a) requires that the amount of reduced death benefit for each duration be prominently displayed on the face page of the policy. Subsections (b) and (c) set standards for advertising materials and sales presentations for individual limited death benefit policies. These subsections have been amended to require prominent wording advising the prospect of the policy's limited benefits

and that similar full coverage underwritten policies at possibly lower premiums may be available from that or some other company. Subsection (d) requires that a narrative statement of how the policy is to be sold, any standardized presentation and any advertising or direct mail material be submitted to the Department. Subsection (e) states that agents' commissions for limited death benefit policies must be significantly less than that for full coverage, underwritten policies; subsection (f) requires that the limited death benefit be not less than a return of premium plus interest at the rate used to determine nonforfeiture values; subsection (g) states that the durations of the limited benefit period shall not exceed 25 percent of the expectation of life. Subsections (h) and (i) are amended to raise the benefit limits on the face amount and to lower the age to which limited death benefit policies may be issued. Lastly, subsection (j) requires a 30-day free look period.

A new section concerning severability of the rules has also been included at N.J.A.C. 11:4-21.5.

Social Impact

The limited death benefit policy fills a void for individuals who, due to their medical history, are ineligible for full coverage, underwritten policies. The Department believes the rule should be continued so as to fill this void. The proposed amendments will allow such individuals to purchase life insurance coverage in an amount greater and at an age lower than that which was previously allowed.

At the same time, stricter disclosure and advertising requirements are proposed to better protect the buying public from the possible abuses which could result from the sale of limited death benefit policies. The changes will also benefit the public by enabling insurers to issue higher face amounts to a larger segment of the population.

Economic Impact

The stricter disclosure and advertising requirements of the proposed amendment may result in some individuals purchasing full coverage, underwritten policies at lower premiums instead of costly limited death benefit contracts. Insurers should enjoy increased premium income from the higher face amounts and relaxed age restrictions of the proposed amendments to the rule. Insurers will incur some additional cost in meeting the stricter disclosure and advertising requirements.

The Department will spend more time and expense in reviewing the revised advertising for forms already filed. It is anticipated, however, that this will be absorbed into the existing budget.

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

SUBCHAPTER 21. LIMITED DEATH BENEFIT FORMS

11:4-21.1 Purpose

[(a) This department has for the past several years been disapproving life insurance policy forms that limit benefits at early durations as an alternative to underwriting. These policy forms have been disapproved pursuant to N.J.S.A. 17B:25-18h on the ground that they are misleading, unfair and inequitable.

(b) The areas of concern have been the following.

1. The likelihood of misunderstanding arises where the sales presentation emphasizes the non-underwritten feature while minimizing or ignoring the limitation on death benefits at early durations.

2. Where the policy is sold to an applicant who can qualify for an underwritten policy, the insurable person may be de-

prived of benefits while paying higher than necessary premiums.

(c) In spite of these areas of concern, these policies may make life insurance available to people who would not otherwise be eligible. Hence the department will consider for filing Limited Death Benefit policy forms that comply with N.J.S.A. 17B:25, any applicable regulations, and the additional requirements stated herein.]

(a) The purpose of this subchapter is to establish guidelines for the filing and review of Limited Death Benefit policy forms which will:

- 1. Make life insurance available to people who would not otherwise be eligible;**
- 2. Reduce through disclosure the likelihood of misunderstanding arising where the sales presentation emphasizes the non-underwriting feature while minimizing or ignoring the limitation on death benefits at early durations;**
- 3. Insure that the applicant is aware that he or she may qualify for an underwritten policy, which may provide greater benefits at lower premiums; and**
- 4. Set standards for the advertising of Limited Death Benefit policy forms so as to eliminate unfair, misleading or deceptive advertising practices.**

11:4-21.2 Applicability and scope

This subchapter shall apply to all individual life insurance policy forms delivered or issued for delivery after the effective date hereof that limit death benefits at early durations as an alternative to underwriting. [Furthermore, the previous filing by the commissioner of any policy forms which do not meet all the requirements of this regulation is withdrawn as of the effective date.] **For previously-filed limited death benefit forms, revised advertising materials and sales presentations must be submitted to the Department prior to the issuance of any limited death benefit policy forms after the operative date of this subchapter.**

AGENCY NOTE: The Department intends to make the amendments to the readopted rule operative 60 days after the publication in the Register of the notice of adoption.

11:4-21.3 Definitions

“Advertising materials and sales presentations” means:

- 1. Printed and published material, audiovisual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio and television scripts, billboards and similar displays;**
- 2. Descriptive literature and sales aids of all kinds issued by an insurer or agent, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters;**
- 3. Material used for the recruitment, training and education of an insurer’s sales personnel, agents, solicitors, and brokers which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate, or retain a policy; and**
- 4. Prepared sales talks, presentations, and material for use by sales personnel, agents, solicitors, and brokers.**

“Limited Death Benefit Policy” means a policy which limits death benefits at early durations as an alternative to underwriting.

“Prominently” means in such a manner as to make wording conspicuous, obvious and immediately noticeable. For

written publications, this would mean type larger and bolder than that of the remainder of the publication appearing at the top or beginning of the publication. For radio or television, this means verbal statements made at the outset of the presentation.

11:4-21.[3]4 Requirements

(a) The policy must prominently display, on its face page, the amount of any death benefit smaller than the face amount of the policy together with the years during which each of the reduced amounts apply. The brief description on the face page shall refer to the limited benefits and specify the period of limitation.

(b) All advertising materials and sales presentations shall [clearly] **prominently** advise the prospect of the limited nature of the early death benefits, **and that similar, full coverage, underwritten policies, at possibly lower premium rates, may be available from that or some other company.**

(c) For companies that offer similar, full coverage, underwritten policies to some or all of those eligible for limited death benefit policies [the advertising materials and sales presentations must inform the prospect that an underwritten policy with full benefits and, if such is the case, lower premium rates may be available from the company. Any], **any** difference in the premium rates between the limited benefit policy and the underwritten policy must be prominently shown in advertising and sales presentations. Instructions in the procedure to be followed if the prospect is interested in applying for the underwritten policy must also be included.

(d) A narrative statement of the method by which the policy will be sold, including any instructions to agents, standardized presentation, and any advertising or direct mail material shall be submitted to the Department.

(e) When sold by agents, the commission must be significantly lower on the limited benefit policies to insure that full coverage, equivalent, underwritten policies will be sold in preference to the limited benefit forms. A statement to this effect must be submitted to the Department.

(f) The limited death benefit shall not be less than the amount of premiums paid with interest at the rate used to determine nonforfeiture values under the policy.

(g) The period during which a limited benefit applies shall not exceed 25 percent of expectation of life at the issue age determined by the mortality table used for nonforfeiture values under the policy.

(h) The face, or ultimate, amount of insurance shall not exceed [\$5,000] **\$15,000.**

(i) The issue age shall not be less than [50] **45.**

(j) The policy shall include a provision allowing for the return of the policy for a full refund of premiums within at least 30 days after delivery.

11:4-21.5 Severability

If any section or portion of a section of this subchapter, or the applicability thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the remainder of this subchapter, or the applicability to other persons, shall not be affected thereby.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES DEPARTMENT OF INSURANCE

Driver Control Service Motor Vehicle Insurance Surcharge; Supplemental Surcharges

**Proposed Amendments: N.J.A.C. 13:19-13.1
and 13.2**

Proposed New Rule: N.J.A.C. 13:19-13.3

Authorized By: Clifford W. Snedeker, Director of the
Division of Motor Vehicles, and Jasper J. Jackson,
Acting Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:29A-35.

Proposal Number: PRN 1985-223.

Submit comments by May 15, 1985 to:
Clifford W. Snedeker, Director
Division of Motor Vehicles
25 South Montgomery Street
Trenton, NJ 08666; and

Verice M. Mason, Director
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, NJ 08625

At the close of the period for comments, the Division of
Motor Vehicles and the Department of Insurance may adopt
this proposal, with any minor changes not in violation of the
rulemaking procedures at N.J.A.C. 1:30-3.5.

The agency proposal follows:

Summary

The purpose of this proposal is to change the effective date
of the Merit Rating Plan supplemental surcharges imposed
pursuant to N.J.A.C. 13:19-13.1 and 13.2 from January 1,
1983 to March 19, 1984.

The regulations were originally promulgated and published
March 19, 1984, and were imposed on violations or suspen-
sions that occurred on or after January 1, 1983, the effective
date of the New Jersey Automobile Insurance Reform Act of
1982.

These proposed amendments will remove any possible retro-
active application of the regulatory surcharge.

Additionally, certain surcharges are repealed as they may
have been in conflict with the surcharges imposed pursuant to
N.J.S.A. 17:29A-35(a).

Monies collected pursuant to these surcharges for violations
or suspensions occurring prior to March 19, 1984, will be
refunded without interest and any suspensions imposed will
be deleted (N.J.A.C. 13:19-13.3).

This proposal is in accord with recent legislative efforts to
eliminate any possible retroactive application of the Merit
Rating Plan surcharges.

Social Impact

The proposed amendments will affect those persons who
had surchargeable violations between January 1, 1983 and
March 18, 1984 in that the retroactive provisions of the regu-
latory surcharges will be deleted. Any person who had been
suspended for failing to pay the surcharge will have the sus-
pension deleted. Any surcharges paid will be refunded.

Economic Impact

There will be a loss of revenue of approximately 5 million
dollars to the State and the New Jersey Automobile Full
Insurance Underwriting Association, the recipients of the
monies collected pursuant to the Merit Rating Plan surcharge,
as a result of changing the effective date for surcharge collec-
tions. Additionally, there will be a cost to the State to admin-
ister the refund program. There will be a savings by those
persons who had surchargeable violations between January 1,
1983 and March 18, 1984.

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

SUBCHAPTER 13. MOTOR VEHICLE INSURANCE SURCHARGE; SUPPLEMENTAL SURCHARGES

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

(a) Plan surcharges shall be levied by the Division of Motor
Vehicles for convictions of violations set forth in (b) below
which violations occurred on or after [the effective date of the
New Jersey Automobile Insurance Reform Act] **March 19,
1984, the effective date of the original regulation.** The sur-
charges shall be annually assessed for a three year period.

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

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

13:19-13.2 Surcharges for three year period; administrative violations; amounts

(a) Plan surcharges shall be levied by the Division of Motor
Vehicles for violations resulting in license suspensions im-
posed administratively which are set forth in (b) below and
which violations **or suspensions** have occurred on or after [the
effective date of the New Jersey Automobile Insurance Re-
form Act of 1982] **March 19, 1984, the effective date of the
original regulation.** The surcharge shall be assessed each year
for a three year period and shall be in addition to the license
restoration fee charged pursuant to N.J.S.A. 39:3-10a.

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

1. Operating while suspended	\$250.00
2. Failure to maintain liability insurance on motor vehicle	\$250.00
[3. Any motor vehicle violation resulting in fatal accident	\$250.00]
(c) (No change.)	

13:19-13.3 Refund of surcharge; deletion of suspension

A person who previously had been suspended for failing to pay a surcharge pursuant to N.J.A.C. 13:19-13.1 or 13:19-13.2 for a violation or suspension that occurred on or after January 1, 1983, but before March 19, 1984, will have the driving privilege suspension deleted without the payment of the mandatory restoration fee. If the restoration fee had been previously paid, the fee will be refunded, provided the person was serving no other suspension.

(a)

DIVISION OF MOTOR VEHICLES

Standards and Procedures for Licensed Reinspection Centers Glazing

Proposed Amendment: N.J.A.C. 13:20-33.6

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

Authority: N.J.S.A. 39:3-43, 39:3-75 and 39:8-2 et seq. specifically 39:8-4.1 and 39:8-23.

Proposal Number: PRN 1985-215.

Submit comments by May 15, 1985 to:

Clifford W. Snedeker, Director
Division of Motor Vehicles
Department of Law and Public Safety
25 South Montgomery Street
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The proposal amends that section of the motor vehicle equipment standards pertaining to glazing. First, the proposal provides that a vehicle must be rejected for a glazing defect if a tinted spray or plastic material has been added to approved glazing in the front windshield or windows, vents or deflectors to the right or left of the driver. Second, the proposal provides that a vehicle may have the rear window and/or side windows to the rear of the driver tinted or covered in a manner so as to partially obscure the driver's view provided that the vehicle is equipped with an exterior mirror on each side of the vehicle. Finally, the proposal provides that a vehicle must be rejected for a glazing defect if any window is composed of a mirror-type material.

Social Impact

The proposal establishes glazing standards for motor vehicles. The proposal, therefore, promotes highway safety by insuring that only properly equipped motor vehicles are operated on the public highways. Motor vehicles which do not conform with the glazing standards shall be rejected at inspection.

Economic Impact

There is an economic impact on the Division of Motor Vehicles in enforcing the glazing standards at the State Inspection Centers and in monitoring enforcement of the glazing standards by licensed inspection centers. There is also an economic impact on owners of motor vehicles which are

equipped with improper glazing. Non-conforming equipment must be removed from the motor vehicle.

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

13:20-33.6 Glazing; Classes I and II licensees

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

(d) A vehicle shall not be certified which has tinted spray or plastic material added to previously approved glazing in the front windshield or windows, vents or deflectors to the immediate right or left of the driver because such condition changes the vision and light transmission properties of the glazing in areas where driver visibility shall not be obscured or obstructed.

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

(g) Any vehicle may have the rear window and/or side windows to the rear of the driver tinted or covered in some manner so as to partially obscure the drivers view and any motor vehicle registered for commercial purposes and constructed on a truck chassis (including Code 15) may have the rear window and/or side windows to the rear of the driver painted, tinted or constructed in some manner so as to obstruct or obscure the drivers view, provided that the vehicle is equipped with an exterior mirror on each side of the vehicle. If glazing material remains in any of the window openings mentioned above, it must be possible to read the approval markings.

(h) A vehicle shall not be certified which has mirror-type material on any window.

(b)

BOARD OF MEDICAL EXAMINERS

Professional Conduct of Licensees and Business Relationships

Notice of Pre-Proposal to Amend N.J.A.C. 13:35-6.4

Authorized By: New Jersey State Board of Medical Examiners, Edward W. Luka, M.D., President.

Authority: N.J.S.A. 45:9-2 and N.J.S.A. 45:1-21; pre-proposed pursuant to N.J.A.C. 1:30-3.2.

Submit comments by May 29, 1985 to:

Charles A. Janousek, Executive Secretary
Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08608

The New Jersey State Board of Medical Examiners there- after may propose a rule on this subject in the New Jersey Register.

NOTICE OF INTENT TO CONSIDER A RULE INVITATION TO SUBMIT A PRESENTATION TO THE BOARD OF MEDICAL EXAMINERS

The Board of Medical Examiners licenses and regulates the professional conduct of many categories of health care professionals including, in part, physicians, podiatrists, chiropractors, nurse midwives and bioanalytical laboratory directors. Some categories of licensees are in independent or

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Interested Persons see Inside Front Cover

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semi-independent types of practices, and may employ other licensees of the same category or assistants in other categories, for example, nurses, physical therapists, x-ray technicians. Complaints have been received that some of these licensee-employers have been charging patients for prescribed portions of medical treatment at rates exceeding the costs incurred by the doctor for providing the service. Similarly, some categories of licensee are authorized to prescribe and dispense medicines or medical devices or to order that laboratory or other tests be performed for patients. The Medical Board already has an administrative rule prohibiting licensees from prescribing services or devices from which the licensee will make a direct or indirect profit, but there are complaints that not all licensees are applying that rule to the situations described here. It has been requested that the Board clarify or expand the current rule to prohibit some or all of that conduct.

Among those expressing concern is the Commissioner of the New Jersey Department of Health. He has offered a specific proposed amendment; the text of N.J.A.C. 13:35-6.4, as well as the Health Commissioner's proposal follows. The Board has taken no position at this time on the merits of the proposal and wishes to elicit the views of the public. The Board is aware that some persons have expressed concern that no rule be adopted that might have an unnecessarily restrictive effect on certain forms of professional decisions when there might, in fact, be some reasonable and ethical business purpose for them.

Another matter of concern to the Board is the proliferation of inquiries on certain proposed business arrangements by licensees with other licensees or with non-licensees, asking whether these arrangements for rental of professional premises or for financial remuneration of corporate managerial services violate current law.

In short, the Medical Board would like to have the benefit of the knowledge and experience of interested individuals, professional societies, health insurance carriers and others on any aspects of these matters, especially as they bear upon protection of the reasonable expectations of the public. The Medical Board has established a committee to receive this information and plans to conduct a public hearing on Wednesday, May 29, 1985 at 10:00 A.M. at the Hughes Justice Complex, Trenton, New Jersey. Interested members of the public are cordially invited to submit a written presentation and/or to attend and make an oral presentation. If an interested person wishes time to be reserved for an oral presentation, the Board requests that the person write to the Administrative Office, Board of Medical Examiners, 28 West State Street, Trenton, New Jersey 08608, no later than May 13, 1985. Kindly identify yourself and the entity or organization you represent (if any); the topics you will address and the estimated length of your presentation. This public hearing will be conducted as scheduled ONLY if sufficient public interest warrants it. The Board will confirm scheduling only with those persons who write to the Board as set forth above. The topics to be addressed are as follows.

1. Should it be considered professional misconduct for a licensee of the Board to be involved in the following practice: Referral of the licensee's own patients to a nominally separate entity for provision of a limited health care service, where that separate entity actually is owned entirely or in part by the referring licensee? Examples would include at least the following: A physician who owns or is a shareholder in a separate entity which employs physical therapists, where the physician refers his or her own patients to that physical therapy entity and receives the profits from billings nominally done by the physical therapy entity. Another example would include a

physician-owned professional association established for the performance of radiological procedures where a shareholder-physician, whose office is not on the same premises, makes specific referrals and receives a portion of the profits. Or, a doctor sets up a separate laboratory, prescribes lab tests for his patients, and specifically refers the patient or sends the specimen to that personally-owned laboratory. Or, a doctor who writes prescriptions and directs the patient to a pharmacy in which the doctor has a direct or indirect financial interest. Or, a doctor who writes prescriptions for drugs manufactured by pharmaceutical companies in which the physician owns stock.

2. Should it be considered professional misconduct for a licensee to employ another licensee and then to prescribe a service to be performed by the employee, billing the patient for a fee greater than the actual cost of the service to the employer-licensee? For example, should a physician who wishes to offer to patients physical therapy services as part of the doctor's own medical treatment be prohibited from charging the patient so as to profit from the prescribing and performance of the physical therapy? That is, should the doctor charge the patient only the real cost of making those therapy services available within the doctor's office?

3. Should it be considered professional misconduct for a licensee to make commercial financial arrangements if those arrangements present a significant potential to affect the independent professional judgment of the licensee. Examples might include:

(a) office rental rates tied to the number of patients seen, and/or to a percentage of gross income, in lieu of regular fixed rent; or

(b) a licensee agreement with a regular business corporation to pay a percentage of gross income in return for the corporation building for or leasing to the licensee an office premises complete with furnishings, technological equipment including x-ray or CAT or NMR scanners, etc., office supplies, clerical equipment and staff, and the handling of all administrative responsibilities such as patient scheduling, billing and collection, advertising, etc.

4. If any of the above conduct should be considered to be not in the public interest, should there be exceptions to this policy and/or are there situations in which the public interest is already adequately protected as a practical matter? Such protected situations might include a pharmaceutical corporation with publicly held stock or a national laboratory where the effect of ownership of a few shares by the physician is so diluted as to have no real potential for abusive self-dealing. Other solutions might be to require full disclosure to the patient of the prescriber's financial interest. With regard to the proposal submitted by the Commissioner, the Board recognizes that the questions he raises and the prohibitions he proposes have impact upon the private rights of an individual to engage in ordinary decisions on private investment for profit. Yet the situations under review here also have an identifiable effect upon consumers who may, without being aware of it, find themselves paying substantially increased costs for ancillary health care services because the licensee ordering the service has a direct or indirect monetary interest in the accomplishment of that service and at the specified location. The consumer may have no way of being aware of these hidden monetary interests or, more significantly, may have no realistic way of avoiding these excessive costs.

On the other hand, there is concern about whether a prohibition of some such investments might have the unintended effect of precluding knowledgeable investors (who may be health care professionals themselves) from filling certain mar-

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ket needs such as home health care services in an effort to reduce unnecessarily high costs of hospitalization, when no other entity in the private sector has stepped forward to fill the need for such services. Another complicating factor is whether, if physicians are excluded from such investment opportunities, those separate services will then be promoted and sponsored by business persons who are not regulated by the rules, laws and ethical constraints which limit professional conduct for the protection of the public. Similarly with regard to various rental or leasing arrangements, the Board is mindful of the substantial start-up costs required for a young professional beginning private practice and who might be appreciative of a rental obligation which fluctuates with an uncertain income.

Generally, it should be noted that a regular business corporation is not permitted to set itself up and offer to provide medical or other services requiring licensure, to the public. Nor may a licensed practitioner work as an employee of a regular business corporation to render service which the corporation itself cannot lawfully perform. (There are certain very limited exceptions to this, such as licensed hospitals, health maintenance organizations, non-profit union member health plans, charitable clinics, etc. Further information on that subject is available from the Board.) This last question therefore addresses only entities established as an independent private practice or as a professional corporation or association as authorized by N.J.S.A. 14A:17-1 et seq. Your participation in this inquiry will be appreciated.

The **current text** of the rule affected by this petition follows. The **suggested amendment** as proposed by the Commissioner of Health is shown in boldface **thus**.

13:35-6.4 Prohibition of kickbacks, rebates or receiving payment for services not rendered

(a) It shall be unprofessional or unethical conduct for any licensee or registrant of the State Board of Medical Examiners to:

1. Receive directly or indirectly from any person, firm or corporation any fee, commission, rebate, gift or other form of compensation for prescribing, ordering or promoting the sale of a device, appliance or other prescribed item or service when such device, appliance or prescribed item or service is provided by another;

2. Directly or indirectly charge or bill the recipient of a device, appliance or prescribed item, or directly or indirectly charge or bill any third party when such device, appliance or prescribed item is delivered by the licensee or registrant without disclosing to the recipient and third party, if any, the actual cost to the licensee or registrant for such device, appliance or prescribed item which the licensee or registrant paid or shall pay to the provider of such device; appliance or prescribed item;

3. Receive directly or indirectly from any person, firm or corporation any fee, gift, commission, rebate, free saleable products, anything of value or any form of compensation for prescribing or promoting the sale of any drug, commodity or product;

4. Sell "free samples" or "samples" or other similar items obtained from any person, firm or corporation by such licensee or registrant;

5. Render any bill or invoice or receive any monies from any person, firm, corporation or governmental entity for the performance of services which were not, in fact, performed; provided, however, that this shall not be construed to prohibit an agreed charge for appointment made or services ordered notwithstanding subsequent patient or consumer cancellation.

6. To refer a patient to a corporation whose employees diagnose or treat human diseases, if that licensee or registrant does not actively or routinely participate in the onsite provision of care in the specialty that the corporation provides and from which the licensee receives, directly or indirectly, anything of value, including but not limited to a cash or stock dividend.

(a)

BOARD OF PSYCHOLOGICAL EXAMINERS

Change of Address; Service of Process

Proposed New Rule: N.J.A.C. 13:42-1.5

Authorized By: Duncan E. Walton, President, Board of Psychological Examiners.

Authority: N.J.S.A. 45:14B-13.

Proposal Number: PRN 1985-214.

Submit comments by May 15, 1985 to:

Jeannette V. Balber
Executive Secretary
Board of Psychological Examiners
1100 Raymond Boulevard, Room 512
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed new rule, N.J.A.C. 13:42-1.5, would require a licensee of the Board of Psychological Examiners to notify the Board, by certified mail, return receipt requested, of any change of address within thirty days following such change of address. A licensee's failure to notify the Board of such change of address would be grounds for disciplinary action. Additionally, the proposed new rule would provide that for purposes of compliance with the Uniform Administrative Procedure Rules of Practice and of commencing disciplinary proceedings against licensees, service of Board-initiated process, such as administrative complaints, at a licensee's current address on file with the Board would be adequate notice.

Social Impact

The proposed new rule, N.J.A.C. 13:42-1.5, would place an affirmative duty upon the licensee to inform the Board of any change of address. As the Board makes periodic mailings to all licensees, including biennial registration materials and current rules and regulations, it is important that licensees keep a current address on file with the Board to ensure that they will receive information concerning the practice of their profession from the Board.

Economic Impact

The proposed new rule will have no unfavorable economic impact upon its licensees since it imposes no financial obligation aside from the minimal costs of mailing notification to the Board of a change of address. It will have a favorable economic impact on the public since it will enable the Board to save time, effort and money in locating the whereabouts of licensees who have changed their addresses without notifying the Board of the change.

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STATE

Full text of the proposed new rule follows.

13:42-1.5 Notification of change of address; service of process

(a) A licensee of the Board of Psychological Examiners shall notify the Board in writing of any change of address from that currently registered with the Board and shown on the most recently issued license. Such notice shall be sent to the Board by certified mail, return receipt requested, not later than 30 days following the change of address.

(b) Failure to notify the Board of any change of address pursuant to (a) above may result in disciplinary action in accordance with N.J.S.A. 45:1-21(h).

(c) Service of an administrative complaint or other Board-initiated process at a licensee's address currently on file with the Board shall be deemed adequate notice for the purposes of N.J.A.C. 1:1-7.1 and the commencement of any disciplinary proceedings.

STATE

DIVISION OF COMMERCIAL RECORDING

Proposals numbered PRN 1985-197 and 227 are authorized by Jane Burgio, Secretary of State.

Submit comments by May 15, 1985 to:

Charles C. Hager
Assistant Counsel
Department of State
CN 300
Trenton, N.J. 08625

(a)

Expedited Service Rules

Proposed Amendments: N.J.A.C. 15:2-1.1, 1.3 and 1.4

Authority: N.J.S.A. 52:16A-35 et seq., specifically 52:16A-41, and 42:2A-1 et seq., specifically 42:2A-71 and 72.

Proposal Number: PRN 1985-197.

The agency proposal follows:

Summary

The proposed amendments extend guidelines and fees for expedited service in the Commercial Recording Division of the Department of State, to cover and include filings under the new Limited Partnership Act, N.J.S.A. 42:2A-1 et seq.

Social Impact

The proposed amendments will allow those who wish to expedite limited partnership inquiries, searches, and filings to do so.

Economic Impact

An economic impact will occur only if a person voluntarily requests these services from the Commercial Recording Division on an expedited basis. The expedited service drastically decreases the time between receipt of an information request or a document by the Department and the Department's response.

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

15:2-1.1 Services which will be provided on an expedited basis

(a) The Division of Commercial Recording shall provide expedited over the counter corporate services for the following requests:

1. Any information contained in the annual report of a corporation **or a limited partnership**;

2. A certificate of standing, either long form, short form, or certificate listing charter documents;

3. A certified or uncertified copy of any document filed with the Division of Commercial Recording;

4. A certificate as to the existence or nonexistence of any [facts] **document** on record with the Division of Commercial Recording;

5. The availability of a corporate name [under N.J.S.A. 14A:2-2] **or a limited partnership name**;

[6. Filing a certificate of incorporation and all other corporate filings;] **6. Filing corporate documents or limited partnership documents**;

7. The name and address of the registered agent of a corporation **or limited partnership**;

8. The filing date of a certificate of incorporation for a domestic corporation **or the filing date of a certificate of limited partnership** or the filing date for a certificate of qualification for a foreign corporation **or limited partnership**;

9. The name and address of the corporation's **or a limited partnerships** registered agent [which has filed a fictitious name certificate pursuant to N.J.S.A. 14A:2-2.1];

10. A U.C.C. 1 filing pursuant to N.J.S.A. 12A:9-401 et seq.;

11. A U.C.C. 3 filing pursuant to N.J.S.A. 12A:9-401 et seq.;

12. A U.C.C. 11 search pursuant to N.J.S.A. 12A:9-401 et seq., provided that the U.C.C. 11 search shall not exceed 20 filings. Searches over 20 filings can be expedited but may not be completed within the same day.

(b) The Division of Commercial Recording shall provide expedited telephone service for the following requests:

1. The availability of a corporate name [under N.J.S.A. 14A:2-2] **or limited partnership name**;

2. Whether or not a corporation's certificate of incorporation or authority has been voided or revoked;

3. The name and address of the registered agent of a corporation **or limited partnership**;

4. The filing date of a certificate of incorporation for a domestic corporation **or limited partnership** or the filing date for a certificate of qualification for a foreign corporation **or limited partnership**;

5. The name and address of the registered agent of a corporation **or limited partnership** which has filed a fictitious/alternate name certificate [pursuant to N.J.S.A. 14A:2-2.1];

6. The date when the last annual report was filed **for a corporation or limited partnership**.

15:2-1.3 Exception: computer breakdown

Expedited service shall be rendered as soon as possible but may extend beyond the same day if the computer system utilized by the [corporate] **commercial** recording division is down, making response impossible.

15:2-1.4 Fees for expedited service

(a) Fees for over the counter [corporation] **expedited** service shall be as follows:

1.-3. (No change.)

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4. Status report(s) which includes name availability, the name and address of the registered agent, corporation or **limited partnership** name, whether corporation charter is still valid, and whether the corporation or **limited partnership** has filed a fictitious/**alternate** name. Fees for report(s) requested, at the same time are as follows:

i.-x. (No change.)

5.-8. (No change.)

(b) (No change.)

(c) Expedited telephone service shall be provided for:

1. Status reports which include:

i. Availability of a corporate name [under N.J.S.A. 14A:2-2] or a **limited partnership name**;

ii. Whether a corporation's certificate of incorporation or a **limited partnership certificate** has been voided or revoked;

iii. The date of incorporation or the **date of formation of a limited partnership** or the date of qualification of a foreign corporation or **limited partnership**;

iv. The name and address of the registered agent of a corporation or **limited partnership** which has filed a fictitious name certificate;

v. The corporation's number;

vi. The date when the last annual report was filed.

2. (No change.)

(a)

Expedited Service

Method of Payment of Fees

Proposed New Rule: N.J.A.C. 15:2-1.5

Authority: N.J.S.A. 52:16A-35 et seq., specifically 52:16A-41.

Proposal Number: PRN 1985-227.

The agency proposal follows:

Summary

The proposed new rule supplements the regulations regarding expedited service in the Commercial Recording Division of the Department of State. The current regulations do not include any guidelines on methods of payment for fees being charged persons requesting expedited service. The large demand for expedited services has created a need to provide efficient means to collect them. It is anticipated that the proposed designation of approved major credit cards as an acceptable method of payment will provide an efficient and convenient means of payment for the public, as well as minimizing collection costs for the Department of State.

Social Impact

The proposed new rule will provide for immediate billing via an approved major credit card for users of expedited service. It is expected that those who will benefit from this proposal will be: 1) attorneys seeking corporate names for corporate clients; 2) corporate search firms which conduct searches for other corporations requesting such information, and; 3) individuals who need general information on corporation records.

Economic Impact

Prior to the proposed new rule, the regulations provided for fees to be charged for both over-the-counter and telephone

requests for expedited service, but did not delineate any approved methods of payment for such services. The proposal will have an economic impact on those persons who request service from the Commercial Recording Division or an expedited basis who choose to charge the fees for service to one of their approved major credit cards. The economic burden of any credit card costs will be more than outweighed by the convenience in this proposed method of payment.

Full text of the proposed new rule follows.

15:2-1.5 Method of payment of fees for expedited service

(a) All fees for expedited service performed by the Division of Commercial Recording may be paid via a pre-paid deposit account or charged against a major credit card held by the service user.

1. When a credit card is utilized as a method of payment, the user may be charged a separate fee to cover reasonable bank fees that are incurred by the Department in processing the credit charge.

2. Major approved credit cards shall be defined for the purposes of this section as those credit cards accepted by the Secretary of State.

TRANSPORTATION

(b)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping

Routes U.S.9 in Ocean County; 28 in Somerset County; U.S.30 in Camden County; 45 in Gloucester County; U.S.46 in Bergen County and 52 in Cape May County

Proposed Amendments: N.J.A.C.

16:28A-1.7, 1.19, 1.21, 1.31, 1.32 and 1.35

Authorized by: John P. Sheridan, Jr., Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and 39:4-199.

Proposal Number: PRN 1985-200.

Submit comments by May 15, 1985 to:

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

The agency proposal follows:

Summary

The proposed amendments will establish "no parking" zones along Routes 28 in Somerville Borough, Somerset County and 52 in Ocean City, Cape May County; "no parking loading zone" along Route 28 in Somerville Borough,

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Interested Persons see Inside Front Cover

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Somerset County; "no parking bus stop" zones along Routes U.S. 9 in Berkeley Township, Ocean County; U.S. 30 in Lawnside Borough, Camden County; 45 in Woodbury City, Gloucester County and U.S. 46 in Saddle Brook Township, Bergen County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon requests from the local officials the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking," "no parking loading zone" and "no parking bus stop" zones were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.7, 1.19, 1.21, 1.31, 1.32 and 1.35 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish "no parking" zones along Routes 28 in Somerville Borough, Somerset County and 52 in Ocean City, Cape May County; "no parking loading zone" along Route 28 in Somerville Borough, Somerset County; "no parking bus stop" zones along Routes U.S. 9 in Berkeley Township, Ocean County; U.S. 30 in Lawnside Borough, Camden County; 45 in Woodbury City, Gloucester County and U.S. 46 in Saddle Brook Township, Bergen County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no parking" zones signs, and the local officials will bear the costs for the installation of "no parking loading zone" and "no parking bus stop" zones. Motorists who violate the rules will be assessed the appropriate fine.

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

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

(a) (No change.)

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

1.-33. (No change.)

34. Along the northbound (easterly) side in Berkeley Township, Ocean County:

i. Far side bus stops:

(1) Bay Boulevard—Beginning at the northerly curb line of Bay Boulevard and extending 110 feet northerly therefrom.

(2) Morris Boulevard—Beginning at the northerly curb line of Morris Boulevard and extending 130 feet northerly therefrom.

16:28A-1.19 Route 28

(a) The certain parts of State highway Route 28 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-7. (No change.)

8. No stopping or standing in Somerville Borough[:], Somerset County:

i. Along the eastbound side:

[(1) From a point 200 feet west of the center line of Mountain Avenue to a point 120 feet east of the center line of Mountain Avenue.

(2) From the center line of Meadow Street to the center line of South Gaston Avenue;

(3) From the center line of East Main Street to a point 185 feet north of the center line of East Main Street;

(4) From a point 160 feet south of the center line of East High Street to a point 120 feet north of the center line of East High Street;

(5) From a point 60 feet south of the center line of Reimer Street to a point 84 feet north of the center line of Reimer Street.]

(1) Beginning at the westerly curb line of Union Street and extending 50 feet westerly therefrom.

(2) Beginning at Meadow Street to South Gaston Avenue.

(3) Beginning at the easterly curb line of North Gaston Avenue extending to the Borough Line (Rehill Avenue).

ii. Along the westbound side:

[(1) From a point 75 feet north of the center line of Bartine Street to a point 85 feet south of the center line of Bartine Street;

(2) From a point 255 feet north of the center line of East High Street to a point 130 feet south of the center line of East High Street;

(3) From a point 185 feet north of the center line of East Main Street to the center line of East Main Street.]

(1) Union Avenue:

(A) Beginning at the Borough Line (opposite Rehill Avenue) and extending to North Gaston Avenue.

(2) North Gaston Avenue:

(A) Beginning at the northerly curb line of Bartine Street and extending 59 feet northerly therefrom;

(B) Beginning at the southerly curb line of Bartine Street and extending 56 feet southerly therefrom;

(C) Beginning at the northerly curb line of East Cliff Street and extending 81 feet northerly therefrom;

(D) Beginning at the southerly curb line of East Cliff Street and extending 81 feet southerly therefrom;

(E) Beginning at the northerly curb line of East High Street and extending 245 feet northerly therefrom;

(F) Beginning at the southerly curb line of East High Street and extending 111 feet southerly therefrom;

(G) Beginning at the northerly curb line of East Main Street and extending 173 feet northerly therefrom.

iii. Along the northbound side:

(1) Beginning at a point 150 feet from the westerly curb line of North Gaston Avenue and extending westerly to Park Avenue;

(2) Beginning at the prolongation of the westerly curb line of Hamilton Street and extending 68 feet easterly therefrom;

(3) Beginning at the easterly curb line of Mechanic Street and extending 45 feet easterly therefrom;

(4) North Gaston Avenue:

(A) Beginning at the northerly curb line of East Main Street and extending 174 feet northerly therefrom.

(B) Beginning at the southerly curb line of East High Street and extending 147 feet southerly therefrom.

(C) Beginning at the northerly curb line of East High Street and extending 98 feet northerly therefrom.

(D) Beginning at the southerly curb line of East Cliff Street and extending 81 feet southerly therefrom.

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(E) Beginning at the northerly curb line of East Cliff Street and extending 48 feet northerly therefrom.

(F) Beginning at the northerly curb line of Reimer Street and extending 71 feet northerly therefrom.

(G) Beginning at the southerly curb line of Union Avenue and extending 108 feet southerly therefrom.

9.-13. (No change.)

(b) (No change.)

(c) The certain parts of State highway Route 28 described [herein below] in this section shall be [, and hereby are,] designated and established as "no parking['] loading zone" [for designated curb loading zones.] where parking is prohibited at all times. In accordance with N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established Loading Zones.

[i.] 1. (No change in text.)

[ii.] 2. (No change in text.)

3. Along the eastbound side in Somerville Borough, Somerset County:

i. Beginning 35 feet westerly of the projection of the curb line of Davenport Street and extending 62 feet westerly therefrom.

4. Along the westbound side in Somerville Borough, Somerset County:

i. Beginning 35 feet westerly of the westerly curb line of Maple Street and extending 64 feet westerly therefrom.

(d)-(e) (No change.)

16:28A-1.21 Route U.S. 30

(a) (No change.)

(b) The certain parts of State highway Route U.S. 30 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-7. (No change.)

8. Along (White Horse Pike) westbound on the northerly side in Lawnside Borough, Camden County:

i. Far side bus stops:

(1) Mouldy Road—Beginning at the westerly curb line of Mouldy Road and extending 100 feet westerly therefrom.

(2) Emlen Avenue—Beginning at the westerly curb line of Emlen Avenue and extending 100 feet westerly therefrom.

9. Along (White Horse Pike) eastbound on the southerly side in Lawnside Borough, Camden County:

i. Mid-block bus stop:

(1) Between Gloucester Pike and Emlen Avenue—Beginning 390 feet east of the easterly curb line of Gloucester Avenue and extending 135 feet easterly therefrom.

16:28A-1.31 Route 45

(a) (No change.)

(b) The certain parts of State highway Route 45 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with N.J.S.A. 39:4-199, permission is [hereby] granted to erect appropriate signs at the following established bus stops:

1. (No change.)

2. Along the northbound (easterly) side in the City of Woodbury, Gloucester County:

i. Near side bus stops:

(1) Barber Avenue—Beginning at the southerly curb line of Barber Avenue and extending 110 feet southerly therefrom.

(2) Newton Avenue—Beginning at the southerly curb line of Newton Avenue and extending 105 feet southerly therefrom.

3. Along (Broad Street) southbound on the westerly side in the City of Woodbury, Gloucester County:

i. Far side bus stop:

(1) West Red Bank Avenue—Beginning at the southerly curb line of West Red Bank Avenue and extending 100 feet southerly therefrom.

ii. Near side bus stop:

(1) Delaware Street—Beginning at the northerly curb line of Delaware Street and extending 115 feet northerly therefrom.

16:28A-1.32 Route U.S. 46

(a) (No change.)

(b) The certain parts of State highway Route U.S. 46 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-9. (No change.)

10. Along the eastbound (southerly) side in Saddle Brook Township, Bergen County:

i. Near side bus stop:

(1) Sixth Street—Beginning at the westerly curb line of Sixth Street and extending 108 feet westerly therefrom.

ii. Mid-block bus stop:

(1) President Street and 10th Street—Beginning 150 feet east of the easterly curb line of President Street and extending 135 feet easterly therefrom.

11. Along the westbound (northerly) side in Saddle Brook Township, Bergen County:

i. Mid-block bus stop:

(1) Sixth Street—Beginning 108 feet east of the easterly curb line of Sixth Street and extending 168 feet easterly therefrom.

16:28A-1.35 Route 52

(a) The certain parts of State highway Route 52 described [herein] in this section shall be [, and hereby are,] designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. (No change.)

2. No stopping or standing in Ocean City, Cape May County:

i. Along both sides:

(1) (Howard M. Stainton Memorial Causeway)—Entire Corporate Limits including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

**General Administration
Purchases; Employee Pay-All**

Proposed Amendment: N.J.A.C. 17:1-4.11

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Interested Persons see Inside Front Cover

TREASURY-TAXATION

Authorized By: Douglas R. Forrester, Director, Division of Pensions.

Authority: N.J.S.A. 52:18A-95 et seq.

Proposal Number: PRN 1985-198.

Submit comments by May 15, 1985 to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front St.
CN 295
Trenton, N.J. 08625

The agency proposal follows:

Summary

The proposed amendments attempt to implement the provisions of Chapter 223, P.L. 1984 (effective December 20, 1984), which permit certain nurses in a certain county hospital to purchase PERS service credit for their previous temporary service that immediately preceded their permanent appointment as such nurses. The nurses may, within one year of the effective date of the Act, purchase the service credit. Such nurses are to assume the entire costs for such purchases. At the time of their retirement, if the previous cost estimates are insufficient to fund their benefits, the members will have to make additional contributions at that time to provide such funds. The employer is not to be liable for any part of the cost of such purchase.

Social Impact

Chapter 223, P.L. 1984, and these proposed amendments only pertain to certain nurses at a certain county hospital seeking to purchase service credit in the PERS for their temporary service that immediately preceded their permanent employment.

Economic Impact

Under the provisions of Chapter 223, P.L. 1984, the member who purchases such service credit is to assume the entire costs of such purchase. Thus, the system and the public at large will not experience a significant cost but the individual member requesting such purchase will assume the entire cost liability of such purchases.

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

17:1-4.11 Purchase terms; computation; employee pay-all (a)-(d) (No change.)

(e) Pursuant to the provisions of Chapter 223, Laws of 1984, the following shall apply:

1. At the time of purchase request, an estimated cost for purchase of service will be calculated based on factors supplied by the actuary. This cost will be communicated to the member in a manner such that is clearly understood that an additional lump sum cost may be requested at retirement to consummate the purchase.

2. Upon application by the member for retirement, the actual cost of the service purchased will be calculated. The difference between this actual cost and any monies accumulated based upon the estimated cost will have to be paid in a lump sum.

3. If a required final payment is not made but the member is eligible to retire based on actual service, the purchase will be cancelled. the member will be retired with a benefit based on actual service and any monies accumulated for the purchase will be refunded.

4. If a required final payment is not made and the member is not eligible to retire based on actual service, the application for retirement will not be approved pending completion of the purchase.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Proposals numbered PRN 1985-195 and 224 are authorized by John R. Baldwin, Director, Division of Taxation.

Corporation Business Tax Consolidated Casino Corporation Business Tax

Proposed New Rule: N.J.A.C. 18:7-1.17 Proposed Amendment: N.J.A.C. 18:7-11.15

Authority: N.J.S.A. 5:12-148(b) and 54:10A-27.

Proposal Number: PRN 1985-224.

Submit comments by May 15, 1985 to:

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

The agency proposal follows:

Summary

This proposal supersedes the proposal published at 16 N.J.R. 2423(a), which is being withdrawn. This new proposal describes the principles of consolidation which are to be followed by casino hotels in complying with the requirement to file consolidated corporation business tax returns under section 148(b) of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The proposal makes clear that the Federal Internal Revenue Code principles of consolidation do not apply. There are two criteria for determining which persons or entities join in the consolidated return. They must be specified licensees under the Casino Control Act and also be subject to common effective control as defined in the rule. Where a corporation joins in the consolidation it is not relieved from its obligation to file a separate return under the Corporation Business Tax Act for its corporate franchise.

The proposal describes the manner by which consolidation is accomplished and provides that transactions between or among entities in the consolidation be eliminated. Income subjected to tax on the consolidated return is not also subjected to tax on an individual corporate return filed under the Corporation Business Tax Act. However, there is no provision for the elimination of duplications in statutory net worth on the consolidated return and on the separate returns filed under the Corporation Business Tax Act.

The proposal deals with fiscal years to be used by the consolidation as well as with apportionment of common costs where a licensee may be required to join in filing two consolidated returns or where a licensee is also engaged in a business unrelated to the operation of a casino hotel.

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PROPOSALS

Social Impact

The proposal would affect licensees filing the consolidated corporation business tax return pursuant to the Casino Control Act, but provides that an individual whose sole connection with the casino is as a licensed employee shall not be required to join in the consolidated return.

Economic Impact

The adoption of this proposal will lower costs of administration of the tax imposed by section 148(b) of the Casino Control Act by supplying taxpayers with a uniform rule rather than continuing the necessity of making frequent case by case determinations in the casino industry.

Full text of the proposed new rule follows.

18:7-1.17 Application of the tax to licensees under the Casino Control Act; casino business consolidated return

(a) Pursuant to N.J.S.A. 5:12-148(b), any business conducted by an individual, partnership, corporation, or any other entity, or any combination thereof, holding a license pursuant to the Casino Control Act shall, in addition to all other taxes imposed by that act, file a consolidated corporation business tax return pursuant to the Corporation Business Tax Act and pay the taxes indicated thereon.

(b) The consolidated return to be filed under the Casino Control Act is in addition to, and not in lieu of, any return due under the Corporation Business Tax Act. Provided, however, that where any corporation is a licensee under the Casino Control Act, it may exclude from the return due under the Corporation Business Tax Act any item of income, loss or deduction appearing on its consolidated return, but which would have been reported on its own separate return under the Corporation Business Tax Act for the year for which that item would otherwise have been reported. Provided further, that where any corporation is a partner in a licensee under the Casino Control Act, it may similarly exclude its share of distributable income or loss attributable to its partnership interest in the licensee which would otherwise have been reported by it on its own separate return under the Corporation Business Tax Act.

1. In no event may the tax reduction arising out of any such exclusion exceed the portion of the tax paid with the consolidated return which is clearly attributable to the net effect of the existence of the amount which is duplicated in entire net income on the separate return filed under the Corporation Business Tax Act.

2. The return filed under the Corporation Business Tax Act shall reflect taxable income before net operating loss deduction and special deductions which is required to be reported to the United States Treasury Department for the purposes of computing its Federal income tax. Claims for exclusion for any duplication shall be separately identified in computing entire net income and be documented and reconciled on the return due under the Corporation Business Tax Act.

EXAMPLE

	Hotel Entity 1		Management Co. Entity 2		Eliminations		Consolidated		Duplications Entity 1		Entity 2	
	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.
Gaming Revenue	\$	\$1000	\$	\$0-	\$	\$	\$1000	\$	\$1000	\$	\$0-	\$0-
Other Income		200		0-			200		200		0-	0-
Management Fees		0-		500		500	0-		0-		0-	0-
Total Income		1200		500			1200		1200		0-	0-
Management Fees		500		0-		500	0-		0-		0-	0-
Payroll Deductions		0-		200			200		0-		200	200
Other Deductions		200		0-			200		200		0-	0-
Total Deductions		700		200			400		200		200	200
Net Income		500		300			800					
Duplications									1000			(200)

Entity #1	
Net Income	\$ 500
Adjustment for duplication	(1000)
Tax Base	\$ -0-

Entity #2	
Net Income	\$ 300
Adjustment for duplication	(200)
Tax Base	\$ 300
Entity #2 may elect not to exclude duplications	

(c) The principles of consolidation are determined by regarding each casino hotel as though it were a single corporation reporting in its own right under the Corporation Business Tax Act. The rules governing consolidation under the Internal Revenue Code do not apply. The business conducted by each casino hotel shall give rise to an obligation to file a separate consolidated corporation business tax return based on all the business activities conducted with respect to that casino hotel. All licensees subject to common effective control, without respect to their form of organization or the form of license held, except for licenses issued to individuals in their capacity as employees, must join in filing the consolidated return. All transactions between or among them are to be eliminated in consolidation and shall not appear on the consolidated return. Accordingly, where the same licensee is a participant in the business conducted by more than one casino hotel, it must join in filing a consolidated return with each such business. A change in common effective control terminates the fiscal year for purposes of filing the consolidated return.

1. Common effective control is the power exercisable by any person or entity arising out of ownership or a contractual arrangement which joins more than one licensee and permits domination in the management of more than one licensee for the purpose of engaging in a single casino hotel business. Common effective control also occurs where a contractual arrangement permits more than one licensee to operate jointly a single casino hotel business. For example, where the same persons or entities simultaneously control voting stock, boards of directors or serve as or nominate managing partners or are employed as managers or executives in more than one licensee which participates in the business activities conducted by the same casino hotel, or where a licensee executes a sale and leaseback of its property with another licensee and reserves by contract the option to recover its property, all such licensees shall join in filing the consolidated return. Notwithstanding an absence of common ownership, licensees joined in the operation of the business conducted by a casino hotel by management contract or partnership arrangement shall join in filing the return.

2. Consistent with N.J.A.C. 18:7-11.15(a), the separate return due under the Corporation Business Tax Act may not be consolidated.

(d) Where a licensee is engaged in a business wholly unrelated to the casino hotel, or is engaged in the operation of more than one casino hotel, common costs must be apportioned in a reasonable manner consistently applied. The method of apportionment shall be disclosed on the consolidated return and may be adjusted by the Director where it shall appear to him to result in a distortion of tax liability.

(e) Where the licensees joining in filing the consolidated return do not have a common fiscal year, the return may be based upon the fiscal year of the casino operator as defined at N.J.A.C. 19:54-1.2 where all licensees join in making such an election. The other licensees may then include their respective financial condition and operations on the basis of their own fiscal years within which the consolidated year ends. Separate schedules reconciling timing differences in elimination of balance sheet items and items of entire net income attributable to

PROPOSALS

Interested Persons see Inside Front Cover

TREASURY-TAXATION

the lack of a common fiscal year must be submitted as part of any such consolidated return. In the absence of this election, the return shall be based on a calendar year ending December 31. The reporting method, once adopted, is effective for all future returns unless the prior consent of the Director is obtained for a change.

(f) A legend shall be prominently displayed on the face of any return filed under this section identifying the return as a casino business consolidated return.

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

18:7-11.15 Consolidated returns

(a) Corporations are not permitted to file consolidated returns. **Provided, however, any business conducted by an individual, partnership, or corporation or any other entity, or any combination thereof holding a license pursuant to the Casino Control Act shall file a consolidated corporation business tax return as described at N.J.A.C. 18:7-1.17.**

(b) **Except as provided in (a) above,** [W]where a taxpayer has filed a consolidated return with the [Bureau of] Internal Revenue Service for Federal income tax purposes, it must compete its return under the act and must reflect its entire net income and entire net worth as if it had filed its Federal return on its own separate basis.

(c) (No change.)

(a)

**Local Property Tax
Farmland Assessments**

**Proposed Amendments: N.J.A.C. 18:15-2.1,
2.2, 2.3, 2.4, 2.5 and 2.6**

Authority: N.J.S.A. 54:4-23.21.
Proposal Number: PRN 1985-195.

Submit comments by May 15, 1985 to:

John C. Raney
Superintendent
Local Property Tax Branch
Division of Taxation
CN 52
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendments will amend existing rules which provide instructional guidelines for applicants and assessors with respect to the filing of applications for assessment under the Farmland Assessment Act of 1964, P.L. 1964, c.48; N.J.S.A. 54:4-23.1 et seq. The proposed amendments are necessitated by a recent change made in processing the application form, Form FA-1 (revised January 1985). The amendments are mostly of a technical and grammatical nature.

Social Impact

Taxpayer-claimants and assessing officials are aided by the uniform approaches provided in the guidelines set forth in the proposed amendments. The availability of concise standards minimizes error in procedures and the resulting need to engage in costly litigation.

Economic Impact

The proposed amendments are purely procedural in nature and have no economic impact since they concern technical changes.

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

18:15-2.1 Persons required to file

In order that land [is] **in** agricultural or horticultural use may be assessed under the act, the owner of such land must file an application [and supplemental] form requesting such assessment with the assessor of the taxing district in which such land is situated on or before August 1 of the pre-tax year.

18:15-2.2 Form[s] FA-1 [and FA-1S,] required

Application for assessment under the act may be made only upon completion of the form[s] prescribed by the Director, identified as Form FA-1 [and FA-1S]. Copies of the form[s] may be obtained, upon request, from the assessor of each taxing district who is required to provide [such] **said** form[s] for use by applicants.

18:15-2.3 Form FA-[2]1 [and FA-1S], signature and verification

The application, Form FA-1 [and supplemental Form FA-1S are] is to be filed by the owner of the land at the time the application for farmland assessment is made. In the case of multiple ownership, (except corporate co-owners), one of the owners may sign on behalf of the other co-owners, and such signer will be presumed to have authority to sign on behalf of the other owners. In the case of a corporate owner or owners the full name of the corporation must be filled in, and accompanied by the signature and title of the corporate officer authorized to sign the application on its behalf.

18:15-2.4 Annual filing required

In order that land in horticultural or agricultural use **can** continue to be assessed as farmland, the owner thereof must annually, on or before August 1 of the pre-tax year, complete and file **an application on** Form[s] FA-1 [and FA-1S] with the assessor of the taxing district where such land is situated. See Form FA-1, revised [March, 1974] **January, 1985** [and Form FA-1S, October 1983]. **This form supersedes Form FA-1 of prior dates.**

18:15-2.5 Extension of time for filing

The owner of land in horticultural or agricultural use may file [the] **an** [A]application [and Supporting Farm Information forms] after August 1, but before December 31 of the pre-tax year if the taxing district in which the land is located completes a revaluation of all property in time to be reflected in the assessments for the next succeeding tax year.

18:15-2.6 Application forms; original and [duplicate] **two copies**

(a) The original [copy] of [all] **the** FA-1 [and FA-1S] form[s] submitted to the assessor shall be retained in the office of the assessor.

(b) [The duplicate copy] **Two copies** of each [form] **application** shall be forwarded to the Local Property and Public Utility Branch by the assessor on or before [November] **January 10** of the [pre-tax] **tax** year.

(c) [Copies of forms submitted to the assessor after August 1, but before December 31, under the provision for the extension of time to file shall be forwarded to the Local Property and Public Utility Branch by the assessor on or before January 10 of the year in which a revaluation becomes effective.]

[(d)] Each [duplicate] **triplicate** copy of the application form shall, in the space reserved for official use, be signed and dated by the assessor and be marked "approved" or "disapproved."

RULE ADOPTIONS

BANKING

(a)

DIVISION OF CONSUMER COMPLAINTS LEGAL & ECONOMIC RESEARCH

Advertising by Financial Institutions

Readoption with Amendments: N.J.A.C. 3:2-1

Proposed: February 4, 1985 at 17 N.J.R. 238(a).
Adopted: March 21, 1985 by Mary Little Parell, Commissioner of Banking.
Filed: March 25, 1985 as R.1985 d.183, **without change**.

Authority: N.J.S.A. 17:16H-1 et seq., specifically 17:16H-3.

Effective Date: April 15, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): April 15, 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. 3:2-1.

Full text of the adopted amendment to the readoption follows.

3:2-1.6 Hearings

Upon notification of a request for a hearing by a financial institution in response to an order to show cause issued pursuant to N.J.A.C. 3:2-1.5, the Commissioner shall certify the matter as a contested case. An administrative hearing will then be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1 et seq.

(b)

DIVISION OF SAVINGS AND LOAN ASSOCIATIONS

Reserve Requirements

Adopted Repeal: N.J.A.C. 3:30-2.1

Proposed: January 21, 1985 at 17 N.J.R. 142(a).
Adopted: March 19, 1985 by Mary Little Parell, Commissioner of Banking.
Filed: March 20, 1985 as R.1985 d.172, **without change**.

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

Effective Date: April 15, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): None.

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

Full text of the adopted repeal appears in the New Jersey Administrative Code at N.J.A.C. 3:30-2.1.

COMMUNITY AFFAIRS

(c)

DIVISION ON AGING

County Offices on Aging

Readoption with Amendments: N.J.A.C. 5:71

Proposed: February 19, 1985 at 17 N.J.R. 342(a).
Adopted: March 22, 1985 by Ann Zahora, Director, Division on Aging.
Filed: March 22, 1985 as R.1985 d.176, **without substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 40:23-6.44.

Effective Date for Readoption: March 22, 1985.
Effective Date for Amendments: April 15, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): March 1, 1990.

Summary of Public Comments and Agency Responses:

Comments: Five letters with comments were received on the proposal. Three letters were from Executive Directors of County Offices on Aging, one from the New Jersey Association of Area Agencies on Aging, and one from the Director of a county Department of Human Services. Each letter of comment was responded to individually. Comments from the Executive Directors of County Offices on Aging and from the Association of Area Agencies on Aging were upon the \$20,000 ceiling on reimbursement toward the costs of operating a County Office on Aging (N.J.A.C. 5:71-2.2). Comments from the Director of a county Department of Human Services were upon the Division's statement of its authority to designate area agencies on aging, the effect of that designation upon County Offices on Aging, the degree of local participation in decision making on programs and services for the elderly and upon the removal of the provision for a waiver of the requirement that a multi-purpose human services agency which receives funds from the Older Americans Act (PL 98-459), must delegate authority and responsibility for activities related to the Act to a single organizational unit within such a multi-purpose agency. (N.J.A.C. 5:71-1.2).

Responses: The Division on Aging's responses to Executive Directors of County Offices on Aging and to the Association of Area Agencies on Aging clarify for each commentator that the \$20,000 ceiling on reimbursement toward the costs of operating a County Office on Aging is established by statute (N.J.S.A. 40:23-6.43) and cannot be changed by rule. The Division's response to the county Department of Human

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Services also points to statute, in this instance the Older Americans Act Amendments of 1984 (P.L. 98-459), and previous amendments, which clearly set forth the authority and responsibility of the Division to designate area agencies on aging and to give preference in such designation to an existing Office on Aging unless the Division determines that such an Office does not have the capacity to carry out the functions of an area agency on aging. The Division's further response is that the exercise of its authority and responsibility to designate area agencies on aging does not circumvent local participation in decision making on programs and services for the elderly because an area agency on aging is required by statute to establish councils of local elected officials, the general public and eligible recipients of services and to have such councils provide specific and wide-ranging advice to the local agency and that the award of grants from the Division for the planning and provision of such programs and services are made to County Boards of Chosen Freeholders. The Division's response to the objection to the removal of the provision of waiver is that this administrative decision was based on the knowledge that the Federal rules from which this prerogative is derived will have expired during the life time of these rules.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 5:71.

Full text of the changes to the readoption follows (additions to proposal shown in boldface with asterisks ***thus***).

CHAPTER 71

COUNTY OFFICES ON AGING

SUBCHAPTER 1. GENERAL PROVISIONS

5:71-1.1 (No change.)

5:71-1.2 Designation of grantees

(a) The Division on Aging, in the Department of Community Affairs, pursuant to its authority under the Older Americans Act of 1965 as amended (P.L. 98-459), or as may be subsequently amended, has designated each county as a planning and service area and has designated within each such county an area agency on aging to prepare, develop and carry out an area plan on aging.

(b) The designated area agency on aging will be a County Office on Aging established pursuant to N.J.S.A. 40:23-6.44 or other agency or organization which the Division on Aging deems able to perform the functions of an area agency on aging.

(c) When the County Office on Aging has been designated as the area agency on aging, the Board of Chosen Freeholders (hereinafter referred to as the grantee) shall:

1.-2. (No change.)

3. Ensure that the County Office on Aging will have complete authority and responsibility to plan and develop all policy on programs for older persons under an approved area plan on aging. Such office may be an agency whose single purpose is to administer programs for older persons, or a multi-purpose agency with the authority and capacity to administer human services in the county. A multi-purpose agency must delegate all its authority and responsibility under the Older Americans Act to a single organizational unit within the agency.

COMMUNITY AFFAIRS

5:71-1.3 Functions

(a) The County Office on Aging as the designated area agency on aging will have duties, responsibilities and functions which include but are not limited to:

1. Prepare, develop and carry out an area plan on aging which has been submitted to and approved by the Division on Aging.

2.-4. (No change.)

5. Act as the central place in each county planning and service area responsible for the implementation of all policies and procedures issued by the Division to achieve at a local level the goals which the Division addresses in its statewide efforts.

6.-7. (No change.)

5:71-1.4 Executive director

(a) The executive director of the County Office on Aging shall have responsibilities which include but are not limited to the following:

1.-6. (No change.)

7. Develop and exercise methods of administration necessary for the proper administration of the Office on Aging, including effective and efficient procedures for planning and coordinating with Federal, State and local agencies with resources of benefit to older persons.

(b) The executive director shall be a full-time qualified professional appointed by the respective grantee in compliance with applicable Federal, State and local regulations governing personnel administration including the requirements of merit employment systems. Selection will be made in consultation with the Division on Aging.

(c) (No change.)

5:71-1.5 (No change.)

5:71-1.6 (No change.)

SUBCHAPTER 2. STATE AID TO COUNTY OFFICES ON AGING

5:71-2.1 (No change.)

5:71-2.2 Cost sharing requirements

(a) The Division on Aging shall pay to each County Office on Aging which the Division has designated as the area agency on aging one-half of the amount of the annual allowable costs of the Office, provided the State appropriates such funds. In no case, however, may the Division on Aging's grant to an office for a calendar year exceed \$20,000.

(b) (No change.)

5:71-2.3 Audit procedures

(a) All financial activities of the Office are subject to a Division on Aging audit. Any exception which might result from a State audit shall be deducted and credited against the State aid that a grantee is to receive under P.L. 1970 c. 248, N.J.S.A. 40:23-6.44.

(b) The County Office on Aging which the Division has designated as the area agency on aging, is required to provide the Division on Aging, through the board of chosen freeholders, with ***certified*** supplemental schedules to a single agency audit pursuant to the requirements of the Single Audit Act of 1984 (P.L. 98-502) for all funds received under the Older Americans Act, as amended (P.L. 98-459), except when the board of chosen freeholders elects to secure a separate ***certified*** audit of the Office on Aging area plan grant. Such supplemental schedules or separate audits must be provided to

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the Division no later than April 15 following completion of the grant agreement year.

5:71-2.4 (No change.)

EDUCATION

(a)

STATE BOARD OF EDUCATION

Family Life Education Programs

Readoption with Amendments: N.J.A.C. 6:29-7.1

Proposed: December 17, 1984 at 16 N.J.R. 3377(a).
 Adopted: March 6, 1985 by State Board of Education, Saul Cooperman, Secretary.
 Filed: March 25, 1985 as R.1985 d.185, **with technical changes** not requiring additional public notice and comment (see: N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 18A:4-10, 18A:4-15, 18A:7A-1, 18A:33-1, 18A:35-4.6, 18A:35-5, 18A:36-5, 18A:35-7.

Effective Date for Readoption: March 25, 1985.
 Effective Date for Amendments: April 15, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): March 25, 1990.

Summary of Public Comments and Agency Responses and Reasons for Making Changes:

The Department received four letters in response to the proposed rules for Family Life Education (FLE). Two of the letters were in support of the rule; while the remaining two letters contained the suggestions listed below. The Department's responses follows each of these suggestions. One respondent indicated that N.J.A.C. 6:29-7.1(e) excludes teachers holding other certification who might be better prepared to present instructional materials in Family Life Education. The department position is that the preparation to fulfill the requirements for one of the ten certifications necessary to teach FLE is most appropriate. Second, the criteria to determine preparation and experience of teachers would be difficult to standardize Statewide. Last, teachers can become eligible to teach FLE through fulfilling certain minimal certification endorsement requirements.

The last respondent suggested that parents of children in FLE are unaware of what is being taught in the classroom. The rule indicates that the curriculum must be developed in consultation with the community and parents (N.J.A.C. 6:29-7.1(b)). Second, the rule indicates that parents are to be provided with a copy of the curriculum outline and provided with an opportunity to view the curriculum and instructional materials (N.J.A.C. 6:29-7.1(b)). Further, the code indicates that parents may excuse their children from the program (N.J.A.C. 6:29-7.1(c)).

The following information summarizes the public comments of 55 speakers at the State Board hearings on February 22, 1985. The comments made by the speakers who were in

support of the readoption of the FLE code were either an expression of their positive feelings or suggestions for additions to the code such as mandating an awareness of child abuse; providing more State level training for teachers; requiring more local involvement; and augmenting classroom instruction with a crisis counselor. The department's position is that FLE is a classroom instructional program which adequately addresses the educational needs of students. District boards of education may augment their instructional programs with specifically trained personnel as they see fit. Also the State Board has passed a resolution requiring district boards of education to cooperate in child abuse investigations and to provide classroom instruction on the prevention of child abuse.

The speakers who were opposed to the readoption of FLE commented that FLE is an invasion of student privacy; provides for the teaching of secular humanism; and should be taught in the home and church, not in the school. Further, they felt that FLE should not include such topics as fertility control, homosexuality, abortion and masturbation. Also the speakers said that the classroom presentation is casual and vulgar. In response to concerns regarding curriculum, the department believes that the rule adequately provides for community involvement in curriculum development so that the curriculum may reflect the values of the community (N.J.A.C. 6:29-7.1(b)). Also the department believes that the public wants those subjects covered in FLE taught to their children as indicated by public response to the Gallup and Eagleton polls. FLE provides the opportunity for the religious community to participate in FLE curriculum development and classroom instruction, thus making it possible for students to have a religious perspective.

Additional opposing comments were that the excusal procedures do not work and that parents have no control over the material being used for instruction. A county office survey indicated that less than one percent of the students in New Jersey are using the excusal procedures. Also, parents are provided with a list of instructional materials and an opportunity to view the curriculum materials on an annual basis.

Another comment suggested that FLE needs to be formally evaluated. The department will evaluate the program once it has been implemented for more than two years so that there is adequate information to study.

The department has only made technical changes in the language of the rule. The language was changed to read "district board of education" instead of "local school district" in order to be consistent with other references to school districts used in this rule and throughout N.J.A.C. Title 6.

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

6:29-7.1 Family life education

(a) As used in this subchapter, "family life education program" means instruction to develop an understanding of the physical, mental, emotional, social, economic, and psychological aspects of interpersonal relationships; the physiological, psychological and cultural foundations of human development, sexuality, and reproduction, at various stages of growth; the opportunity for pupils to acquire knowledge which will support the development of responsible personal behavior, strengthen their own family life now, and aid in establishing strong family life for themselves in the future thereby contributing to the enrichment of the community.

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(b) The family life education curriculum shall be developed through appropriate consultation and participation of teachers, school administrators, parents and guardians, pupils in grades 9 through 12, community members, physicians, members of the clergy and representative members of the community. The *[local school]* district ***board of education*** shall demonstrate prior to the initiation of any *[local school]* district ***board of education*** program that the above consultation and participation have taken place. The process of consultation shall be continued as the program is revised in future years.

1. The parents and guardians of pupils enrolled in the district shall receive annually an outline of the curriculum and a list of instructional materials for the grade of their child including notification about how to receive a copy of the curriculum. The district shall make available for review in each school the complete curriculum and all instructional materials prior to use in the classroom. Upon the request of parents and guardians, the material shall be made available for their review.

(c) The district's family life education program shall be implemented comprehensively through the coordinate sequential elementary/secondary curriculum with instructional units appropriate to the age, growth and development, and maturity of the pupils.

(d) Districts that develop their program with an interdisciplinary approach may use teachers from other disciplines to assist those staff members authorized to give instruction in family life education.

(e) Teaching staff members holding one of the following certificates are authorized to teach in the district's family life education program:

1. Biology;
2. Comprehensive science;
3. Elementary;
4. Health education;
5. Health and physical education;
6. Home economics;
7. Nursery;
8. School nurse;
9. Teacher of psychology;
10. Special Education.

(f) Districts may use resource people to assist with their program; that is, physicians, members of the clergy, attorneys, parents and guardians, school social workers, school psychologists, law enforcement personnel, and others as necessary.

(g) The *[local school]* district ***board of education*** shall provide for in-service education to those teachers responsible for family life education programs.

(h) The State Department of Education shall provide technical assistance to *[local school]* district*[s]* ***boards of education*** in the development of family life education programs.

(i) The district board of education shall establish procedures whereby any pupil, whose parent or guardian presents to the school principal a signed statement that any part of the instruction in family life education is in conflict with his or her conscience, or sincerely held moral or religious beliefs, shall be excused from that portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom (N.J.S.A. 18A:35-4.6 et seq.).

(j) *[The]* ***This*** subchapter is subject to all of the provisions of N.J.A.C. 6:8-4.2.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Shore Protection Program Procedural Rules

Adopted New Rule: N.J.A.C. 7:7F-3.7

Adopted Amendment: N.J.A.C. 7:7F-1 and 3

Proposed: November 5, 1984 at 16 N.J.R. 2881(a).

Adopted: March 25, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: March 25, 1985 as R.1985 d.184, **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. 13:1D-9, P.L. 1978, c. 157 Section 10 as amended by P.L. 1983, c. 356.

Effective Date: April 15, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): December 6, 1987.

DEP Docket No. 068-84-10.

Summary of Public Comments and Agency Responses:

One written comment was received suggesting that the general public can best be protected from any abuses which may occur in the expenditure of grants or loans to local governments by including the provisions of the Local Public Contracts Law P.L. 1971, c. 198 in the Shore Protection Program Procedural Rules.

The Department has determined that this change would be appropriate to provide additional safeguard against possible contract abuses. Accordingly, appropriate language has been inserted stating the adherence to the Public Contracts Law is required in all activities which are addressed by these regulations. The addition of such language is merely a reiteration of an existing statutory requirement.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***).

SUBCHAPTER 1. GENERAL PROVISIONS

7:7F-1.1 Scope and construction

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

(b) (No change.)

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7:7F-1.2 Purpose

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

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

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

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

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

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

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

7:7F-1.4 Definitions

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

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

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

SUBCHAPTER 3. LOCAL GOVERNMENT GRANTS

7:7F-3.1 Eligibility

Any loan government applicant is eligible for a shore protection grant or loan in any year where the proposed shore protection project ranks high enough on the priority list to be funded (given the funds available), is in compliance with the Department's Rules on Coastal Resource and Development Policies (see N.J.A.C. 7:7F-3.8), and for which the local government and other local governments in the reach have irrevocably committed funds.

7:7F-3.2 Pre-application procedures

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

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

7:7F-3.3 Application procedures

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

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

(c) Applications shall be submitted well in advance of the desired grant or loan award date. Generally, processing of a

completed grant or loan application by the Department requires 120 calendar days after receipt of the application.

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

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

7:7F-3.4 Funding formula

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

(b) (No change.)

7:7F-3.5 Eligible costs

(a) Shore Protection funds may be used for the following costs:

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

2. Construction and,

3. Administrative costs.

(b) Shore Protection funds shall not be used for the following costs incurred by local governments:

1. Pre-application and application phase engineering,

2. In kind costs,

3. Administrative costs.

7:7F-3.6 Grant *or loan* agreement

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

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

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

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

(e) The grant or loan agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project or Department objectives. The grantee *, **borrower*** or contractor shall comply with any special conditions which the Department requires in the agreement or any amendment thereto; such requirements will in-

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clude the Affirmative Action requirements of P.L. 1975, Chapter 127 *and the requirements of all applicable public contracts laws, including the Local Public Contracts Law, N.J.S.A. 40:11-1 et seq.*

7:7F-3.7 Shore protection loans

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

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

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

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

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

4. All other financial terms shall be established by agreement between the Department and the Department of Treasury. Loan terms shall be made available to all applicants by the Department in all cases prior to execution of any loan award document.

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

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

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

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

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

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

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

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

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

5. The borrower shall certify that the borrower includes in all its construction or development contracts for the project a

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requirement that the contractor post a performance bond or other performance guarantee in an amount equal to the full cost of the project;

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

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

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

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

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

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

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

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

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

7:7F-3.8 Compliance with Coastal Resource and Development Policies

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

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

(b) Local governments must be able to demonstrate that adequate public access is provided to the waterfront area. Factors to be evaluated will include, but are not limited to:

1. Physical access to anyone, at a reasonable, non-discriminatory cost (if a fee is charged)

2. Adequate parking or public transportation for non-residents,

3. Public ownership or control of beach areas and access routes, to insure that the beach area will be accessible to the public.

(c) (No change.)

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

(e) N.J.A.C. 7:7E-3.24 prohibits development in erosion hazard areas, except for linear development and shore protection activities. These areas are identified in the Shore Protection Master Plan, and a local government which has erosion hazard areas and wants to undertake a shore protection proj-

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ect must be able to demonstrate that local ordinances comply with this policy.

7:7F-3.9 Federal reimbursement

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

**7:7F-3.10 Payment of local share
(No change.)**

(a)

BOARD OF PUBLIC UTILITIES

**Small Water Company Takeover Act
Regulations**

**Adopted New Rule: N.J.A.C. 7:19-5
(14:9-6)**

Proposed: December 17, 1984 at 16 N.J.R. 3380(a).
Adopted: March 22, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection, and March 14, 1985 by Board of Public Utilities, Barbara A. Curran, President.

Filed: March 25, 1985 as R.1985 d.182, **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. 58:11-59 et seq. and 58:12A-1 et seq.

Effective Date: April 15, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 15, 1990.

DEP Docket No.: 006-84-02.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (“NJDEP”) and the Board of Public Utilities (“BPU”) held a written comment period open from December 17, 1984 until January 16, 1985 concerning the proposed new rule titled “Small Water Company Takeover Act Regulation”, N.J.A.C. 7:19-5 (14:9-6). NJDEP and BPU received only one written comment from a large water company in northern New Jersey concerning two separate issues.

Comment:

The commenter noted that 7:19-5.8(h) (14:9-6.8(h)) does not permit cross-examination at the joint public hearing. The commenter felt that this provision should be amended to provide for a right of cross-examination by interested parties. In particular, the commenter felt that a potential “capable proximate private or public water company” should not be precluded from cross-examining NJDEP’s presentation pursuant to N.J.A.C. 7:19-5.8(d) (14:9-6.8(d)). The commenter also noted N.J.A.C. 7:19-5.8(g) (14:9-6.8(g)) authorizes the designated hearing officers to require answers from any appropriate interested parties attending the joint public hearing, if possible, to all reasonable questions put forward at the joint

public hearing. As a counterbalance, the commenter argued that the right to cross-examine NJDEP’s technical presentation should be granted by amending N.J.A.C. 7:19-5.8(h) (14:9-6.8(h)).

Response:

The N.J.A.C. 7:19-5.8 (14:9-6.8) joint public hearing was designed as a joint informational public hearing. Quasi-legislative in nature, NJDEP and BPU intended the joint public hearing to provide information which would assist the joint hearing officers preparation of the required joint hearing report. The joint public hearing provides an opportunity for public input into the NJDEP and BPU decision-making process. N.J.A.C. 7:19-5.9 (14:9-6.9) provides for a contested case hearing on the same issues that concern the comments. N.J.A.C. 7:19-5.9 (14:9-6.9) provides for a fact-finding adversarial hearing to determine expenditures for necessary improvements, acquisition costs and the identity of the most suitable entity to acquire a non-complying small water company. N.J.A.C. 7:19-5.9(b) (14:9-6.9(b)) allows parties to the contested case to respond, appear and present evidence and argument on all issues involved pursuant to N.J.S.A. 52:14B-1 et seq., N.J.S.A. 52:14F-1 et seq. and the “New Jersey Uniform Administrative Procedure Rules of Practice”, N.J.A.C. 1:1. Therefore, the commenter would have the opportunity for full cross-examination, as well as other due process protections, on the relevant issues at the contested case stage described at N.J.A.C. 7:19-5.9 (14:9-6.9)).

Comment:

The commenter felt that N.J.A.C. 7:19-5.10(f) (14:9-6.10(f)) would permit BPU the option to exclude agreed upon acquisition costs from inclusions in the rates. The commenter recommends the word “may” be replaced by “shall” in N.J.A.C. 7:19-5.10(f) (14:9-6.10(f)). The commenter felt that due process would require inclusion in the rates of acquisition costs if a small water company and all other parties, subject to BPU approval, agreed on acquisition costs.

Response:

NJDEP and BPU disagree with this recommended change. N.J.A.C. 7:19-5.10(f) (14:9-6.10(f)) has not been revised as requested. BPU needs flexibility and discretion concerning the issue of inclusion of acquisition costs in the rates. Please note that, N.J.A.C. 7:19-5.11(b) (14:9-6.11(b)) provides for utilization of the “Eminent Domain Act of 1971”, N.J.S.A. 20:3-1, to determine acquisition costs if the parties cannot reach agreement.

Pursuant to an order from the Honorable Steven P. Perskie, Superior Court Judge, Atlantic County, NJDEP and BPU conducted a November 29, 1984 joint public hearing concerning the Aramingo Water Company of Upper Township pursuant to the provisions of N.J.S.A. 58:11-59 et seq. NJDEP and BPU utilized the December 17, 1984 proposal as a guideline for the November 29, 1984 joint public hearing. As a result, NJDEP and BPU revised N.J.A.C. 7:19-5.8(d) and (j) (14:9-6.8 (d) and (j)) based upon observations made at the November 29, 1984 joint public hearing. N.J.A.C. 7:19-5.8(d) (14:9-6.8(d)) now requires NJDEP to mail written summaries of NJDEP’s planned technical presentation at the joint public hearing to the parties noticed pursuant to N.J.A.C. 7:19-5.8(a)3 (14:9-6.8(a)3) at least five days before the joint public hearing date. Copies of the written summaries would also be required to be made available at the joint public hearing to all other interested parties. N.J.A.C. 7:19-5.8(j)

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(14:9-6.8(j)), as revised, would allow 60 rather than 45 days for preparation of the joint hearing report.

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 5. SMALL WATER COMPANY TAKE-OVER ACT REGULATIONS

7:19-5.1(14:9-6.1) Purpose

This subchapter implements the provisions of N.J.S.A. 58:11-59 et seq., commonly known as the "Small Water Company Takeover Act". This subchapter establishes procedures by which a small water company that does not comply with appropriate statutory and regulatory standards concerning actual or imminent public health problems may be acquired or "takenover" by the most suitable public or private entity pursuant to a joint order issued by the New Jersey Department of Environmental Protection and the New Jersey Board of Public Utilities.

7:19-5.2(14:9-6.2) Definitions

Unless the context clearly indicates otherwise, the following terms, when used in this subchapter, shall have the following meanings:

"Act" means the "Small Water Company Takeover Act", N.J.S.A. 58:11-59 et seq.

"Actual or imminent public health problems" means any violations by a small water company of appropriate statutory and regulatory standards, including but not limited to the New Jersey Safe Drinking Water Regulations, N.J.A.C. 7:10-1 through 13, which adversely affects the quality, pressure or volume of water delivered as determined by the Department. Violations by a small water company of appropriate statutory and regulatory standards that do not adversely affect the quality, pressure or volume of water delivered as determined by the Department shall not be considered actual or imminent public health problems for the purposes of this subchapter, including, but not limited to, aesthetic water quality problems or minor design deficiencies.

"BPU" means the New Jersey Board of Public Utilities.

"Capable" means financially and operationally able to provide safe, adequate and proper water service for the customers of the small water company to be acquired currently or in the foreseeable future. BPU shall be consulted by the Department concerning any public or private water systems' financial status.

"Commissioner" means the Commissioner of Environmental Protection or his designated representative.

"Department" means the Department of Environmental Protection.

"Division" means the Division of Water Resources of the Department of Environmental Protection.

"Proximate" means and includes all public or private water companies, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq., municipalities or any other suitable governmental entities wherein the small water company provides service regardless of their ability to reasonably physically interconnect with the small water company to be acquired.

"Public Advocate" means the Department of the Public Advocate.

"Small water company" means any company, purveyor or entity, other than a governmental agency, that provides water for human consumption and which regularly serves less than 1,000 customer connections.

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7:19-5.3(14:9-6.3) Construction

(a) This subchapter shall be liberally construed to permit the Department and BPU to discharge their statutory functions.

(b) The Department and BPU may jointly amend, repeal or rescind this subchapter from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and any regulations promulgated pursuant thereto.

7:19-5.4(14:9-6.4) Applicability

This subchapter shall apply to all small water companies within the State of New Jersey.

7:19-5.5(14:9-6.5) Severability

If any section, subsection, provision, clause or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

7:19-5.6(14:9-6.6) Scope

(a) Any small water company not in compliance with appropriate statutory and regulatory standards, including but not limited to the New Jersey Safe Drinking Water Regulations, N.J.A.C. 7:10-1 through 13, concerning actual or imminent public health problems as determined by the Department may be subject to the provisions of this subchapter.

(b) Violations by a small water company of appropriate statutory and regulatory standards not adversely affecting the quality, pressure or volume of water delivered as determined by the Department shall not be considered actual or imminent public health problems for the purposes of this subchapter.

7:19-5.7(14:9-6.7) Departmental action

(a) Prior to the implementation of procedures under the Act, the Department shall actively pursue appropriate and available enforcement options to bring a small water company into compliance with the appropriate statutory and regulatory standards concerning actual or imminent public health problems including but not limited to:

1. Issuance of directive letters;
2. Issuance of administrative orders;
3. Direct negotiation;
4. Appropriate legal proceedings; or

5. All other enforcement options deemed reasonable and appropriate by the Department consistent with its statutory mandate.

(b) A Departmental order issued on a case-by-case basis to a small water company concerning the availability of water, the potability of water and the provision of water at adequate volume and pressure may initiate the proceedings under the Act and this subchapter.

1. A Departmental order shall specify on a case-by-case basis a reasonable time period in which the small water company must comply with the appropriate statutory and regulatory standards concerning actual or imminent public health problems as determined by the Department and shall provide the public health problems as determined by the Department and shall provide the small water company with the opportunity for an evidentiary hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F et seq. to determine whether there has been compliance with appropriate statutory and regulatory standards.

2. If administrative hearing procedures have been initiated by a small water company concerning any outstanding Departmental order, the Department shall move to join any new order issued with the ongoing administrative hearing procedures.

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3. The Department may issue another order concerning any small water company if the outstanding Departmental order remains over one year old or administrative hearing procedures have commenced.

(c) Should the Department conclude, following the expiration of the times for compliance or following an evidentiary hearing if one has been requested, that the small water company has not complied with the Department's order, the Department may invoke and initiate the provisions as set forth in N.J.A.C. 7:19-5.8.

1. The Department shall provide BPU with immediate notice of the small water company's noncompliance and the decision to invoke and initiate the provisions as set forth in N.J.A.C. 7:19-5.8.

7:19-5.8(14:9-6.8) Joint public hearing

(a) Designated hearing officers from the Department and BPU or an Administrative Law Judge shall conduct a joint informational public hearing in the proximate area of the non-complying small water company, preferably in the evening, concerning the non-complying small water company after 30 days notice pursuant to (b) below.

(b) Notice of the time, place and subject matter of the joint public hearing shall be given at least 30 days prior to the scheduled hearing date by the Department and BPU as follows:

1. Publication of a display advertisement in a newspaper circulating within the proximate area of the small water company for a minimum of one day per week for two weeks prior to the scheduled date of the joint public hearing;

2. Issuance of press releases and utilization of other appropriate methods of notice;

3. Written notice by certified or registered mail sent to the following parties:

- i. The non-complying small water company;
- ii. The Public Advocate;
- iii. Capable proximate public and private water companies; and
- iv. Capable proximate municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq., municipalities and any other suitable governmental entities wherein the non-complying small water company provides water service.

(c) The joint public hearing shall be conducted to receive public comments regarding the possible options available to bring the non-complying small water company into compliance with the appropriate statutory and regulatory standards concerning actual or imminent public health problems. The acquisition of the non-complying small water company by the most suitable public or private entity shall be discussed. Information should be required from participants at the joint public hearing concerning any estimates of expenditures, including acquisition and improvement costs, that may be required to:

1. Assure the availability of water;
2. Assure the potability of water; and
3. Assure the provision of water at adequate volume and pressure.

(d) The Department shall make a technical presentation at the joint public hearing of the non-complying small water company's deficiencies, indicate necessary improvements and discuss, after consultation with BPU, possible options and preliminary improvement costs.

1. The Department's presentation shall be based on information reasonably available to the Department and be intended to focus attention on the relevant issues concerning the non-complying small water company.

2. Written summaries of the Department's presentation required by (d) above shall be mailed to the parties set forth in (a)3 above at least five days before the scheduled joint public hearing date.

3. Copies of the written summaries required by (d) 2 above shall be made available to other interested persons at the joint public hearing.

(e) The non-complying small water company shall be ordered to appear at the joint public hearing and provide all available information pertaining to the value of its water supply facilities and the cost of correcting deficiencies.

(f) Public comments shall be solicited at the joint public hearing and transcribed for the record at the expense of the non-complying small water company.

(g) The designated Department and BPU hearing officers, or an Administrative Law Judge shall require answers from any appropriate interested parties attending the joint public hearing, if possible, to all reasonable questions put forward at the joint public hearing.

(h) Cross-examination shall not be permitted by any interested parties at the joint public hearing.

(i) All participants at the joint public hearing shall be afforded the opportunity to testify under oath.

(j) Within ***[45]* *60*** days after the joint public hearing held pursuant to this section, the designated Department and BPU hearing officers or an Administrative Law Judge shall review the record and prepare a joint report detailing no more than three options and their estimated costs, including the rationale for selection of each option in order of priority, for utilization by the Department and BPU in selecting an option.

(k) The joint report required by (j) above shall be mailed to all those noticed by certified or registered mail of the joint public hearing and shall be made available for public review. The Department and BPU shall undertake reasonable efforts to make copies of the joint report available to all other interested persons.

1. All interested persons shall be allowed to file comments concerning the report within 30 days of its issuance.

i. Failure to file any comments concerning the joint report by the small water company, capable proximate public or private water companies, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1, municipalities or any other suitable governmental entities wherein the non-complying small water company provides service shall create a rebuttable presumption that no objections to the joint report exist.

2. If the joint report required by (j) above recommends acquisition as an option, the Department and BPU may forward a copy of the joint report to the Office of Administrative Law to provide notice that the Department and BPU may request the services of an administrative law judge on an expedited scheduling basis to conduct the contested case hearing required by N.J.A.C. 7:19-5.9.

7:19-5.9(14:9-6.9) Contested case

(a) A contested case hearing(s) shall be held before the Commissioner, the BPU Commissioner, or an Administrative Law Judge concerning the non-complying small water company to determine through a fact-finding adversarial hearing the expenditures that may be necessary to make improvements necessary to the non-complying small water company to insure compliance with the appropriate statutory and regulatory standards concerning actual or potential public health problems. Also to be considered at this contested case hearing(s) shall be the issue of acquisition costs and the most suitable public or private entity to acquire the non-complying small water company.

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(b) At the contested case hearing(s) opportunity shall be afforded the parties to respond, appear and present evidence and argument on all issues involved pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the "New Jersey Uniform Administrative Procedure Rules of Practice", N.J.A.C. 1:1.

(c) The entire record addressed pursuant to this subchapter shall be considered by the Commissioner, BPU Commissioner or Administrative Law Judge in deciding the issues set forth in (a) above. All portions of this record considered admissible pursuant to the "New Jersey Uniform Administrative Procedure Rules of Practice", N.J.A.C. 1:1, shall be exhibits in the contested case hearing.

(d) In addition to any notice requirements required pursuant to (b) above, notice of time, place and subject matter of the contested case hearing shall be given by certified or registered mail to the following parties:

1. The non-complying small water company;
2. The Public Advocate;
3. Capable proximate public and private water companies; and
4. Capable proximate municipalities, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq. and any other suitable governmental entities wherein the small water company provides water service.

(e) The contested case hearing(s) shall be transcribed for the record at the expense of the non-complying small water company.

7:19-5.10(14:9-6.10) Joint takeover order by the Department and BPU

(a) Upon receipt of the entire record of the joint public hearing and the contested case hearing(s), the Department and BPU shall jointly determine in a written order the appropriate actions to be taken on the basis of the entire record. If the acquisition option is not selected, then procedures under the Act terminate.

(b) If the Department and BPU have determined that the costs of improvements to and the acquisition of the non-complying small water company are necessary and reasonable, the Department and BPU shall jointly order the acquisition of the non-complying small water company by the most suitable entity.

1. The Department has responsibility for technical determinations and BPU has responsibility for the rate making function.

2. The Department will consult with BPU technical staff prior to making any technical determinations with regard to this joint order.

3. This order shall include an action by BPU subject to refund which provides for the immediate inclusion in the rates of the acquiring entity of the anticipated costs of necessary improvements, or, if the determination of acquisition costs has been deferred, as soon as possible thereafter as may be practicable and feasible consistent with N.J.A.C. 7:19-5.11. The order shall also include the approved tariffs.

(c) If anticipated improvement costs are customer provided, the improvements shall be considered contributions in all future rate cases. Separate records shall be maintained as to contributions occurring under this process.

(d) The BPU shall extend or transfer the franchise area of the acquiring public or private entity to the extent necessary to cover the service area of the non-complying small water company taken over pursuant to the Act and this subchapter.

(e) If this joint order results in an increase in the rates, this process shall be considered a proceeding initiated by the appli-

cation of a utility for an increase in rates for the purposes of N.J.S.A. 52:27E-19.

(f) Any acquisition costs which are deemed necessary and reasonable, based on evidence from the contested case hearing(s), and agreed to by the small water company and the acquiring entity and approved by BPU, after consultation with *[DEP]* ***the Department*** and the Public Advocate, may be included in the rates.

7:19-5.11(14:9-6.11) Acquisition costs

(a) If the parties have not agreed to acquisition costs, BPU's and *[DEP's]* ***the Department's*** designated representatives shall convene at least one meeting within 60 days of the issuance of the joint hearing report pursuant to N.J.A.C. 7:19-5.9(i) and again within 15 days after issuance of the joint order prepared pursuant to N.J.A.C. 7:19-5.10. Representatives of the Public Advocate, non-complying small water company and acquiring entity shall be notified of each meeting which will concern the possibility of mutual agreement on compensation for the acquisition and the other details pertaining to takeover of the non-complying small water company by the acquiring entity.

1. Meetings shall be continued if the Department and BPU determine in writing that a reasonable possibility of success for an agreement exists.

2. BPU and *[DEP]* ***Departmental*** representatives shall certify in writing to the Department and BPU the status of these meetings every three months.

(b) If no agreement between parties exist, compensation for the acquisition of the non-complying small water company shall be determined through the use of the eminent domain procedures pursuant to the "Eminent Domain Act of 1971", N.J.S.A. 20:3-1.

7:19-5.12(14:9-6.12) Compliance with joint order

(a) The acquiring entity which receives a joint order pursuant to N.J.A.C. 7:19-5.10 shall acquire the non-complying small water company and make necessary improvements to assure the availability of water, the potability of water and the provision of water at adequate volume and pressure as mandated by N.J.S.A. 58:11-62.

(b) The non-complying small water company shall immediately comply with the joint order and facilitate its sale to the acquiring entity as mandated by N.J.S.A. 58:11-62.

(c) The failure of any utility to comply with a joint order pursuant to N.J.A.C. 7:19-5.10 shall permit the BPU and the Department to proceed to enforce the joint order consistent with their statutory mandate.

7:19-5.13(14:9-6.13) Differential rate for customers of small water company for use of service of acquiring entity's system or facilities

If the joint order pursuant to N.J.A.C. 7:19-5.10 has been issued BPU may, in its discretion, allow the acquiring entity to charge and collect a differential rate from the customers of the non-complying small water company for the use or service of the acquiring entity's water supply system or facilities pursuant to N.J.S.A. 58:11-63.

HEALTH (a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations Economic Factor

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

Proposed: January 21, 1985 at 17 N.J.R. 153(a).

Adopted: March 22, 1985 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: March 25, 1985 as R.1985 d.189, **without change.**

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

Effective Date: April 15, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): October 17, 1985.

Summary of Public Comments and Agency Responses:

COMMENT: Federal Insurance Contribution Act (FICA) Proxy

Mercer Medical Center states that the proposed FICA proxy calculation would result in a decrease in the proxy value of 4.45 percent which would cause an unfair financial burden on the hospital industry for a legal fringe over which they have no control.

RESPONSE:

The Department believes that the proxy stated in the present regulation does not accurately reflect increases in FICA taxes. The proposed method of calculation will not place an unfair burden on the hospitals but will be more reflective of the actual increases in FICA tax liability.

COMMENT: Unemployment Insurance Proxy

West Hudson Hospital objects to the proposed change in the proxy for calculating unemployment insurance based on the fact that they (as well as most hospitals in the State) are self-insured for unemployment compensation. They believe that this proxy should be a pass-through of actual cost to avoid a serious financial loss to hospitals that layoff employees due to DRG rate reductions.

RESPONSE:

The Department believes that whether most hospitals are self-insured for unemployment insurance, is irrelevant as the substitution of actual costs for a proxy would be contrary to the intentions of an economic factor, which is to encourage constraint of costs to a generalized proxy. The unemployment proxy, as amended, will serve as a good indicator of inflation in Unemployment Insurance throughout the State.

COMMENT: Drug Proxy

Comments were received from the New Jersey Hospital Association, (NJHA) Bayshore Community Hospital and the New Jersey Society of Hospital Pharmacists. All commenters believe the proposed proxy to be an improvement over the current one, but believe that the proxy value will still be too low. All expressed concern that the Producer Price Index

(PPI) does not take into account the high price of newly introduced drugs that tend to be used disproportionately in a hospital setting. The NJHA recommended adding 10 percentage points for the proposed proxy and making it retroactive to 1984; Bayshore Community Hospital recommended development of a hospital-specific proxy and; the New Jersey Society of Hospital Pharmacists suggested that the drug proxy be updated on a yearly basis.

RESPONSE:

The Department believes that the Producer Price Index (PPI) is the best indicator of several cost increases in pharmaceuticals since it is updated periodically and the purpose of a proxy is to provide an indicator of inflation in a cost area that is outside the hospital's control. A hospital-specific proxy would defeat the purpose of a neutral inflation factor. Our payment system is prospective and the Department believes that altering a proxy for a rate year which has already concluded is not in keeping with the intentions of the system. The proposed change will bring New Jersey's drug proxy in line with the Federal proxy and those of other regulated states. If a hospital incurs extraordinarily high drug costs over and above those allowed by the economic factor, due to changes in medical practice patterns, the DRG appeals process provides the proper means of recourse.

Full text of the adoption follows.

8:31B-3.26 Economic factor
(a)-(c) (No change in text.)

APPENDIX II COST COMPONENTS AND PROXIES FOR THE ECONOMIC FACTOR

LABOR 1.-2. (No change.)

LABOR 3.

COST COMPONENT: Fringe Benefits

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

CATEGORY 1: FICA

PROXY: Percentage change in Social Security Tax Rate compounded by changes in salaries (95%). Percentage change in Social Security Tax Rate compounded by change in Rate Base (5%).

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

CATEGORY 2: (No change.)

CATEGORY 3. Unemployment Insurance

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

SOURCE: New Jersey Department of Labor and Industry and BLS, Average Hourly Wages—Hospital Workers (U.S.)

CATEGORY 4: Disability Insurance

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

SOURCE: New Jersey Department of Labor and Industry and BLS, Average Hourly Wages—Hospital Workers (U.S.)

CATEGORY 5.-8. (No change.)

SUPPLIES 1.

COST COMPONENT: Office Supplies

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

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

PPI: 0913-0131.09 Paper, Unwatermarked Bond, No. 4 (67%)

SOURCE: BLS, Producer Price Index
SUPPLIES 2. (No change.)

SUPPLIES 3.

COST COMPONENT: Other Dietary Supplies

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

PROXIES: PPI: 0915-0333.03 Paper Goods, Hot Cups (24.07%)

PPI: 0722 Unsupported Plastic Film and Sheeting (12.03%)

PPI: 1261 Dinnerware (35.98%)

PPI: 0671 Soap and Synthetic Detergent (27.92%)

SOURCE: BLS, Producer Price Index
SUPPLIES 4.-5. (No change.)

SUPPLIES 6.

COST COMPONENT: Drugs

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

PROXIES: PPI: 0635 Ethical (Prescription) Drugs (70%)
0636 Proprietary (over the counter) Drugs (30%)

SOURCE: BLS, Producer Price Index
SUPPLIES 7.-10. (No change.)

OTHER 1.-3. (No change.)

Other 4.

COST COMPONENT: Utilities

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

Category 1.-2. (No change.)

CATEGORY 3: Oil

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

SOURCE: U.S. Department of Energy, Petroleum Marketing Monthly

CATEGORY 4. (No change.)

OTHER 5.

COST COMPONENT: Major Moveable Equipment

CATEGORY 1. (No change.)

CATEGORY 2: General Services Equipment

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

PROXY: PPI: 1161 Food Products Machinery (41.18%)

PPI: 1241.01 Laundry Equipment (23.53%)

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

SOURCE: BLS, Producer Price Index

CATEGORY 3.-4. (No change.)

Other 6. (No change.)

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Surgical Facilities

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

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

Proposed: January 21, 1985 at 17 N.J.R. 154(a).

Adopted: March 22, 1985 by J. Richard Goldstein, M.D., Commissioner of Health (with approval of Health Care Administration Board).

Filed: March 25, 1985 as R.1985 d.188, 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. 26 2:2H.

Effective Date: April 15, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 15, 1990.

Summary of Public Comments and Department Responses:

Comments were received during the comment period from the following: the Bridgeton Hospital Association, Inc., and the New Jersey Hospital Association.

Comment: Bridgeton Hospital questioned the appropriateness of regulating both surgical resources within existing hospitals and within freestanding surgical facilities that are licensed independently while exempting from regulation those free standing surgical facilities which do not seek an independent license. The commentator suggests that the State would be allowing these non-licensed facilities to exist without regulation providing the same services as licensed regulated facilities thereby enabling the development of a double standard of care for the public.

Response: Since amendments to the enabling legislation that would require any entity that seeks to provide a service for which there is a planning regulation to apply for Certificate of Need approval has not been adopted, the Department must deal with the determination of who is subject to these rules and the ramifications of that determination on a case by case basis. It must be remembered that the enabling legislation exempts the "private practice of medicine" from Certificate of Need review.

Comment: The New Jersey Hospital Association has commented that change in surgical capacity or modernization/renovation of surgical suites which are part of a major renovation should be reviewed in the same cycle (batch) as that project.

Response: N.J.A.C. 8:33A-2.3 (b) states that applications for additions, deletions, or alterations of surgical facilities will be processed in the same batching cycles as hospital bed need, modernization and renovation applications and in accordance to policies and procedures set forth in N.J.A.C. 8:33.

Comment: The New Jersey Hospital Association has commented that waivers by the HSA should be added.

Response: Language has been added at N.J.A.C. 8:33A-2.6(b) so that a waiver may be considered where an HSA has petitioned such waiver and has identified specific and quanti-

fiable evidence that the methodologies contained in Appendices A and B of the Surgical Facilities Regulation is inappropriate because of circumstances unique to a given application. The waiver, if approved, would apply only to the application for which the waiver is petitioned and the waiver request must give substantial evidence that in the absence of a waiver serious problems of access to a needed service would result.

Comment: The New Jersey Hospital Association has stated that assurance by the applicant that at least 10 percent of their clientele will be either Medicaid eligible persons or medically indigent persons is an unrealistic request by the Department. N.J.H.A. suggests that the level of care provided to Medicaid eligible persons or medically indigent persons should relate to the average level of indigent care provided by the facilities within defined service area. N.J.H.A. further stated that the regulation as it currently exists, "places certain institutions at an unfair competitive advantage and that the State must guarantee additional payments to make up for the lost revenue. These additional payments will be based upon the percentage of bad debts incurred. Also this condition will not be placed on applicants who are negotiating contracts with payors or other providers whereby those contracted cases will represent at least 50 percent of total cases."

Response: The Department of Health disagrees with this comment as stated. The Department continues to provide strong policy direction to assure accessibility to as well as delivery of effective and efficient health care services to Medicaid eligible and medically indigent persons. This policy has been encouraged and endorsed by the Statewide Health Coordinating Council and its committees.

However, in response to deliberations at the March 14, 1985 Health Care Administration Board meeting, the Department agreed to modify the language upon adoption as shown in N.J.A.C. 8:33A-2.6(a)4.

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 2. CERTIFICATE OF NEED: SURGICAL FACILITIES

8:33A-2.1 Scope

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

8:33A-2.2 Definitions

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

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

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

The term "surgical facility" includes not only the operating and recovery rooms, but related contiguous areas, consulta-

tion and other treatment rooms. A surgical facility may be either a surgical area within a facility licensed as a hospital or be licensed independently as a "Free standing ambulatory surgical facility", defined below.

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

"Operating room" means a room specifically dedicated to the performance of surgical procedures. It must meet the minimum square footage, air changes, and air pressure relationship requirements established by the U.S. Department of Health and Human Services as cited in the Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities U.S. Department of Health, Education and Welfare 1979, Sections *7.7A*, 15:4C and D, and 15.13D. These Minimum Requirements are hereby incorporated by reference.

"Recovery room" means a room used for post-anesthesia recovery of patients. It must meet the minimum requirements established by the U.S. Department of Health and Human Services as cited in the Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities U.S. Department of Health, Education and Welfare 1979, Sections *7.7A*, 15:4C and D, and 15.3D. These Minimum Standards are hereby incorporated by reference.

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

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

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

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

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

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

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

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

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

- *[1. Information to indicate that licensure standards will be met;

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- 2. The proposed capital and/or lease cost;
- 3. The proposed number of operating rooms;
- 4. The potential need or demand for the proposed surgical facility, or proposed change in the number of operating rooms, based on the surgical need methodology specified in Appendix A. All of the data used in applying the formula must be supplied in the Certificate of Need application.]*

***1. The potential need or demand for the proposed surgical facility or proposed change in the number of operating rooms, based on the surgical need methodology specified herein attached as Appendix A. All of the data used in applying the formula must be supplied in the Certificate of Need Application;**

- 2. The proposed number of operating rooms;
- 3. Pro forma showing all capital and operating costs and revenues to one year beyond breakeven;
- 4. Information to indicate that licensure standards will be met.*

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

- 1. The expected number of recovery beds and/or recliners;
- 2. The expected number of surgical procedures, by each of the categories given in Appendix C;
- 3. The expected payor percentages;
- 4. The procedures performed and charge per procedure, where applicable;

*[5. Physician fee, where applicable;

6. Documentation as to whether the physician accepts Medicare assignment;

7. The proposed service area, indicated by both a circled area on a map and list of municipalities. This area should encompass a geographic area between five and 35 miles in radius. The Department of Health shall determine the reasonableness of the defined service area.]*

***5. Documentation as to whether the physician accepts Medicare assignments;**

6. The proposed service area, indicated by both a circled area on a map and list of municipalities. This area should encompass a geographic area between 5 and 35 mile radius. The Department of Health shall determine the reasonableness of the defined service area.*

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

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

8:33A-2.6 Criteria for review and approval

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

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

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

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

*[4. The applicant provides assurance that at least 10 percent of their clientele will be either Medicaid eligible persons or medically indigent persons who are provided free care or charged on a sliding scale according to income based upon the Community Services Administration poverty guideline as con-

tained in Category B of the Hill-Burton Act. This provision may be superceded by applicable indigent care requirements as contained in Amendments to the Hospital Policy Manual N.J.A.C. 8:43E-1.1 et seq. and Chapter 33 Guidelines and Criteria for Submission of Applications for Certificate of Need N.J.A.C. 8:33-1.1 et seq. If these provide higher guidelines than the above mentioned Community Services Administration poverty guidelines;]*

4. The applicant must document in its application the proportion of Medicaid-eligible and medically indigent persons residing in the proposed service area. In addition, the applicant must, in delivering the proposed service, provide care on a free or partial-pay basis to Medicaid-eligible and medically indigent persons at least in proportion to their representation in the approved service area.

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

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

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

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

(b) ***Waivers may be considered where an HSA has petitioned a waiver identifying specific and quantifiable evidence that the methodology is inappropriate because of circumstances unique to a given application. The waiver, if approved, would apply only to the application for which the waiver is petitioned and the waiver request must give substantial evidence that in the absence of a waiver serious problems of access to a needed service would result.***

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

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

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

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

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

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

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

APPENDIX A

Formula for Assessing Need/Potential Demand For Additional Surgical Capacity

Gross Need/Potential Demand

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

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

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

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

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

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

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

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

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

Net Need/Potential Demand

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

APPENDIX B

Formula for Assessing Surgical Capacity Given Utilization

Projected Utilization

1. Hospitals located in the service area or drawing more than half of their caseload from the service area are selected. The number of surgical procedures performed in each of those hospitals is taken from the most recent SHARE form.
2. Using population projection percentages for these counties whose patients comprise more than 20 percent of each hospital's caseload, the surgical procedures are projected to 1990.
3. Surgical procedures in ambulatory surgery facilities serving the area are also projected to 1990.
4. The 1990 surgical procedures are totaled.

Expected Capacity

5. The capacity of existing operating rooms in these hospitals is assessed at:
 - 1 dedicated inpatient operating room 1000
 - 1 mixed (inpatient and same day surgery) operating room 1090
 - 1 dedicated same day surgery operating room 1500

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

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

APPENDIX C

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

	Group			
	1	2	3	4
Integumentary System	Benign lesion, excision (lipoma) Fingernail, toenail removal Malignant lesion, excision (Basal cell Melanoma)		Breast biopsy (incision, excision uni- or-bilateral) Mandible cyst excision simple Philonidal cyst excision, simple, extensive Skin graft	Gynecomastia excision uni- and bilateral
Musculoskeletal System	Closed Reduction of Nasal Fracture Tenotomy, hands, fingers, ankle, feet and toes Trigger Finger Release (tendon sheath incision for)	Phalangectomy (amputation, fingers and toes) Sequestrectomy Tendon Sheath Release (De Quervains) Zygoma (Zygomatic arch) Reduction	Bursectomy Capsulectomy/capsulotomy (metacarpophalangeal and interphalangeal) Ganglionectomy (wrist) Neuroma excision (Morton's and cutaneous and digital nerves) Osteotomy metatarsal (metatarsal head excision) Tendon repair without grant, implant or transfer	Hammer toe Repair Boutonniere Repair Bunionectomy Ligament Repair Neurectomy Osteotomy Synovectomy Arthroscopy Fasciectomy/Fasciotomy Arthrodiesis Arthroplasty Tendon Repair with graft, implant or transfer
Respiratory System	Bronchoscopy Excision turbinate Laryngoscopy	Nasal Polypectomy Antral Window (puncture) (Sinusotomy)	Ethmoidectomy	Septal Reconstruction Submucous Resection (turbinate and nasal septum)
Cardiovascular System	Temporal Artery, Ligation or biopsy			Varicose Vein Ligation
Hemic and Lymphatic System		Cervical Node (lymph node) biopsy		
Digestive System	Esophagoscopy Gastrosocopy Rectal Dilation Tongue Biopsy	Branchial Arch Appendage Excision Liver Biopsy, percutaneous Vermilionectomy (Lig peel) Fistulectomy	Colostomy Revision (simple) Wedge Resection of Lip Hemorrhoidectomy	Peritonoscopy (minilaparotomy) Herniorrhaphy
Urinary System	Cystourethroscopy Urethral Dilation		Transurethral Resection of Bladder Tumor (Cystourethroscopy w/operative procedure)	
Male Genital System	Prostate Biopsy	Orchiectomy	Hydrocele excision Spermatocoele excision	Varicocele repair
Female Genital System	Vulva (labia) biopsy Examination under Anesthesia (pelvic) Vaginal Stenosis Release (Dilation of Vagina under Anesthesia) Culdoscopy (Culdocentesis)	Hysterosalpingogram Perineoplasty Vaginal tumor (cyst) excision	Colpotomy, with exploration Dilation and curettage, diagnostic and/or therapeutic (non-obstetric)	Laparoscopy
Endocrine System			Thyroglossal Duct Cyst Removal	
Nervous System			Neurolysis (including carpal tunnel decompression)	Ulnar Nerve Repair Ulnar Nerve Transfer
Eye and Ocular Adnexa System	Chalazion excision Dissection lens (needling of lens) Foreign Body Removal Pterygium (excision or transposition) Lacrimal duct probing or reconstruction	Canthoplasty Tarsorrhaphy	Ectropion/Entropion repair	Cataract extraction Enucleation, with and without implant Iridectomy Eye Muscle Operation extraocular muscles, strabismus procedure)
Auditory System	Myringotomy (including aspiration and/or eustachian tube inflation)			Mastoidectomy, simple (transmastoid antrotomy) Miringoplasty Stapedectomy Tympanoplasty (without mastoidectomy)

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

Category

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

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

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

(a)

LOCAL AND COMMUNITY HEALTH SERVICES

**Invalid Coaches and Ambulances
Manual of Standards for Licensure of
Invalid Coach and Ambulance Services**

Adopted New Rule: N.J.A.C. 8:40

Proposed: November 19, 1984 at 16 N.J.R. 3127(a).
Adopted: March 22, 1985 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: March 25, 1985 as R.1985 d.192, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 26:2H-1 et seq. and N.J.S.A. 30:4D-6.2 et seq., specifically 30:4D-6.3 and 4.

Effective Date: April 15, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 15, 1990.

Summary of Public Comments and Agency Responses:

**GENERAL COMMENTS
AND AGENCY RESPONSE**

The Commissioner, Department of Human Services, wrote, "I fully support your Department's regulations governing ambulance and invalid coach services . . . I recognize the need for these regulations . . ."

The New Jersey Professional Ambulance Association and Alert Ambulance Service each wrote that—other than some specific subsections—they are "in favor" of the regulations.

Advance EMS Systems wrote, ". . . these regulations are long overdue."

Invalid Coach Service of New Jersey wrote, "The regulations . . . are a forward step, appropriate and manageable overall."

Guardian Ambulance wrote, ". . . while many subsections are beneficial to the industry, many of the subsections will impose a hardship on us providers."

State Ambulance Service wrote, "Please don't overkill the industry with such impossible regulations . . ." The firm also wrote "I whole heartedly support the idea of regulations for our industry, because I see bad treatment of patients everyday, but providers such as myself, doing a good job will be hurt severely financially while these other bad providers will continue to operate."

A-1 Ambulance Service listed as good points:

- * "Regulations will cause everyone to be equal and competitive."
- * "Promote better patient care."
- * "Add safety to the ambulance industry."
- * "Remove the sub-standard units from service."

As bad points, A-1 Ambulance Service listed:

- * "Economic hardships."
- * "Companies will go out of business."
- * "Patient care may be jeopardized due to this."
- * "People will have to go on unemployment."

Response: We believe these regulations are needed to improve patient care. Under the present unregulated conditions, patients do not always receive the services they need and pay for.

Comments:

1. Invalid Coach Service of New Jersey indicated that the Department erred by stating Medicare pays for Invalid Coach service; they don't.

2. Four commentors disagreed with the Economic Impact statement. Each felt that providers would incur additional costs because of these regulations.

Response:

1. The Department agrees with the comment and has deleted the incorrect statement.

2. The Department believes that its existing statement is appropriate; the economic impact on providers will vary.

SUBCHAPTER 1. DEFINITIONS—COMMENTS AND RESPONSE

1.1 Definitions

Comment: A provider suggested that the definition of "ambulance service" be expanded by changing the last words to read ". . . to or from a medical facility or provider."

Response: The Department agrees with the suggestion and has revised the definition of "ambulance service" as suggested.

SUBCHAPTER 2. AUTHORITY AND LICENSURE PROCEDURES—COMMENTS AND RESPONSE

2.3 Certificate of need required

Comments:

1. Seven commentors objected to the requirement that a provider must obtain a Certificate of Need.

2. The New Jersey Association of Invalid Carriers wrote that the requirement is not workable: the current Certificate of Need regulations only apply to "hospital based ambulances." In addition, there is no planning criteria for the issuance of ambulance Certificates of Need.

Response:

1. The requirement was included on the advice of counsel. Under State law (N.J.S.A. 26:2H-7), the Department can only

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issue licenses to providers who have obtained a Certificate of Need.

2. The Department is revising the Certificate of Need regulations.

2.5 Exemptions

Subsection 2.5(a)

Comments:

1. Four commentors objected that volunteer first aid, rescue and ambulance squads are exempt from these regulations.

2. One commentor also asked if volunteer services, which employed paid personnel, would be exempt.

Response:

1. Volunteer first aid, rescue and ambulance squads are exempt from these regulations by State law (N.J.S.A. 26:2H-2(b) and N.J.S.A. 30:4D-6.2).

2. Counsel has advised that this must be determined on a case-by-case basis.

The Department understands the concern and will ensure that our surveys do not interfere with essential patient care. Therefore, we decline to make the suggested changes.

2.7 Application for licensure and/or vehicle decals or licenses

Subsection 2.7(b)

Comment: An ambulance service objected to any licensure fee. The fees will not be used to support enforcement of these regulations or for related activities.

Response: State law (N.J.S.A. 26:2H-12(b)) requires licensure fees. There is no provision to retain and use the fees for enforcement, or related, purposes.

Subsection 2.7(e)

Comment: An ambulance service suggested that the required survey must be made within 30 days of the Department's receipt of application for licensure.

Response: The Department agrees with the comment and—when possible—will make the initial survey in less than 30 days. However, during the “phase-in period” the Department will have to survey (and resurvey) about 130 providers and 400 vehicles. Because of the many surveys required during this period, it won't be possible to survey each provider and vehicle within 30 days of receipt of an application.

Subsection 2.7(f)

Comment: An ambulance service asked when the licensee would receive notification of deficiencies found during a survey.

Response: A list of any deficiencies will be given to the provider's representative at the end of the survey.

2.9 Full provider license

Comment: An ambulance service asked that subsection 2.9(a) be changed to “a full license shall be issued . . . unless a survey determines non-compliance . . .”

Response: The existing phrasing appears in other Department regulations (such as at N.J.A.C. 8:39-2.5 and 8:43A-1.7) and has been approved by counsel. Therefore, the Department declines to make the suggested change. The language has proved appropriate and completely addresses the subject.

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2.11 Vehicle recognition number

Comment: A provider association requested that the vehicle recognition number consist of numeric characters only rather than alpha-numeric characters as formally required.

Response: The letter commented on an earlier draft of the regulations. The requested change was made in a later draft.

2.12 Waiver

Comments:

1. An ambulance service asked for the Certificate of Need requirements to be waived for all existing providers.

2. The New Jersey Association of Invalid Carriers objected to the phrasing of this section and requested that it be rewritten so that any waiver would apply to all providers.

Response:

1. The Department cannot waive the Certificate of Need requirements. Under State law, as indicated in our response to Section 2.3 above, we can only issue licenses to providers which have obtained a Certificate of Need.

The Department agrees with the implication that it is unfair to require an agency to undergo a full Certificate of Need review—if it was providing service before these regulations were passed. Certificate of Need applications from existing agencies will be administratively reviewed, a more expedient process than a complete review.

2. The existing phrasing appears in other Department regulations (such as at N.J.A.C. 8:39-2.7) and has been approved by counsel. Therefore, we decline to make the suggested change, as the language has proved appropriate and completely addresses the subject.

2.13 Non-transferability

Comments:

The New Jersey Association of Invalid Carriers, the New Jersey Professional Ambulance Association and other commentors objected to the provisions that permits, licenses or decals issued by the Department are not transferable. Each indicated that this would limit—or destroy—the potential resale value of the business.

The New Jersey Association of Invalid Carriers—and other commentors—asked that permits, etc. be transferable subject to the approval of the Department.

Response:

State law (N.J.S.A. 26:2H-12(b)2) provides that the Department shall issue a license on finding:

“ . . . the premises, equipment, personnel, including principals and management, finances, rules and bylaws, and standards of health care services are fit and adequate and there is reasonable assurance the health care facility will be operated in the manner required . . . ”

The law makes no provision for the transfer of licenses, and the Department declines to provide for transferability in these regulations.

2.15 Discontinuance of vehicle use

General Comments:

1. The New Jersey Association of Invalid Carriers summarized this section as:

* Violating a fundamental principle of our system of justice.

* Raising a serious question as to whether the section is legal.

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2. A provider:

- * Characterized this section as very difficult to live with.
- * Was concerned that vehicles would be out-of-service for needlessly long periods (since Department staff might not be able to promptly remove the out-of-service sticker after corrections were made).

3. Statements of three commentors implied that the out-of-service sticker was a punitive action.

- * "... a personal fine be imposed instead of a vehicle penalty."
- * "... how can you justify putting a vehicle out-of-service penalizing a provider . . ."

4. An ambulance service was critical that there is no list of "specific itemized infractions" and that there is "no provision . . . for expeditious review . . . of contested failures."

General Response:

1. Counsel closely reviewed this section at the Department's request.

Certain conditions can pose an imminent threat to the public or to patients using the service. As examples, the following conditions—which show the need for these regulations—have occurred in New Jersey:

- * A private ambulance was operated—during winter months on hilly, twisting roads—with two bald front tires. (The tires were so bald that they were "slick.")
- * A municipal ambulance had a lethal resuscitator. (If the resuscitator had been used, the patient's lungs would rupture.)
- * A patient was fatally injured when an ambulance was driven into the rear of a stopped bus. The ambulance driver had a blood alcohol count of 0.315.

The only way to protect the public and patients—if Department staff finds similar conditions—is to place the vehicle out-of-service.

2. If a provider complies with the explicit standards contained in these regulations, there will be no grounds to place an out-of-service sticker on the vehicle.

3. We disagree that placing an out-of-service sticker is a punitive action. We believe that it is a preventive action.

4. An itemized list was not necessary. Section 2.17 provides that a hearing be held within 10 days after placement of an out-of-service sticker. Therefore, we decline to make the proposed changes.

Subsection 2.15(a)

Comments:

Five commentors objected that a vehicle can be taken out-of-service because of staffing. They believe that action should be taken against the staff person instead of the licensee:

- * "We do not want a vehicle taken out-of-service because of a staffing problem . . . we feel a personal fine should be imposed."
- * "If a staff member drives carelessly or has a liquid lunch, how can you justify putting a vehicle out-of-service . . ."

Response: The responsibility of the licensee includes ensuring staff comply with these regulations.

Subsection 2.15(d) and (e)

Comments:

Six commentors made the following objections to these subsections.

1. Providers should be able to remove the out-of-service sticker when repairs are made.

2. Privately-operated Authorized Inspection Stations should be able to remove the out-of-service sticker when automotive repairs are made.

3. The regulations should require the Department to return to remove the out-of-service sticker within 24 (or 48) hours after repairs are made.

Response:

1. If an out-of-service sticker is placed on a vehicle, there is no assurance that a provider—who was unable to comply with the explicit standards in these regulations—would be able to comply with the standards governing its removal.

2. There is no assurance that a privately operated Inspection Station would comply with the standards governing the removal of an out-of-service sticker. (Neither the Department, nor the Division of Motor Vehicles, has any control over privately operated Inspection Stations regarding the removal of these out-of-service sticker.)

3. Department-authorized representatives will remove out-of-service stickers as promptly as possible.

2.16 Action against a licensee

Subsection 2.16(a)

Comments:

A provider association suggested two changes in this subsection.

- 1. The issue of fines should be more flexible.
- 2. The amount of the maximum fine(s) should be defined.

Response:

1. The letter commented on an earlier draft of the regulations. Changes were made in a later draft.

2. The Department has revised subsection 2.16(a) to cite N.J.S.A. 26:2H-13 and 26:2H-14 which identify maximum fines, etc.

Former Subsection 2.16(f)

Comment: The New Jersey Association of Invalid Carriers suggested that this former subsection with its former requirement for double and triple fines is unfair to larger providers who have greater exposure.

Response: The letter commented on an earlier draft of the regulations. The requirements were changed in a later draft.

Subsection 2.5(b)

Comment: A provider suggested that out-of-state ambulance companies be licensed "if more than 15 percent of their calls are in New Jersey."

Response:

Out-of-state ambulance companies:

- * Are exempt from licensure when they transport a patient INTO or THROUGH the state.
- * Must be licensed if they pick up even one patient in New Jersey (other than on the second leg of a round trip). (N.J.A.C. 8:40-2.5(b)).

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2.6 Surveys

Comments:

Three commentors suggested changes to this section.

- * There should be a time limit on the length of the survey.
- * The term all "required records" is unacceptable—the department should not have access to financial records.
- * Surveys should not interfere with or delay the loading, unloading or transfer of a patient.
- * There should be no "conference with . . . patients" during a transport.
- * The department should not make a survey if the trained invalid coach or ambulance crew deems it contrary to the patient's best interest.
- * The surveys should not interfere with patient care or with the companies' time schedules.

Response: The suggested changes would seriously limit, and might even preclude, enforcement of these regulations.

New Subsection 2.16(e)

Comments: A provider, commenting on Section 3.1, suggested that the regulations should prohibit ownership or operation of a licensed firm by a person who owned or operated a firm that was removed from the approved Medicaid provider list (as a result of disciplinary action).

Response:

The Department agrees with the intent of the comment and believes it should be expanded. The Attorney General has stated that:

" . . . Medicaid fraud is a crime which could undermine the structure of a very necessary and humane social program."

The Department has added a new subsection 2.16(e):

- * (e) should the firm or the owner(s) or the administrator(s) be convicted of Medicare or Medicaid fraud action will be taken to revoke the license of the provider.*

2.17 Hearings

Comment:

The New Jersey Association of Invalid Carriers asked:

- * Whether a hearing could really be held within 10 days when an out-of-service sticker is placed on the vehicle.
- * If the hearing is not held within 10 days, can the provider remove the out-of-service sticker.

Response: The provision for a 10 day hearing was included by the Office of Administrative law. Their staff indicate that a hearing can be held within 10 days. There is no provision for a provider to remove an out-of-service sticker at any time or under any condition.

SUBCHAPTER 3. GENERAL REQUIREMENTS—COMMENTS AND RESPONSE

3.1 Agency ownership

Comments:

1. An ambulance service suggested that we should prohibit ownership or operation of a licensed firm by a person convicted of any crime.

2. The same ambulance service suggested that the regulations should prohibit ownership or operation of a licensed firm by a person who owned or operated a firm that was removed from the approved Medicaid provider list (as a result of disciplinary action).

Response:

1. The existing phrase (which prohibits ownership or operation by a person convicted of a crime which relates to this licensed service) has been approved by counsel and adequately protects the public interest.

2. As indicated in our response to section 2.16, the Department agrees with the intent of the comment. The Department has revised subsection 3.1(b) by adding:

" . . . convicted of a crime *, including conviction of Medicare and/or Medicaid fraud,* relating adversely . . ."

3.5 Report of unusual occurrences

Subsection 3.5(a)1

Comment: An ambulance service suggested that subsection 3.5(a)1 should also apply to Emergency Ambulances.

Response:

No patients are expected to die or be injured in Invalid Coaches or in Transport Ambulances. If a patient is killed or injured, the Department must be notified so it can determine what (if anything) went wrong.

By contrast, Emergency Ambulances will serve acutely ill or injured patients. During treatment, some patients will die and others will sustain injuries (such as can happen during CPR) in the normal course of events. Requiring reports of such incidents would be a needless burden on licensees.

Subsection 3.5(a)2

Comment: An ambulance service suggested that a copy of the Workers' Compensation form would suffice to report the injury or death of an on-duty employee.

Response: The Department will accept a Workers' Compensation form which reports the injury or death of an on-duty employee. We reserve the right to require additional information (such as traffic accidents reports).

Subsection 3.5(a)4

Comment: An ambulance service asked the purpose of the required notification if a vehicle is out-of-service for more than 30 days.

Response:

If a vehicle is out-of-service for more than 30 days, the cause should be determined. That length of time is an "early warning indicator" of potential problems affecting the licensee. As examples:

- * The vehicle might have a serious automotive defect, or
- * The ambulance service might not be able to attract staff or customers.

3.7 Minimum personnel requirements

Subsection 3.7(a)

Comment: An ambulance service was critical that "Driver Safety Training" was not addressed in the regulations.

Response: At the request of the Health Care Administration Board, the Department has asked the Director, Division of Motor Vehicles for recommendations on special driver training. In the future, such training may be addressed in these regulations.

Subsection 3.7(d) and (e)

Comment:

An ambulance service stated “. . . we certainly cannot be held liable for the unauthorized actions or performance of staff which violates corporate policy.”

The New Jersey Association of Invalid Carriers questioned the intent of the phrase “. . . no person shall be allowed . . .” They argued that “. . . the provider cannot be held responsible unless the provider actually is found to knowingly permit such activities . . .”

Response:

Respondeat superior, a well-established legal principle, states that employers are responsible for the actions of employees (even if the action violated corporate policy).

The following standard will be used in administering these regulations:

- * A licensee “knows or should have known” of the actions of its employees.

3.9 Maintenance of records

Subsection 3.9(b)

Comment: An ambulance service indicated that its required records are kept at two different locations and “that’s where your inspections will have to be . . .”

Response:

The licensee may keep records at as many locations as it wishes. However, a copy (or the original) of each required record must be kept at the principal place of business.

If records could be stored in various locations, enforcement of these regulations would be seriously hindered. Therefore, we decline to make the suggested change.

Subsection 3.9(c)

Comments:

1. A provider association suggested:

- * Medical records be retained for six years (instead of the required 10 years) since the statute of limitations (for malpractice suits) is six years.
- * Other required records be retained for three years (instead of the required five years).

2. An ambulance service asked if the requirement for medical records to be retained for 10 years exceeded the statute of limitations (for malpractice suits).

Response:

1. Under State law (N.J.S.A. 26:8-5), medical records must be retained for 10 years. The Attorney General has determined that this requirement applies to all health care facilities.

The requirement that other records be retained for 5 years has been approved by counsel. Therefore, we decline to make the suggested changes.

2. State law—not the malpractice statute of limitations—mandates that medical records be retained for 10 years. (Malpractice is a separate issue from these regulations.)

3.11 Motor vehicle chassis, body and components

Comment: An ambulance service asked the meaning of the phrase “away from” (in subsection 3.11(d)).

Response: The Department believes that the phrase “away from,” when read in context, is clear.

3.13 Restrictions on carbon monoxide concentrations

General Comment: The New Jersey Association of Invalid Carriers wrote, “. . . there is no acceptable testing standard for interior carbon monoxide and there is difficulty in determining what would be an acceptable standard.”

Response: The Department published a standard (and established a test protocol) for carbon monoxide in ambulances in March 1982. Since then, over 1,000 New Jersey ambulances have been tested for carbon monoxide.

Subsection 3.13(b)2

Comment: An ambulance service recommended that patches be permitted on vehicle exhaust systems.

Response: Patches on vehicle exhaust systems are grounds for rejection according to The Vehicle Inspection Handbook for Truck/Bus/Schoolbus (prepared by the Motor Vehicle Manufacturers Association of the United States). Therefore, the Department declines to make the suggested change.

Subsection 3.13(c)

Comments:

1. An ambulance service stated that a carbon monoxide (CO) test “must show the exact location of the leak.”
2. Another service recommended that the wording be changed to “. . . 10 ppm above outside CO concentrations.”

Response:

1. The test report will show all detected points of CO entry. (A retest may identify additional CO entry points; high CO entry points can “mask” other CO entry points until repairs are made.)

2. We agree with the comment and have revised subsection 3.13(c) to read:

“. . . at rates greater than 10 ppm *above the general ambient carbon monoxide concentration*.”

Subsection 3.13(d)

Comment: An ambulance service asked “who does the CO testing.”

Response:

The required CO tests will be made by Department-approved staff.

Preliminary tests may be made by anyone. (When possible, the Department will provide training, at no cost, to do CO tests to any provider—or provider association—which has a CO test meter.)

3.16 Provision of certificate of insurance

Comment: An ambulance service suggested that we provide a form for insurance companies to use.

Response: A Department-provided form would be a needless burden on insurance companies. Most insurance companies have their own forms (which have been approved by the state Department of Insurance).

3.17 Pneumatic testing required

Comment:

A provider association asked:

1. Is it necessary for pneumatic testing to be done every six months.
2. Who can/should do the testing.

Response:

1. The semi-annual pneumatic testing requirement is from Health Devices Inspection and Preventive Maintenance System published by ECRI (a nationally recognized medical testing and consulting organization).

Our experience—based on ten years of voluntary pneumatic testing—confirms the ECRI criteria. (A manufacturer of an oxygen powered resuscitator in widespread use in New Jersey even recommends that its unit be tested after each use.)

2. The question about who can/should do the testing concerned an earlier draft of the regulations. Subsection 3.17(b) answers the question.

3.19 Physical behavioral restraints

Comment: The New Jersey Association of Invalid Carriers objected that handcuffs cannot be used to restrain a patient. The same association characterized (what are now) subsections 3.19(a) and (c) as “totally unnecessary.”

Response:

Handcuffs have no role in patient care. Handcuffs can cause physical harm to the patient or—when used as a weapon—to attendants. The stigma of being handcuffed (“like a common criminal”) can worsen underlying mental conditions.

The criteria in these subsections is adapted from standards established by the Health and Hospital Unit of the state Department of Human Services and from standards of the Joint Commission on the Accreditation of Hospitals. The Department believes that these subsections are necessary.

SUBCHAPTER 4. SPECIFIC INVALID COACH REQUIREMENTS—COMMENTS AND RESPONSE

4.1 Patient restrictions

Comment:

An ambulance service objected that an Invalid Coach is not permitted to transport undiagnosed patients to Emergency Departments. They stated that—under some conditions—the vehicle can do so “at a lesser cost and just as safe.”

Response:

An undiagnosed patient has an undetected underlying medical problem(s). There’s no way to tell if—or when—a problem will worsen. If a medical problem did worsen, an Invalid Coach is neither staffed nor equipped to provide adequate patient care. There is no attendant, no resuscitator, no aspirator, etc.

4.3 Patient compartment requirements

Comments:

1. A hospital stated that many existing companies would not be able to meet the dimensional requirements.
2. An ambulance service requested that the side doorway dimensions (required at 4.3(b)2) be reduced to 28 inches. The

side door itself is 30 inches wide, but the door stops narrow the opening to 28 inches.

Response:

1. The Medicaid program created the Invalid Coach concept—and established related standards—in 1970.

Medicaid is the only known major third party payer to pay for Invalid Coach transportation. (By contrast, Medicare is not authorized to pay for such service.)

These regulations are based on the long-standing Medicaid standards (which all existing companies must meet to be eligible for Medicaid reimbursement).

2. We agree with the comment and have revised subsection 4.3(c)2 to require each doorway opening be at least 28 inches wide.

4.5 Vehicle markings

Comments:

Two providers suggested that the required height of the vehicle recognition number (at 4.5(b)2) be reduced:

- * One suggested a three-inch height would be consistent with the required height of the trade name.
- * The other suggested a two-inch height would be adequate.

Response: The Department agrees with the first comment and has revised subsection 4.5(b)2 to require a height of three inches. (In response to the second comment, the vehicle recognition number should be readable at the same distance as the trade name. Therefore, we decline to provide for a smaller number.)

4.7 Litters and stretchers prohibited

Comment: An ambulance service objected to the prohibition of litters and stretchers. The prohibition means the vehicle cannot be used as an ambulance (or to transport ambulance patients).

Response: The vehicle is not an ambulance. Its equipment and staffing do not meet the medical needs of ambulance patients.

4.9 Oxygen administration devices

Subsection 4.9(f)

Comment: An ambulance service wrote that a different type of oxygen face mask would better meet the needs of patients.

Response: The Department agrees with the comment and has revised subsection 4.9(f) to require simple oxygen face masks.

Subsection 4.9(h)4

Comment: An ambulance service stated that the required tagging (of oxygen cylinders) is useless.

Response: Tagging is a widely accepted “good practice” which reduces the chance that an “in-use” or “empty” oxygen cylinder will be confused with a full cylinder.

Subsection 4.9(h)5

Comment: A provider association stated that a former requirement (referring to N.J.A.C. 8:21A-1) was confusing.

Response: The letter commented on an earlier draft of the regulations. The requirement was deleted in a later draft.

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4.10 Safety equipment

Comment: An ambulance service wrote that two fire extinguishers—each rated 5 BC—should be allowed (instead of a single 1A 10 BC fire extinguisher).

Response: The Department agrees with the comment and has revised subsection 4.10(a)3 so two fire extinguishers are also acceptable.

4.12 Required Training of Staff

Comment: An ambulance service asked when the required Invalid Coach Attendant training would be available.

Response:

The anticipated training start-up date is September 1986.

The Department has revised subsection 4.12(c) to be consistent with our changes at subsections 5.23(b) and 6.26(b) (described below). With this revision, "First Responder/CIM" training is also acceptable in lieu of Invalid Coach Attendant training.

4.13 Duties of staff

Subsection 4.13(a)2

The New Jersey Association of Invalid Carriers objected that staff must assure that the driver and vehicle occupants wear automotive safety belts. They state:

- * Some patients refuse to wear safety belts.
- * The provider cannot be held responsible if a driver does not wear a safety belt.

Response: The Office of Highway Safety advises automotive safety belts must be used to protect vehicle occupants.

Subsection 4.13(a)5

Comment: An ambulance service suggested that smoking be prohibited any where in the vehicle.

Response: The existing prohibition adequately protects the public. (A firm can establish more stringent prohibitions, if it wishes.)

4.14 Required call report

Comment:

1. A provider association suggested certain former phrasing would create needless paperwork.
2. An ambulance service, commenting on Subsection 6.29(a), suggested the Department should clarify if a separate call report is needed for each leg of a round trip.

Response:

1. The letter commented on an earlier draft of the regulations. The phrasing was changed in a later draft.
2. The Department agrees with the comment and believe that it also applies here. The Department has revised subsection 4.14(a) to clarify that a single call report will suffice for both legs of the round trip.

4.15 Radio communications

Subsection 4.15(a)

Comment: The New Jersey Association of Invalid Carriers wrote that there was no need to submit a copy of the FCC license to the Department.

Response: A copy of the FCC license is necessary for the statewide management of a limited resource.

Subsection 4.15(b)

Comments:

A provider association stated that there is no need for a JEMS radio which they thought to be required by former phrasing.

An ambulance service wrote that there is no need for a JEMS radio which they think is required by the current phrasing.

Response:

The Department agrees with the comments. The association commented on an earlier draft of the regulations. The phrasing was changed in a later draft to clarify the issue.

The Department revised subsection 4.15(b) to further clarify that there is no need for a JEMS radio.

Subsection 4.15(b)4

Comment: An ambulance service argued that "licensing of radio frequencies is the jurisdiction of the Federal Communications Commission. The Health Department may tell us what frequencies they require, but not what we cannot use."

Response:

This requirement should pose no hardship since:

- * Each of the "prohibited" frequencies is in the Special Emergency Radio Service, and
- * Federal Communications Commission staff have determined that "invalid carriers . . . do not qualify for licensing in the Special Emergency Radio Service." (FCC letter dated Jan. 31, 1978; reference 7600-09.)

The Federal Communications Commission has specifically recognized the need for—and has encouraged the preparation of—"area-wide medical communications plans."

The New Jersey Medical Radio Frequency Plan (prepared in accordance with then Subpart P of Part 89 of the FCC Rules and Regulations) was submitted to the FCC in December 1977 and has been available for inspection since that time. The JEMS Communication Plan (which has been distributed throughout the state since 1980) contains a summary of the radio frequency information.

The Department agrees with the implication that it is unfair to require an agency to stop lawful use of a radio frequency—if it was licensed by the FCC before the frequency plan was submitted.

The Department has added new subsections 4.15(b)5 and 6 so Invalid Coach radio systems licensed before 1978 can continue if:

- * The FCC now determines that such use is permissible, and
- * The use does not interfere with essential health care services operating in accordance with the JEMS Plan.

**SUBCHAPTER 5. SPECIFIC TRANSPORT
AMBULANCE REQUIREMENTS—
COMMENTS AND RESPONSE**

5.1 Patient restrictions

Comment:

1. An ambulance service objected that a Transport Ambulance is not permitted to transport undiagnosed patients to Emergency Departments. They stated that—under some con-

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ditions—the vehicles can do so “at a lesser cost and just as safe.”

2. The New Jersey Association of Invalid Carriers objected to the blanket exclusion of patients who require aspiration or who are receiving intravenous fluids. They feel that there should be some “limited exceptions.”

3. The same association also asked that certain former phrasing be clarified.

Response:

1. The Department does not believe that the transportation can be “just as safe.” An undiagnosed patient has an undetected underlying medical problem(s). There’s no way to tell if—or when—a problem will worsen and require essential services that only an Emergency Ambulance can provide.

2. A Transport Ambulance does not have the same capability as an Emergency Ambulance. As an example, it has a built-in aspirator, but no portable aspirator. Patients who require aspiration, or who are receiving intravenous fluids, have serious medical problems which can best—and often, only—be served by an Emergency Ambulance. Therefore, we decline to make the suggested change.

3. The letter commented on an earlier draft of the regulations. The phrasing was changed in a later draft.

5.3 Patient compartment requirements**Subsection 5.3(b)2**

Comment: An ambulance service requested that the required side doorway dimensions be reduced to 28 inches. The side door itself is 30 inches wide, but the door stops narrow the opening to 28 inches.

Response: The Department agrees with the comment and has revised subsection 5.3(b)2 to permit doorway openings of 28 inches.

Subsection 5.3(f)

Comment: An ambulance service suggested phrasing be changed to “. . . the vehicle may or may not be equipped to transport wheelchairs . . .”

Response: If the requested change was made, occupied wheelchairs could be transported in the vehicle even if there was no way to secure them. Unsecured wheelchairs are not safe; they will keep rolling around in the patient compartment (as the vehicle turns or brakes). Therefore, the Department declined to make the suggested change.

5.4 Patient compartment dimensions

1. A hospital stated that many existing companies would not be able to meet these requirements.

2. A provider association requested that a former height requirement be changed.

Response:

1. The required dimensions are necessary. There must be enough space within the vehicle for:

- * The patient (who may be seated or stretcher bound).
- * The attendant (who must have “working room” at the head and side of the patient).
- * Interior storage space (for the required equipment and supplies).

2. The letter commented on an earlier draft of the regulations. The height requirement was changed in a later draft.

5.6 Vehicle markings**Comments:**

1. Two providers suggested that the required height of the vehicle recognition number be reduced:

- * One suggested a 3-inch height would be consistent with the required height of the trade name.
- * The other suggested that a lesser height would be adequate.

2. A provider association objected to the prohibition against display of the Star of Life.

Response:

1. The Department agrees with the first comment on the required height. We have revised subsection 5.6(b) to require a height of 3 inches. We disagree with the second comment on the height; the vehicle recognition number should be readable at the same distance as the trade name.

2. Transport Ambulances do not meet Federal criteria to display the Star of Life (which is a certification mark issued to the National Highway Traffic Safety Administration).

5.7 Emergency warning devices**Comment:**

1. The New Jersey Association of Invalid Carriers objected to the prohibition of:

- * Emergency warning lights which are not red in color.
- * Flashing headlight devices.

Response: The Division of Motor Vehicles advises that neither is permitted under State law.

5.8 Use of emergency warning devices

Comment: A provider association objected to a former total prohibition on air horn use when a patient is transported.

Response: The letter commented on an earlier draft of the regulations. Subsection 5.8(b) was changed in a later draft.

5.9 General equipment and supplies requirement

Comment: An ambulance service objected to the requirement that a list of contents appear on interior compartment doors. The firm suggested that a clipboard list is an acceptable alternative.

Response: It is common for staff to be transferred between vehicles. It is unreasonable for staff to be completely familiar with storage arrangements on different vehicles. A list on each compartment door is the most reliable means to ensure that staff can promptly locate needed supplies and equipment.

5.10 Standard patient transport devices**Subsection 5.10(a)**

Comment: A provider association requested a change in the required thickness of the mattress.

Response: The letter commented on an earlier draft of the regulations. The requested change was made in a later draft.

Subsection 5.10(c)

Comments: An ambulance service suggested that the phrase “wheelchair bound” be deleted. Other patients also require transportation in a stairchair.

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Response:

The Department agrees with the comment and has deleted "wheelchair bound" from subsection 5.10(c).

5.11 Oxygen administration devices

Subsection 5.11(a)

Comment: The New Jersey Association of Invalid Carriers objected to the requirement for an installed oxygen system. They stated the system "is extremely costly and is not necessary since a portable system is required which should be sufficient to meet . . ." patient needs.

Response:

An installed oxygen system is necessary for patient(s) transported an hour or more. (A portable oxygen system, even with a reserve cylinder, doesn't contain enough oxygen.)

An ambulance, which lacks an installed oxygen system, is not eligible for Medicaid and Medicare reimbursement. Medicare and Medicaid each require an ambulance to meet Medicare criteria. An installed oxygen system is required by that criteria.

Subsection 5.11(e)

Comment: An ambulance service wrote that a different type of oxygen face mask would better meet the needs of patients.

Response: The Department agrees with the comment and has revised subsection 5.11(e) to require "simple face masks."

Subsection 5.11(g)4

Comment: An ambulance service stated that the required tagging (of oxygen cylinders) is useless.

Response: Tagging is a widely accepted "good practice" which reduces the chance that an "in-use" or "empty" oxygen cylinder will be confused with a full cylinder.

Subsection 5.11(g)5

Comment: A provider association stated that a former reference to N.J.A.C. 8:21A-1 was confusing.

Response: The letter commented on an earlier draft of the regulations. The reference was deleted in a later draft.

5.16 Spine boards, orthopedic litter and splints

General Comment: A hospital wrote ". . . much of the equipment outlined is not necessary."

Response:

A Transport Ambulance services patients who—although no longer emergent—may require splinting of possible fractures.

As indicated in our response to Subsection 5.11(a) above—the vehicle must meet Medicare criteria to be eligible for Medicaid and Medicare reimbursement. That criteria calls for ". . . backboard, neckboards . . . splints . . ."

Subsection 5.16(a)1

Comments: An ambulance service stated that the required runners—on the long spine board—would make the long spine board too thick to fit in many ambulance storage compartments.

Response: Runners are necessary to provide sufficient space underneath the board so an "occupied" long spine board can be safely lifted.

Subsection 5.16(a)2

Comment: An ambulance service reported that commercial short spine boards are now 16 inches wide.

Response: The Department agrees with the comment and has revised subsection 5.16(a)2 so short spine boards can be 16 to 18 inches wide.

Subsection 5.16(a)3

Comment: An ambulance service wrote "traction splints should be deleted since this vehicle does not respond to emergencies."

Response: A Transport Ambulance serves nursing home and other patients who—although no longer emergent—may require traction splinting of long bone fractures.

5.17 Wound dressing and burn treatment

General Comment: A hospital stated ". . . much of the equipment outlined is not necessary."

Response:

Patients—such as kidney dialysis patients with unexpected "shunt bleeding"—may require these type of supplies.

As indicated in the response to Subsection 5.11(a) above, the vehicle must meet Medicare criteria that calls for ". . . first aid supplies . . ."

5.18 Obstetrical kit

Comment: An ambulance service asked for this requirement to be deleted since Subsection 5.1(b)5 effectively prohibits transportation of patients about to give birth. A hospital stated ". . . much of the equipment outlined is not necessary."

Response:

Patients may require these type of supplies (because of unexpected vaginal bleeding or spontaneous abortions).

Again, the vehicle must have the capability to meet Medicare criteria for ". . . such basic services as . . . delivery of babies . . ."

5.19 Poison treatment supplies

Comment: A hospital wrote ". . . much of the equipment outlined is not necessary." An ambulance service asks that the requirement be deleted; Transport Ambulances don't need these supplies.

Response: A Transport Ambulance may inadvertently respond—because of caller or dispatch error—to a patient who requires treatment for poisoning. patient care should not be delayed until an Emergency Ambulance responds to the scene. Therefore, we decline to make the suggested change.

5.21 Safety equipment

Comment: An ambulance service wrote that two fire extinguishers—each rated 5 (BC)—should be allowed (instead of a single 1A 10 BC fire extinguisher).

Response: The Department agrees with the comment and has revised subsection 5.21(a)3 so two fire extinguishers are also acceptable.

5.22 Required Staff

Comments: The New Jersey Professional Ambulance Association and two ambulance services each urged that—when

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Invalid Coach service is provided—they be allowed to staff the vehicle with only one person.

Response:

As indicated above, the vehicle must meet Medicare criteria to be eligible for Medicaid and Medicare reimbursement. One person staffing does not meet that criteria.

In an earlier draft, the Department proposed that a Transport Ambulance be staffed by only one person when used as an Invalid Coach. In their review, the Health Care Financing Administration stated:

* “These vehicles staffed by only one person at times do not satisfy the Medicare program’s requirements for furnishing covered ambulance service. The statement each supplier submits . . . as evidence that their vehicles meet the Medicare program’s requirement . . . should be evidence that the vehicles meet the staffing requirements at all times the vehicles are in service.” (HCFA letter dated March 3, 1982; reference FQA-421)

To ensure that each licensee understands this requirement—and to be consistent with our change at subsection 6.25(a) (described below) the Department revised subsection 5.22(a) to read:

“. . . by at least two persons *(including any time the vehicle is used as an Invalid Coach)* who shall meet . . .”

5:23 Required training of staff

Comments: An ambulance service reported that it recruits from volunteer first aid squads; most new staff members have “5-point training.”

* The service asked to use “5-point trained” staff indefinitely if they later obtain Emergency Medical Technician/Ambulance (EMT-A) certification.

* The service was also concerned that there are not enough trained EMT-As. The firm suggested that we require all volunteer first aiders take EMT-A training (to ease their recruitment problems).

(A provider association told the Department of a typographical error in an earlier draft; this has since been corrected).

Response: Any of the 7,100 plus New Jersey residents who hold current Department certification as EMT-As can serve as the first required person.

As proposed, any person with valid documentation of CPR and Advance First Aid training can serve as the second required person (regardless of the training program under which the documentation was obtained). To ease recruitment problems we have revised subsection 5.23(b) so any person with valid documentation of “First Responder/CIM” training can also serve as the second required person.

The patient’s need for quality care should be paramount. Therefore, the Department declines to make any further changes.

5.24 Duties of staff

Comments:

1. A provider association objected that staff must assure that the driver and vehicle occupants wear automotive safety belts. They state:

* Some patients refuse to wear safety belts.

* The provider cannot be held responsible if a driver does not wear a safety belt.

2. An ambulance service suggested that 5.24(a)7 be changed to “. . . summoning advanced life support . . .”

3. The same service suggested that smoking be prohibited anywhere in the vehicle.

Response:

1. The Office of Highway Safety advises automotive safety belts must be used to protect vehicle occupants.

2. The Department agrees, in part, with the comment and has revised 5.24(a)7 to read:

“7. Summoning an emergency ambulance *and, if available, a Mobile Intensive Care Unit *, if necessary, for patient care.”

3. The existing prohibition adequately protects the public. (A firm can establish more stringent prohibitions if it wishes.)

5.26 Radio communications

Comments:

1. An ambulance service suggested that the vehicle have radio capability to alert a hospital if the patient’s condition worsens during transport.

2. Another ambulance service argued that “licensing of radio frequencies is the jurisdiction of the Federal Communications Commission. (The Health Department) may tell us what frequencies they require, but not what we cannot use.”

Response:

1. The Department believes that a (previously diagnosed) patient’s condition will remain stable during transport. Therefore, we decline to make the suggested change.

2. As indicated in the response to Section 4.15:

* The Federal Communications Commission has recognized the need for—and the Department has submitted—an “area-wide medical communications plan.”

* The Department agrees that it is unfair to require an agency to stop use of a radio frequency (licensed by the FCC before the plan was submitted).

* The Department has added new subsections 5.26(b)5 and 6. Transport Ambulance radio systems licensed before 1978 can continue if the use does not interfere with essential health care services operating in accordance with the JEMS Plan.

To be consistent with the change at subsection 4.15(b)4 (described above), the Department has also revised subsection 5.26(b)4 to clarify that there is no need for a JEMS radio.

SUBCHAPTER 6. SPECIFIC EMERGENCY AMBULANCE REQUIREMENTS—COMMENTS AND RESPONSE

6.3 Patient compartment requirements

Subsection 6.3(b)2

Comment: An ambulance service requested that the required side doorway dimensions be reduced to 28 inches. The side door itself is 30 inches wide, but the door stops narrow the opening to 28 inches.

Response: The Department agrees with the comment and has revised subsection 6.3(b)2 to permit doorway openings of 28 inches.

Subsection 6.3(c)

Comment: The New Jersey Association of Invalid Carriers suggested that a (former) requirement (on control of interior lighting) be deleted. Many "grandfathered" vehicles lack the required capability.

Response: The letter commented on an earlier draft. The deletion was made in a later draft.

6.4 Patient compartment dimensions

Comments:

1. A hospital stated that many existing companies would not be able to meet these dimensional requirements.

2. An ambulance service stated that providers could save money—when purchasing new vehicles—if the required interior length was reduced to 110 inches.

Response:

1. The required patient compartment dimensions are long-standing national standards for ambulance vehicle established in:

a. Medical Requirements for Ambulance Design and Equipment prepared by the National Academy of Sciences in 1968 for the U.S. Dept. of Health Education and Welfare.

b. Ambulance Design Criteria prepared by the National Academy of Sciences in 1971 for the U.S. Dept. of Transportation.

c. Federal Specification, Ambulance, Emergency Medical Care Surface Vehicle, KKK-A-1822 first prepared in 1974 by the U.S. General Services Administration in cooperation with the U.S. Dept. of Transportation.

The National Highway Traffic Safety Administration adopted the latter two documents as the national standard for emergency ambulance vehicles under the Federal Highway Safety Act. In turn, the Medicaid Program requires (in N.J.A.C. 10:50-1.2) that ambulance services meet the standards set by the Federal Highway (Safety) Act.

Subsections 6.4(b) and (c) allow a two-year "grandfathering" of vehicles which do not meet national and Medicaid standards.

2. As stated above, the dimensional requirements are based on national standards.

6.5 Certification to Federal standards

Subsection 6.5(c)7

Comment: A provider association requested that a "clear flashing light" on the front of the ambulance be permissible.

Response: The Division of Motor Vehicles advises that "clear flashing lights" are not permitted under State law.

Subsection 6.5(c)12

Comment: An ambulance service objected to the requirement that suction aspirator flow rate must be 30 LPM. The Federal specification for ambulance vehicles only requires a flow rate of 20 LPM.

Response:

A 30 LPM flow rate is a long-standing requirement contained in:

a. Medical Requirements for Ambulance Design and Equipment (cited above).

b. Ambulance Design Criteria (cited above).

c. Standards and Guidelines for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiac Care (ECC) prepared by the American Heart Association and updated in 1980.

d. Community-Wide Emergency Medical Services prepared by the Committee on Acute Medicine of the American Society of Anesthesiologists in 1968.

The Department was unable to locate any clinical criteria in support of the 20 LPM required in the Federal vehicle standard.

6.7 Vehicle markings

Subsection 6.7(b)

Comments:

Two ambulance services suggested that the required height of the vehicle recognition number be reduced:

* One suggested a three-inch height would be consistent with the required height of the trade name.

* The other suggested that a lesser height would be adequate.

Response:

The Department agrees with the first comment and has revised subsection 6.7(b) to require a height of three inches. In response to the second comment, the vehicle recognition number should be readable at the same distance as the trade name.

Subsection 6.7(c)3

Comments:

1. A provider association asked that the required height of 16-inch Star of Life be reduced. Reportedly, manufacturers do not make that size.

2. An ambulance service wrote that the required block-type Star of Life would obstruct vision if installed on the rear windows.

Response:

1. The required marking, in the required height, is available from several New Jersey dealers and from mail-order firms.

2. The Department agrees with the comment and has revised 6.7(c)3 to permit a translucent or "cut-out" Star of Life on the rear windows.

Subsection 6.7(c)4

Comments:

1. An ambulance service suggested that the required height of the six-inch word "Ambulance" be reduced to four inches.

2. A provider association urged that the required height of the six-inch word "Ambulance" be reduced. Reportedly, manufacturers do not make that size.

3. The same association asked if the required word "Ambulance" could be part of the required trade name.

Response:

1. The six-inch high marking, called for in the Federal vehicle specifications, permits a citizen—who may need emergency medical care—to readily identify an emergency ambulance.

2. The required marking, in the required height, is commercially available from several New Jersey dealers and from mail-order firms.

3. The letter commented on an earlier draft. The requested change was made in a later draft.

Subsection 6.7(d)

Comment: The New Jersey Association of Invalid Carriers asked what is the fine for smoking in the ambulance.

Response: State law (N.J.S.A. 26:3D-7 et seq.) provides for a fine of \$25.00 for the first offense.

6.9 Use of emergency warning devices

Comment: A provider association objected to (former) phrasing in subsection 6.9(b) and to a (former) total prohibition in subsection 6.9(c) on air horn use when a patient was being transported.

Response: The letter commented on an earlier draft. Subsection 6.9(b) and (c) were changed in a later draft.

6.10 General equipment and supplies requirement

Comment: An ambulance service objected to the requirement that a list of contents appear on interior compartment doors. The firm suggested that a clipboard list is an acceptable alternative.

Response: As stated in the response to subsection 5.9 comments (above), a list on each compartment door is the most reliable means to ensure that staff can promptly locate needed supplies and equipment.

6.11 Standard patient transport devices

Comment: An ambulance service requested that the phrase "wheelchair bound" (at 6.11(c)) be deleted. Other patients also require transportation in a stairchair.

Response: The Department agrees with the comment and has deleted "wheelchair bound" from subsection 6.11(c).

6.13 Oxygen administration devices

Subsection 6.13(g)4

Comment: An ambulance service states that the required tagging (of oxygen cylinders) is useless.

Response: Tagging is a widely accepted "good practice" which reduces the chance that an "in-use" or "empty" oxygen cylinder will be confused with a full cylinder.

Subsection 6.13(g)5

Comment: A provider association stated that a former requirement (referring to N.J.A.C. 8:21A-1) was confusing.

Response: The letter commented on an earlier draft. The requirement was deleted in a later draft.

6.14 Resuscitation devices

Subsections 6.14(a) and (b)

Comment: An ambulance service wrote that one oxygen powered, positive pressure resuscitator should be acceptable.

Response: Two oxygen powered, positive pressure resuscitators are needed to ensure continuous oxygen resuscitation. The portable resuscitator oxygen supply may be depleted as the patient is "packaged," then transported to a hospital. Therefore the Department declines to make the change.

Subsection 6.14(f)

Comment:

1. An ambulance service stated that four face masks are adequate, if the Emergency Ambulance is not used to provide "street EMS."

2. Another service interpreted the regulations to require nine face masks for two resuscitators.

Response:

1. The requirement for nine face masks is based on national standards for Emergency Ambulances.

2. The nine face masks are for four resuscitators.

6.15 Aspirator/suction devices

Subsection 6.15(b)

Comment: An ambulance service suggested that oxygen (or other gas) powered aspirators be prohibited.

Response: There is no reason to prohibit oxygen (or other gas) powered aspirators if they meet the standards contained in these regulations. Therefore, the Department declines to make the suggested change.

Subsection 6.15(c)1

Comments: The New Jersey Professional Ambulance Association and two ambulance services objected to the required 30 LPM flow rate. Each indicated that a 20 LPM flow rate (which appears in the federal vehicle specification) should be ample.

Response:

A 30 LPM flow rate is a long-standing requirement contained in:

- a. Medical Requirements for Ambulance Design and Equipment (cited above).
- b. Ambulance Design Criteria (cited above).
- c. Standards and Guidelines for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiac Care (ECC) (cited above).
- d. Community-Wide Emergency Medical Services (cited above).

The Department was unable to locate any clinical criteria in support of the 20 LPM required in the federal vehicle standard.

6.16 Airway maintenance supplies

Comments: An ambulance service stated that three sets of airways would be adequate. Another wrote that two sets would be adequate for "non-street EMS."

Response: The requirement for six sets of airways is from Ambulance Design Criteria.

6.18 Spine boards, orthopedic litter and splints

Subsection 6.18(a)1

Comments:

Two ambulance services objected to the requirement that long spine boards have runners.

- * One wrote that ". . . in certain conditions they are hinderous and dangerous." (No information was added to support this contention.)

* Another stated that runners would make the long spine board too thick to fit in many ambulance storage compartments.

Response: Runners are necessary to provide sufficient space underneath the board so an "occupied" long spine board can be safely lifted.

Section 6.18(a)2

Comment: An ambulance service reported that commercial short spine boards are now 16 inches wide.

Response: The Department agrees with the comment and have revised subsection 6.18(a)2 so short spine boards can be 16 to 18 inches wide.

Subsection 6.18(a)3

Comment: An ambulance service stated that only two (spine board) straps are needed.

Response: Four straps are needed: two for the required short spine board, two for the required long spine board.

Subsection 6.18(a)4

Comment: An ambulance service wrote that other types of restraining straps are adequate with an orthopedic litter.

Response: An "occupied" orthopedic litter may be tilted—or even stood on end—as it is moved. The required straps best protect a patient under those conditions.

Subsection 6.18(a)7

Comment: An ambulance service stated that "long splints can be substituted for traction splints. Not necessary for non-street EMS."

Response:

Traction splints are a long-standing requirement in:

- a. Medical Requirements for Ambulance Design and Equipment (cited above).
- b. Ambulance Design Criteria (cited above).
- c. Essential Equipment for Ambulances prepared by the Committee on Trauma of the American College of Surgeons and last updated in 1983.

They stabilize possible fractures of the upper femur. Femur fractures can occur in nursing home patients as well as in people in general population. See: Essential Equipment for Ambulances, American College of Surgeons, and Medical Requirements for Ambulance Design and Equipment, prepared by the National Academy of Sciences in 1968, for the United States Department for Health, Education and Welfare.

Subsection 6.19(a)3

Comment: An ambulance service wrote that only six multi-trauma dressings should be required.

Response: Ambulance Design Criteria calls for 24 multi-trauma dressings. We reduced the required number to 12 after providers demonstrated that many ambulances lacked the room to store 24 of these bulky dressings.

Subsection 6.19(a)7

Comment: An ambulance service asked if pre-packaged burn kits are acceptable.

Response: Pre-packaged burn kits—which contain two burn sheets—are acceptable.

6.20 Obstetrical kit

An ambulance service asked if pre-packaged obstetrical kits are acceptable.

Response: Pre-packaged obstetrical kits are acceptable. However, additional "loose" sterile items may be needed to supplement the contents of a commercial kit. (Most commercial obstetrical kits lack some of the required items.)

6.24 Safety equipment

Comment: An ambulance service wrote that two fire extinguishers—each rated 5 (BC)—should be allowed (instead of a single 1A 10 BC fire extinguisher).

Response: The Department agrees with the comment and has revised 6.24(a)3 so two fire extinguishers are also acceptable.

6.25 Required staff

Comments:

1. The New Jersey Professional Ambulance Association urged that—when Invalid Coach service is provided—they be allowed to staff the vehicle with only one person.

2. An ambulance service asked if the requirement for two persons—when the Emergency Ambulance is "in-service"—applies even when the vehicle is used for Invalid Coach service.

Response:

1. All national standards require an Emergency Ambulance to be staffed by at least two persons whenever it is in-service.

In addition—as indicated in our response to section 5.22 (above)—one person staffing (under any conditions) would not meet Medicare criteria.

2. As required in Subsections 2.4(f) and 2.6(c), the vehicle must be staffed by two persons even when it is used as an Invalid Coach. However, the comment implies that the existing phrasing is not clear. The Department has revised subsection 6.25(a) to read:

“. . . by at least two persons *(including any time the vehicle is used as an Invalid Coach)* who shall meet . . .”

6.26 Required training of staff

Subsection 6.26(a)

Comments: An ambulance service suggested that an evasive driving course be provided by a state agency.

Response: At the request of the Health Care Administration Board, the Department has asked the Director, Division of Motor Vehicles, for recommendations on special driver training. In the future, such training may be addressed in these regulations.

Subsection 6.26(b)

Comments:

Two ambulance services reported that they recruit from volunteer first aid squads; most new staff members have "5-point training."

* One asked if the second person can have "5-point training" (in lieu of EMT-A training) for 24 months.

- * The other asked to use "5-point trained" staff indefinitely if they later obtain EMT-A certification.
- * The latter was also concerned that there are not enough trained EMT-A's and suggested that the Department require all volunteer first aiders to take EMT-A training (to ease their recruitment problems).

Response:

Federal and other national standards call for staffing by two Emergency Medical Technicians. The Department believes that the existing 12-month "grace period" for staff to be trained is adequate and note that over 7,100 persons hold current Department certification as EMT-As.

During the "grace period," any person with valid documentation of CPR and Advance First Aid training can serve as the second required person (regardless of the training program under which the documentation was obtained). To ease recruitment problems the Department has revised subsection 5.23(b) so any person with valid documentation of "First Responder/CIM" training can also serve as the second required person during the "grace period."

The patient's need for quality care far outweighs a firm's need to easily recruit employees. Therefore, the Department declines to make any further changes.

6.27 Duties of staff

Comment:

1. A provider association objected that staff must assure that the driver and vehicle occupants wear automotive safety belts. They stated:

- * Some patients refuse to wear safety belts.
- * The provider cannot be held responsible if a driver does not wear a safety belt.

2. An ambulance service suggested that smoking be prohibited anywhere in the vehicle.

Response:

1. The Office of Highway Safety advises (in the 1985 New Jersey Highway Safety Plan) automotive safety belts must be used to protect vehicle occupants.

2. The existing prohibition adequately protects the public. (A firm can establish more stringent prohibitions if it wishes.)

6.28 Special staff required

Comments:

Subsections 6.28(a) and (b)

1. The New Jersey Professional Ambulance Association and three ambulance services urged that—besides the specially trained person—the vehicle be staffed by the two staff persons required in section 6.25.

In a follow-up phone call, one service indicated that the "specialist":

- * Won't know the location—and use—of essential ambulance equipment.
- * Will probably need help in providing medical care within the moving vehicle.

The Professional Ambulance Association and the other two ambulance services each argued that the two trained staff persons (required in section 6.25) are needed to lift the patient in and out of the vehicle.

2. An ambulance service asked if a Registered Nurse could replace the required Emergency Medical Technician-Ambulance (EMT-A).

Response:

1. The Department agrees with the comments and has revised subsections 6.28(a)1 and (a)2 to require the two "normal" staff persons plus the "specialist" (rather than the one "normal" staff person and the "specialist").

2. As originally proposed, the nurse could replace the EMT-A. However, the regulations have now been revised (see above).

Subsection 6.28(b)2

Comments:

1. The New Jersey Association of Invalid Carriers implied that an EMT-A (required in subsection 6.25) is qualified to supervise intravenous fluids (or medications). They also state the requirements of this subsection would interfere with current hospital policy.

2. The New Jersey Professional Ambulance Association and two ambulance services argued that it should not be their obligation to check the credentials of hospital personnel assigned to a patient receiving intravenous fluids.

Response:

1. Department certified EMT-A's are neither trained nor qualified to supervise the administration of intravenous fluids (or medications). We doubt that hospitals knowingly entrust patients receiving intravenous fluids to unqualified persons.

2. The Department agrees with the comments and has revised subsection 6.28(b) by adding:

- "*or 4. An employee of the "sending" or "receiving" hospital, specifically assigned by the hospital, to care for the patient who is receiving intravenous therapy. (It is the hospital's responsibility to ensure that any assigned employee is certified, or otherwise qualified, to oversee intravenous therapy.)*"

6.29 Call report

Comments:

1. A provider association stated that there is no need to prepare a call report. They characterized the requirement as needless record keeping.

2. An ambulance service suggested that the Department provide a standard call report form.

3. In a follow-up phone call, the same service suggested that the Department clarify if a separate call report is needed for each leg of a round trip.

Response:

1. Emergency Ambulance services—unlike Invalid Coaches and Transport Ambulance services—routinely provide patient care. A call report is a medical record used to:

- * Document the condition of, and care rendered to, the patient.
- * Inform the "receiving" hospital of the patient's (earlier and current) condition and of the prehospital patient care.
- * Evaluate staff and service performance.

2. An ambulance service—or an association—can develop its own forms. Therefore, the Department declines to make the proposed change.

3. The Department agrees with the comment and has revised subsection 6.29(a) to clarify that a single call report will suffice for both legs of the round trip.

6.30 Radio communications

Subsection 6.30(b)2

Comment: An ambulance service stated that they do render essential emergency services to nursing homes and hospitals (even though they don't do "street EMS" work).

Response: Such services—normally—do not involve the rendition of essential emergency medical services.

Subsection 6.30(b)5

Comment: An ambulance service argues that "licensing of radio frequencies is the jurisdiction of the Federal Communications Commission. (The Health Department) may and should tell us what frequencies they require, but not what additional frequency we may not use."

They state they have used a radio frequency for ten years without causing harmful interference to other radio users.

Response:

As indicated in the Department's response to Section 4.15:

- * The Federal Communications Commission has recognized the need for—and the Department has submitted—an "area-wide medical communications plan."
- * The Department agrees that it is unfair to require an agency to stop use of a radio frequency (licensed by the FCC before the plan was submitted).
- * The Department added new subsections 6.30(b)6 and 7. Emergency Ambulance radio systems licensed before 1978 can continue if the use does not interfere with essential health care services operating in accordance with the JEMS Plan.

Subsection 6.30(c)1

Comment: An ambulance service stated that they could save money if two 2-frequency radios were permitted (instead of one 4-frequency radio).

Response: The Department agrees with the comment and has revised subsection 6.30(c) to also permit two mobile radios.

**SUBCHAPTER 7. SPECIFIC HELICOPTER
AMBULANCE REQUIREMENTS—
COMMENTS AND RESPONSE**

No comments were made on this subchapter.

APPENDICES

(Symbols and Local EMS Radio Frequency Table)

COMMENTS AND RESPONSE

Appendix C—Local EMS Radio Frequency Table

Comment: A provider association wrote "the 'required CTCSS' as set forth (in) Appendix C are, in many instances, in error."

Response: The Department first received this comment in March 1984. Since then, the association has been able to identify only one possible error (which the Department changed in a later draft).

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

SUBCHAPTER 1. DEFINITIONS

8:40-1.1 Definitions

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

"Advertising" means any information directly or indirectly issued, distributed, hand-delivered or implied through any medium and used for the purpose of promoting the service of a licensee.

"Administrator" means an individual who may be entitled administrator, captain, chief, director or otherwise. The administrator may also, but need not, be the owner of the agency.

"Ambulance Service" means the provision of emergency or non-emergency medical care and transportation by certified trained personnel in a vehicle, including a helicopter, which is designed and equipped to provide medical care at the scene and while transporting sick and/or injured persons to ***or from* a medical care facility *or provider***.

"AMD Standard" means the standard(s) promulgated by the Ambulance Manufacturers Division of the Truck Body and Equipment Association. Copies of the cited standard(s) may be purchased from that Association at Suite 1220, 5530 Wisconsin Avenue, Washington, D.C. 20015.

"A.N.S.I. Standard" means the standard(s) promulgated by the American National Standards Institute Inc. Copies of the cited standard(s) may be purchased from that Institute at 1430 Broadway, New York, NY 10018.

"Available" means ready for immediate use (pertaining to equipment); immediately accessible (pertaining to records).

"Cleaning" means the removal by scrubbing and washing, as with hot water, soap or detergent, and vacuuming, of infectious agents and/or organic matter from surfaces on which and in which infectious agents may find conditions for surviving or multiplying.

"Commissioner" means the New Jersey State Commissioner of Health.

"Communicable disease" means an illness due to a specific infectious agent or its toxic products, which occurs through transmission of that agent or its toxic products from a reservoir to a susceptible host.

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

"Disinfection" means the killing of infectious agents outside the body, or organisms transmitting such agents, by chemical and physical means, directly applied.

"FAR" means the Federal Aviation Regulations.

"FCC" means the Federal Communications Commission.

"Federal Specification KKK-A-1822" means the specification and amendments thereto in force at the time of vehicle manufacture and entitled "Federal Specification, Ambulance, Emergency Medical Care Surface Vehicle KKK-A-1822" as published by the Federal Supply Service, of the U.S. General Services Administration. Single copies of the specification are available, at no charge, from EmHS, CN 363, Trenton, NJ 08625.

"FMVSS" means Federal Motor Vehicle Safety Standard(s) promulgated under 49 CFR 571. Consult Superintendent of Documents, Washington, D.C., for copies of the cited standards.

"Health care facility" means a facility so defined in the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq.

***"Helicopter Ambulance Service" means those services which provide aeromedical emergency care and transportation by rotowing aircraft and which are either provided to patients**

located in New Jersey by currently existing out-of-state providers or are provided by the New Jersey State Police.*

"JEMS Communication Plan" means the State of New Jersey Emergency Medical Services Communication Plan published by the Department. Single copies of the plan are available, at no charge, from EmHS, CN 363, Trenton, NJ 08625.

"International symbol of access for the handicapped" means the outline form of a person in a wheelchair as illustrated in Appendix *[B]* *A*.

"Invalid Coach Service" means the provision of non-emergency health care transportation, by certified trained personnel, for sick, infirm or otherwise disabled persons who are under the care and supervision of a physician and whose medical condition is not of sufficient magnitude or gravity to require transportation by ambulance, but does require transportation from place to place for medical care, and whose use of an alternate form of transportation, such as taxicab, bus, other public conveyance or private vehicle, might create a serious risk to life and health.

"Licensee" means any person, public or private institution, agency or business concern granted a license under this chapter by the Department.

"Patient" means any person utilizing services licensed under this chapter.

"Pneumatic Testing Manual" means the Pneumatic Testing Manual (for Pre-Hospital Respiratory Equipment) published by the Department. Single copies are available, at no charge, from EmHS, CN 363, Trenton, NJ 08625*[,]* *.*

"Provide" means furnishing, conducting, maintaining, advertising, or in any way engaging in or professing to engage in a service licensable under this chapter.

"Provider" means any person, public or private institution, agency or business concern which is providing Invalid Coach Service and/or Ambulance Service.

"Star of Life" means the symbol described in certification of registration number 1,058,022 which the United States Commissioner of Patents and Trademarks has issued to the National Highway Traffic Safety Administration. The Star of Life symbol is illustrated in Appendix *[C]* *B*.

"SAE Standard" means the standard(s) promulgated by the Society of Automotive Engineers. Copies of the cited standard(s) may be purchased from that Society at 400 Commonwealth Drive, Warrendale, PA 15096.

"Valid" means current, up-to-date, in effect.

SUBCHAPTER 2. AUTHORITY AND LICENSURE PROCEDURES

8:40-2.1 Authority

(a) According to N.J.S.A. 30:4D-6.2 et seq., the Commissioner of Health is required to adopt rules, regulations and administrative orders which regulate the provision of Invalid Coach Service.

(b) According to N.J.S.A. 26:2H-1 et seq., the Commissioner of Health is authorized to adopt rules, regulations and administrative orders which regulate the provision of Invalid Coach and Ambulance Service.

8:40-2.2 Application of regulations

(a) Subchapters 1 through 4 of this chapter apply to Invalid Coach Services.

(b) Subchapters 1 through 3 and subchapter 5 of this chapter apply to Transport Ambulance Services.

(c) Subchapters 1 through 3 and subchapter 6 of this chapter apply to Emergency Ambulance Services.

(d) Subchapters 1 through 3 and subchapter 7 of this chapter apply to Helicopter Ambulance Services.

8:40-2.3 Certificate of need required

(a) According to Chapters 136 and 138, P.L. 1971 Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, or licensed to operate except upon application for and receipt of a Certificate of Need issued by the Commissioner.

(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:

Review and Comment Program
Division of Health Planning and
Resources Development
New Jersey State Department of Health
CN 360
Trenton, NJ 08625

8:40-2.4 Licensing requirements

(a) No person, public or private institution, agency or business concern shall provide Invalid Coach Service or Ambulance Service until the provider, and each of the provider's vehicle(s), is licensed to do so by the New Jersey State Department of Health.

(b) Provider licensing shall consist of two types of licenses:

1. A temporary provider permit issued by the Department which authorizes the licensee to provide one or both of the following:

- i. Invalid Coach Services.
- ii. Ambulance Services.

2. A full provider license issued by the Department which authorizes the licensee to provide one or both of the following:

- i. Invalid Coach Services.
- ii. Ambulance Services.

(c) Vehicle licensing shall consist of a decal or a license issued by the Department for a specific vehicle which authorizes the licensee to utilize the vehicle to provide:

1. Invalid Coach Services; or
2. Transport Ambulance Services; or
3. Emergency Ambulance Services; or
4. Helicopter Ambulance Services.

(d) Vehicles licensed to provide Invalid Coach Services may be utilized to provide only that service.

(e) Vehicles licensed to provide Transport Ambulance Service may be utilized to provide Invalid Coach Service provided:

1. The provider is licensed to provide Invalid Coach Service, and
2. The vehicle, equipment, supplies and staffing comply with the requirements for Transport Ambulance Service.

(f) Vehicles licensed to provide Emergency Ambulance Service may be utilized to provide Invalid Coach Service provided:

1. The provider is licensed to provide Invalid Coach Service, and
2. The vehicle, equipment, supplies and staffing comply with the requirements for Emergency Ambulance Service.

(g) Vehicles licensed to provide Emergency Ambulance Service may be utilized to provide Transport Ambulance Service provided the vehicle, equipment, supplies and staffing comply with the requirements for Emergency Ambulance Service.

(h) Vehicles licensed to provide Helicopter Ambulance Service may be utilized to provide non-health care services provided the vehicle, equipment, supplies and staffing comply

with the requirements of this chapter when the aircraft is used to provide Helicopter Ambulance Service.

8:40-2.5 Exemptions from licensing requirements

(a) In accordance with the provisions of N.J.S.A. 30:4D-6.2 et seq. and N.J.S.A. 26:2H-1 et seq. this chapter shall not apply to Invalid Coach Services or Ambulance Services provided by volunteer first aid, rescue and ambulance squads as defined in the "New Jersey Highway Safety Act of 1971" (N.J.S.A. 27:5F-1 et seq.).

(b) This chapter shall not apply to providers which are based in other states and which provide service in New Jersey when the provider is:

1. Transporting a patient through New Jersey from an out-of-state location to an out-of-state location, or
2. Transporting a patient from an out-of-state location to a New Jersey location and returning that same patient to an out-of-state location, or
3. Transporting a patient from an out-of-state location to a New Jersey location.

(c) The provisions of this chapter shall not apply to services provided by an agency of the government of the United States.

(d) In order to demonstrate compliance with the standards contained in this chapter, exempt providers may voluntarily apply for:

1. Approval of vehicle(s) and equipment, or
2. Certification of vehicle(s), equipment and personnel.

8:40-2.6 Surveys

(a) Authorized representatives of the Department shall conduct surveys to determine compliance with this chapter.

(b) Survey visits may be made at any time to any location used or occupied by the licensee.

(c) In recognition of the necessity to determine compliance with all sections of this chapter, authorized representatives of the Department may survey a vehicle whenever it is in-service provided that no representative of the Department shall stop any vehicle when it is traveling on a public road. For the purpose of such a survey, in-service shall mean:

1. The presence of the vehicle at a health care facility or other place of medical care, or
2. Picking up, transporting or discharging any patient.

(d) In recognition of the necessity to determine compliance with the vehicle and other related standards of this chapter, authorized representatives of the Department may survey an out-of-service vehicle at any time.

(e) Survey visits shall, at the discretion of authorized representatives of the Department, include:

1. A review of all required records;
2. Conferences with staff and patients;
3. Audit of business locations, vehicles, equipment and qualifications of staff;
4. Riding within a vehicle and/or accompanying staff providing services.

(f) The licensee and its employees shall permit authorized representatives of the Department to make such surveys as the Department deems necessary.

8:40-2.7 Application for licensure and/or vehicle decals or licenses

(a) Following acquisition of a Certificate of Need, any person, public or private institution, agency or business concern desiring to be licensed or relicensed to operate Invalid Coach Services and/or Ambulance Services or to secure a vehicle decal or license shall apply to the Commissioner on

forms prescribed by the Department. Forms are available from:

Office of Emergency Health Services

New Jersey State Department of Health

[Division of Health Facilities Evaluation]

CN *[367]* *363*

Trenton, NJ 08625

(b) The Department shall charge a non-refundable fee of \$50.00 for the filing of an application to license, or relicense, a provider.

(c) The Department shall charge a non-refundable fee of \$20.00 for the filing of an application to license, or relicense, each vehicle.

(d) Each set of application(s) submitted to the Department shall be accompanied by a single check in the correct amount made payable to "Treasurer, State of New Jersey."

(e) Upon receipt of the required forms, authorized representatives of the Department shall survey (or resurvey) the licensee and/or the vehicles to determine compliance with this chapter.

(f) The Department shall notify the licensee in writing of any deficiencies found during the survey.

8:40-2.8 Temporary provider permit

Upon finding that the licensee is in compliance with this chapter, the Department shall issue new applicants a temporary provider permit valid for six months. The permit shall be prominently displayed at the licensee's principal place of business.

8:40-2.9 Full provider license

(a) A full license, valid for a period of 12 months or less, shall be issued on expiration of the temporary permit, if periodic surveys by the Department have determined that the licensee is in compliance with this chapter.

(b) The full license, unless sooner suspended or revoked, shall be renewed each year on the original licensure date, contingent upon the licensee:

1. Applying for license renewal; and
2. Continuing to comply with this chapter as determined by periodic surveys by the Department.

(c) The full license shall be prominently displayed at the licensee's principal place of business.

8:40-2.10 Vehicle decals and licenses

(a) Upon finding that the vehicle and required equipment is in compliance with this chapter, the Department shall *[issued]* ***issue*** a decal or a license for the vehicle. Except as provided in N.J.A.C. 8:40-6.4(b), the decal shall be valid for the same period as the temporary permit or full license.

(b) The decal shall be affixed to the lower right corner of the window of the rear (curb side) door into the patient compartment of the vehicle for which the decal was issued. The license shall be displayed within the patient compartment.

8:40-2.11 Vehicle recognition number

In recognition of the need for the public to be able to identify specific vehicles licensed by the Department ***and to avoid confusion between firms with similar appearing names,*** each vehicle shall have a vehicle recognition number. The licensee shall, with the approval of the Department, permanently assign a unique non-duplicated one, two, or three digit Arabic number to each vehicle.

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8:40-2.12 Waiver

(a) The Commissioner or his or her designee may grant a waiver of parts of this chapter if, in his or her opinion, such a waiver would not:

1. Endanger the life, safety or health of any person who utilizes the service, or
2. Adversely affect the provision of the service.

(b) A licensee seeking a waiver of part(s) of this chapter (such as to provide specialized transport) shall apply in writing to:

Office of Emergency Health Services
New Jersey State Department of Health
[Division of Health Facilities Evaluation]
CN *[367]* *363*
Trenton, NJ 08625

8:40-2.13 Non-transferability

No permit, license or decal issued by the Department under this chapter is assignable or transferable. Any permit, license or decal shall be immediately void if the ownership of the agency and/or vehicle changes.

8:40-2.14 Return of vehicle decal or license

(a) The licensee shall return to the Department the scrapings of the vehicle decal(s) or the license:

1. Concurrent with the surrender or termination of its license, or
2. When the vehicle is sold or becomes unusable.

8:40-2.15 Discontinuance of vehicle use

(a) In order to protect the public health, safety and welfare, an authorized representative of the Department is empowered to place an "Out-of-Service" sticker on any vehicle licensed under this chapter when a survey has determined that the vehicle, equipment, or staffing poses an imminent threat to the health, safety or welfare of the public or to patients using the service.

(b) For the purpose of this section, imminent threat may include, but is not limited to:

1. Serious and apparent automotive defects such as faulty brakes, exhaust system or tires, or
2. Serious and apparent equipment defects such as absent or faulty oxygen, resuscitation or aspiration equipment.

(c) The licensee shall immediately cease to utilize the vehicle to provide any services authorized under this chapter if an "Out-of-Service" sticker is placed on the vehicle. The licensee shall ensure that the "Out-of-Service" sticker is not removed from the vehicle, except as provided in (d) or (e) below. The licensee shall have the right to appeal to the Commissioner for a hearing concerning the placement of the "Out-of-Service" sticker.

(d) Except as provided in (e) and (f) below, an "Out-of-Service" sticker shall only be removed by an authorized representative of the Department upon a finding that the applicable deficiencies have been corrected. Correction of deficiencies could include, but is not limited to:

1. The vehicle has been repaired or has successfully passed all tests conducted by the N.J. Division of Motor Vehicles when there was an apparent automotive defect, or
2. The equipment has been repaired or replaced when there was an apparent equipment defect.

(e) The administrator of the licensee may request the on-duty station supervisor, or acting supervisor, of a New Jersey Division of Motor Vehicles Inspection Station (operated and

staffed by employees of the New Jersey Division of Motor Vehicles) to remove an "Out-of-Service" sticker when:

1. The sticker was placed upon the vehicle solely because of apparent automotive defects, and
2. The vehicle has successfully passed all tests conducted by the N.J. Division of Motor Vehicles, provided

3. The licensee advises the Department by telegram or hand-delivered written notice within 12 hours of the removal of the sticker.

(f) For purposes of (e) above, the on-duty station supervisor, or acting supervisor of a New Jersey Division of Motor Vehicles Inspection Station operated and staffed by employees of the New Jersey Division of Motor Vehicles *[,]* is authorized to, but need not, remove such an "Out-of-Service" sticker.

8:40-2.16 Action against a licensee

(a) Violation of any of the provisions of this chapter may result in action to impose a fine. ***(See N.J.S.A. 26:2H-13 and 26:2H-14 for authority and maximum fines.)***

(b) Violation of N.J.A.C. 8:40-3.15 (Required insurance coverage) shall result in action to revoke the license of the provider.

(c) Violations shall be considered as a single, different occurrence for each calendar day the violation occurs or remains uncorrected.

(d) If the Department determines that operational or safety deficiencies exist, it may require that all or part of the services provided under this chapter by the licensee cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his designee shall notify the licensee in writing of such determination.

(e) Should the firm or the owner(s) or the administrator(s) be convicted of Medicare or Medicaid fraud, action will be taken to revoke the license of the provider.

8:40-2.17 Hearings

Except as provided in N.J.A.C. 8:40-2.15, no permit, license or vehicle decal shall be suspended or revoked and no fine shall be imposed without affording the licensee an opportunity for a *[prior]* hearing. In the event an out-of-service sticker has been placed on a vehicle pursuant to N.J.A.C. 8:40-2.15, the hearing shall be held within 10 days unless an adjournment is requested by the licensee. The procedures governing all hearings shall be in accordance with the Administrative Procedure Act N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 26:2H-1 et seq. and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1 et seq.

SUBCHAPTER 3. GENERAL REQUIREMENTS

8:40-3.1 Agency ownership

(a) The ownership of the institution, agency or business concern applying for licensing and the ownership of the vehicle(s) shall be disclosed to the Department. Proof of this ownership shall be made available to representatives of the Department. Any proposed change in ownership shall be reported to the department in writing 30 days prior to the change.

(b) No licensed service shall be owned or operated by any person convicted of a crime*, **including conviction of Medicare and/or Medicaid fraud,***relating adversely to the person's capability of owning or operating the service.

(c) The ownership of the agency shall assume full legal responsibility for compliance with this chapter.

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8:40-3.2 Administrator required

(a) The licensee shall designate an administrator who shall be responsible for the day-to-day operation of the service.

(b) The licensee or the administrator shall designate one or more alternates to act in the administrator's absence.

(c) The Department shall be informed of the name and title of the administrator and his or her alternate(s) within 14 days of appointment.

8:40-3.3 Written policies, procedures and task outlines

(a) The licensee shall develop written policies, procedures and task outlines to ensure compliance with the requirements of this chapter.

(b) The policies, procedures and task outlines shall be utilized by all staff of the licensee.

8:40-3.4 Business locations

(a) The licensee shall maintain a principal place of business at one location. The Department shall be informed of the specific location of the principal place of business and shall be notified 30 days in advance of any change in the location of the principal place of business.

(b) The licensee may park or store its vehicles at location(s) not under the licensee's control (such as at employees' homes or upon public streets), consistent with local ordinances. Upon request, the licensee shall inform the Department of all such locations where its vehicles are parked or stored.

8:40-3.5 Report of unusual occurrences

(a) The licensee shall immediately notify the Department by telephone, followed by a written confirmation within 72 hours, of:

1. Any death or any injury requiring hospitalization which occurred to patients being transported by the licensee's Invalid Coach or Transport Ambulance.

2. Any death, or any injury requiring hospitalization, which occurred to any on-duty personnel of the licensee.

3. Any fire on or within the licensee's vehicle(s) or business location(s) resulting in any damage to records.

4. Any removal of a vehicle from service for a period greater than 30 days.

(b) The required written confirmation shall include any additional information known to the licensee, including the condition of, and prognosis for, injured persons; copies of any official reports; and the licensee's estimate of the degree of disruption of service.

8:40-3.6 Advertising restrictions

(a) No licensee shall advertise or represent that it provides any health care service(s) other than those services it is licensed to provide.

(b) Invalid Coach licensees may advertise their services under generic headings such as "ambulances" in the Yellow Pages (R) and similar listings. The actual advertisement under such a generic heading shall clearly advertise only those services the licensee is licensed to provide.

(c) No advertisement for Invalid Coach Services shall give the impression that the licensee provides Ambulance Services and shall be void of any word or expression indicating emergency medical services, including, but not limited to, "emergency," "call direct," "immediate response" and "eliminate delay."

(d) The words "emergency," "24-hour service," "immediate response," "eliminate delay" or similar expressions shall only appear in advertisements for Emergency Ambulance Services and only when the licensee provides continuous,

around-the-clock answering of telephone requests-for-service by a person qualified to:

1. Promptly summon staff (if necessary); and/or

2. Dispatch assistance.

(e) The words "Paramedic," "Mobile Intensive Care," "Intensive Care," "Coronary Care" or "Special Care," or abbreviations of such words, shall only appear in advertisements when the provider is authorized to provide Mobile Intensive Care Unit Services in accordance with N.J.S.A. 26:2K-2 et seq.

(f) All advertisements shall include the name under which the provider is licensed by the Department.

8:40-3.7 Minimum personnel requirements

(a) Each person who operates a motor vehicle licensed under this chapter shall possess a valid driver's license, as required under N.J.S.A. 39:3-10 (Title 39, Motor Vehicle and Traffic Regulations).

(b) Each person who staffs or operates a vehicle licensed under this chapter:

1. Shall be at least 18 years old;

2. Shall dress in clothing, including any outerwear, of a similar uniform appearance;

3. Shall wear the following identification:

i. His or her first and/or last name above the left breast;

ii. Name of licensee.

4. Shall not wear or display any identification which suggests or indicates affiliation with any other organization or agency. However, identification may be displayed which indicates the person's level of training or personal or licensee membership in a professional association or society.

5. Shall carry upon his or her person valid documentation, or other proof thereof, of his or her training as may be required in this chapter.

(c) Each person who provides patient care (as part of any service licensed under this chapter) shall possess a license, registration, certification or training certificate valid in the State of New Jersey for the type or level of patient care he or she is providing. No person shall be allowed to provide a type or level of patient care beyond the level he or she is lawfully eligible to provide in the State of New Jersey.

(d) No person shall be allowed to staff a vehicle licensed under this chapter while displaying any patch or other symbol indicating a level of training he or she has not attained or is not eligible to provide.

(e) No person shall be allowed to staff or operate a vehicle licensed under this chapter:

1. While under the influence of intoxicating liquor or narcotic or habit forming drugs; or

2. In a reckless manner; or

3. At excessive speed.

8:40-3.8 Personnel files required

A personnel file shall be maintained for each employee. The file shall include the employee's name, home address, documentation of training and expiration date of current training certification or licensure.

8:40-3.9 Maintenance of records

(a) The licensee shall maintain full, complete and accurate records as required in this chapter. No required record shall be falsified, altered or destroyed.

(b) The licensee shall keep a copy of each required record at its principal place of business. The records shall be available to authorized representatives of the Department during normal business hours.

HEALTH

ADOPTIONS

(c) The licensee shall retain and safely store all required medical records for at least ten years and all other required records for at least five years. In the event the licensee ceases operation for any reason, the licensee shall arrange for the safe storage of required records at a place, and in a manner, acceptable to the Department.

8:40-3.10 General vehicle requirements

(a) Motor vehicles licensed under this chapter shall be registered and operated in accordance with Title 39 Motor Vehicle and Traffic Regulations of the State of New Jersey.

(b) Vehicles registered as motor vehicles in New Jersey shall display a valid motor vehicle inspection decal issued by the New Jersey Division of Motor Vehicles. The vehicle shall only be used to provide service after it has successfully passed all motor vehicle tests conducted by the New Jersey Division of Motor Vehicles, or by an authorized Reinspection Station.

(c) Vehicles registered as motor vehicles in other states shall display a valid motor vehicle inspection decal issued in accordance with the requirements of the state registering the vehicle. The vehicle shall only be used to provide service after it has successfully passed all tests conducted in accordance with the requirements of the state registering the vehicle.

(d) The vehicle shall be in safe operating condition. All required vehicle equipment shall be functional and operable when the vehicle is in service.

(e) The interior of the vehicle shall be designed for the safety of patients and staff and the patient compartment shall have the following safety and sanitary features:

1. There shall be no protruding edges.
2. Exterior corners (which are corners which "point-out") shall be "rounded" or covered with a padded material.
3. Ceiling shall be finished with a padded material or with a flat even surface.
4. The floor shall have a flat even surface and be covered with a slip resistant material.
5. All interior surfaces shall be covered with stain resistant material which is impervious to blood, vomitus, grease, oil and common cleaning materials.

(f) The speedometer and odometer shall accurately display the vehicle's speed and distance traveled in accordance with the accuracy standard contained in SAE Recommended Practice Standard J678 e—Speedometers and Tachometers.

8:40-3.11 Motor vehicle chassis, body and components

(a) The motor vehicle chassis, body and components shall be standard commercial products and shall comply with all Federal Motor Vehicle Safety Standards (FMVSS) and Federal regulations applicable or specified for the year of manufacture.

(b) The curb weight and payload weight shall not exceed the gross motor vehicle weight rating as determined by the manufacturer.

(c) Tires shall comply with FMVSS 120 and shall be appropriate for the Gross Vehicle Weight of the vehicle. Radial and non-radial tires shall not be "mixed" on the vehicle.

(d) The vehicle exhaust system shall be in accordance with Federal Motor Carrier Safety Regulation, Part 393:83. The exhaust shall discharge beyond the side(s) of the vehicle and away from fuel tank filler pipe(s) and away from door(s) to minimize the amount of fumes and contaminants entering the vehicle.

(e) The completed/modified vehicle's center of gravity shall be within the parameter recommended by the chassis manufacturer.

(f) All seats shall comply with FMVSS 207. Safety belts/restraints and anchorages for seats and for occupied wheelchairs shall comply with FMVSS 208, 209 and 210.

(g) Safety belts/restraints shall be provided for each person transported in the vehicle.

(h) All glazing shall comply with FMVSS 205.

8:40-3.12 Vehicle heater/air conditioner

(a) The vehicle shall have a functional heater and air conditioner.

1. The heater shall, within 20 minutes after initial engine start up, provide an inside temperature of 68° to 72°F when outside temperature is below 65°F.

2. The air conditioner shall, within 45 minutes after engine start up, provide an inside temperature:

- i. Of 68° to 72°F when the outside temperature is between 75° and 85°F, and
- ii. At least 13°F below the outside temperature when the outside temperature is over 85°F *.*

8:40-3.13 Restrictions on carbon monoxide concentrations

(a) Carbon monoxide concentrations within the vehicle shall not be greater than 10 ppm (parts per million) above the outside ambient carbon monoxide concentration.

(b) The vehicle exhaust system shall be in good condition in order to limit the amount of carbon monoxide and other toxic gases and fumes which could enter the vehicle. The vehicle shall not be used to transport patients if the exhaust system has:

1. Loose or leaking *j*oints, or
2. Holes, leaking seams, or patches, or
3. A tail pipe end which is pinched or damaged, or
4. A tail pipe end which discharges under, or at the edge of, the vehicle body.

(c) The vehicle exterior, doors, window*s*, and related gaskets shall be in good condition in order to limit the entrance of carbon monoxide and other toxic gases and fumes into the vehicle. Carbon monoxide shall not enter the vehicle at rates greater than 10 ppm ***above the general ambient carbon monoxide concentration***.

(d) The vehicle shall be tested for interior carbon monoxide, in a manner acceptable to the Department, at least once every 12 months.

8:40-3.14 Sanitation requirements

(a) The interior of the vehicle, including all areas used for storage, and the equipment and supplies within the vehicle, shall be kept clean and sanitary. A disinfectant shall be routinely applied to all contact surfaces. The floor, wall areas and equipment shall be free of stains and odors.

(b) Exterior surfaces of the vehicle shall be routinely cleaned.

(c) Blankets and any other material shall be kept clean and in good repair.

(d) When the vehicle has been utilized to transport a patient known or suspected to have a communicable disease, other than a common cold, the vehicle shall be cleaned and all contact surfaces, equipment and blankets shall be disinfected prior to transportation of another patient.

(e) Pillows and mattresses shall be kept clean and in good repair. The pillow(s) and mattress(es) shall have protective, waterproof, stain resistant covers.

(f) Freshly laundered linen, or disposable sheets and pillowcases, shall be used in the transport of stretcher patients and shall be changed after each use.

(g) There shall be adequate, clean, dustproof storage for clean linen or for clean disposable sheets and pillow cases.

ADOPTIONS

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(h) Plastic bags and/or covered containers or compartments shall be provided for any soiled supplies carried within the vehicle.

(i) Where possible, only single-service implements shall be inserted into the patient's nose or mouth. These single-service items shall be wrapped and properly stored and disposed of after use. When reusable items, other than single-service items, are required, the items shall be kept clean and sanitary.

8:40-3.15 Required insurance coverage

(a) Each licensee shall maintain the required minimum insurance as outlined in (b)-(d) below, plus such additional insurance as the licensee may deem necessary, in order to be eligible to provide services under this chapter. The licensee shall discontinue any and all services licensed under this chapter in the event any portion of the required insurance is cancelled or becomes void.

(b) The licensee shall have and maintain at least \$300,000.00 of single limit coverage of "premises and operations" type general liability insurance.

(c) The licensee shall have and maintain at least \$100,000.00 of single limit bodily injury coverage, with at least \$300,000.00 coverage per occurrence, of "malpractice" type professional liability insurance.

(d) The licensee shall have and maintain at least \$100,000.00 of single limit bodily injury coverage, with at least \$300,000.00 per occurrence, and at least \$50,000.00 property damage coverage for each vehicle licensed under this chapter.

8:40-3.16 Provision of certificate of insurance

(a) The agency shall arrange for the firm providing the insurance to send a certificate of insurance and any ten-day notice of cancellation to the Department.

(b) The certificate of insurance shall:

1. Identify the insurance company(ies) policy number(s), type and amount of coverage;
2. Certify that the insurance is in force and;
3. Provide that the Department shall be sent a copy of any ten-day notice of cancellation.

8:40-3.17 Pneumatic testing required

(a) All respiratory equipment used to provide services licensed under this chapter shall be pneumatically tested every six months, and, if required by the manufacturer, at more frequent intervals, if necessary. At a minimum, the tests shall measure the:

1. Flow rate and vacuum pressure delivered by each aspirator required in N.J.A.C. 8:40-5.13 and 8:40-6.15.
2. Flow rate and inspiratory pressure delivered by each oxygen powered resuscitator required in N.J.A.C. 8:40-5.12 and 8:40-6.14.
3. ***Flow rate, inspiratory pressure and* * [D]**d*eflating/refilling time cycles of each bag-valve-mask resuscitator required in N.J.A.C. 8:40-5.12 and 8:40-6.14.**
4. Flow rate delivered by each oxygen flowmeter required in N.J.A.C. 8:40-5.11 and 8:40-6.13 and permitted in 8:40-4.9.
5. Pressure delivered by each oxygen system regulator required in N.J.A.C. 8:40-5.11 and 8:40-6.13 and permitted in 8:40-4.9.

(b) The required pneumatic test may be conducted by staff of the licensee or by an outside agency. All tests shall be conducted in accordance with the Pneumatic Testing Manual as published by and from the Department.

(c) The results of the pneumatic tests shall be kept on file at the licensee's principal place of business.

8:40-3.18 Biomedical equipment testing required

(a) In recognition that licensees may provide biomedical patient care equipment for hospital staff to use, any biomedical patient care equipment used to provide services licensed under this chapter shall be inspected and tested every six months, and, if required by the manufacturer, at more frequent intervals, if necessary.

(b) For the purposes of this section, biomedical patient care equipment includes, but is not limited to:

1. Cardiac resuscitators (that is, Thumpers (R));
2. Cardiac defibrillators and/or monitors;
3. Incubators;
4. Specialized respirators.

(c) The required tests shall be conducted by:

1. Qualified employees of the firm which manufactured the equipment; or
2. Qualified employees of a firm approved or authorized by the manufacturer; or
3. Biomedical engineering staff of a licensed New Jersey hospital; or
4. Biomedical engineering staff of the New Jersey Hospital Association (or of an affiliate); or
5. A recognized, independent testing laboratory.

(d) The requirements of (a) above do not apply to biomedical patient care equipment which is:

1. In the physical possession of a hospital, and
2. Is placed in the licensee's vehicle for treatment, during transportation, of a patient of that hospital, and
3. Is operated by the staff of that hospital.

(e) The results of the biomedical patient care equipment tests shall be kept on file at the licensee's principal place of business.

8:40-3.19 Physical behavioral restraints

(a) No patient shall be placed in, or transported in, physical behavioral restraints unless:

1. A physician or court has authorized the placement of the restraints, or
2. The patient is in the custody of a police or corrections officer, or
3. The medical condition of the patient mandates transportation to, and treatment at, a health care facility, and the patient manifests such a degree of behavior that he or she:
 - i. Poses serious physical danger to himself or herself or to others, or
 - ii. Causes serious disruption to ongoing medical treatment which is necessary to sustain his or her life or to prevent disability.

(b) No patient shall be kept in physical behavioral restraints for a period greater than one hour unless:

1. A physician or court has authorized the use of the restraints for longer than one hour, or
2. The patient is in the custody of a police or corrections officer.

(c) No physical behavioral restraint shall be of a type, or used in a manner, that causes undue physical discomfort, harm or pain to a patient. Hard restraints, such as handcuffs, are specifically prohibited unless the patient is in the custody of a police or corrections officer.

(d) The rationale for placing and/or transporting a patient in physical behavioral restraints, and the type of restraints used, shall be clearly stated in the call report required in N.J.A.C. 8:40-5.25 and 6.29.

(e) If restraints are applied by the ambulance staff after leaving the premises of the sending physician or hospital, a copy of the call report shall be provided to the sending physician or hospital within 48 hours.

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(f) The provisions of (a) through (e) above do not apply to automotive safety belts, litter patient restraints, and other safety restraints specifically required in this chapter.

SUBCHAPTER 4. SPECIFIC INVALID COACH REQUIREMENTS

8:40-4.1 Patient restrictions

(a) Except as prohibited in (b) below, non-emergency health care transportation by Invalid Coach Vehicles shall be provided to patients who are under the supervision and care of a physician and who:

1. Are ambulatory, or
2. Are wheelchair bound.

(b) Service shall not be provided to a patient who requires (based upon current medical condition or past medical history):

1. Transportation in a prone or supine position or who is bed or stretcher bound; or
2. Constant attendance due to a medical and/or mental condition; or
3. Aspiration; or
4. Management or observation of intravenous fluids and/or intravenous medications, or
5. Emergency medical services or other emergency services, such as emergency inter-hospital transfer; or
6. Treatment in the Emergency Department of a hospital (for other than routine, non-emergency, follow-up care of a previously diagnosed condition); or
7. Treatment in, or admission to, the Obstetrical Unit (Labor and Delivery Suite) or the Intensive and/or Coronary Care Unit of a hospital; or
8. Transportation in physical behavioral restraints.

8:40-4.2 General vehicle requirements

(a) When in-service, the Invalid Coach Vehicle shall meet the requirements of this chapter.

(b) Each vehicle used by the licensee to provide Invalid Coach Service shall have and display a valid Invalid Coach license decal issued by the Department.

8:40-4.3 Patient compartment requirements and dimensions

(a) The vehicle shall have a patient compartment. There need not be a partition between the driver's seating area (driver's compartment) and the patient compartment.

(b) The patient compartment shall have the following minimum interior dimensions:

1. Height: At least 52 inches between the floor and ceiling when measured at, or near, the center of the patient compartment.
2. Width: At least 56 inches between the vehicle interior sides when measured at any point 42 inches above the floor. (The width of cabinets, etc. will be included when measurements are made.)
3. Length: At least 92 inches between the interior surface of the rear door and the rear of the driver's seat, or, if present, the surface of any partition, when measured at floor level.

(c) The patient compartment shall have at least two exterior doorways:

1. One doorway shall be at the rear of the vehicle; the other shall be at the curbside of the vehicle.
2. Each doorway ***opening*** shall be at least ***[30]* *28*** inches wide and at least 44 inches high.
3. The doorways shall not be obstructed except as permitted in N.J.A.C. 8:40-4.4(a).

4. The door(s) to each patient compartment doorway shall be capable of being opened and being used from inside the patient compartment and from the exterior of the vehicle.

5. There shall be windows in each door of the patient compartment. Rear windows shall be fixed, non-opening.

(d) The patient compartment shall be provided with a built-in lighting system. The lighting system shall use white or clear lenses. The lighting shall not interfere with the driver's vision and shall be located so that no glare is reflected into the driver's eyes or line of vision.

(e) There shall be wheelchair restraint positions to secure and immobilize each occupied wheelchair and/or stairchair transported in the vehicle. When in use, each wheelchair restraint position shall secure and immobilize one wheelchair and/or stairchair in a crashworthy manner and so that movement of the occupied wheelchair and/or stairchair does not exceed one inch.

8:40-4.4 Ramp or lift required

(a) There shall be a ramp, lift or other device for the safe exit/entry of occupied standard size wheelchairs. While in use, the device shall be securely fastened to the vehicle and be capable of accommodating a load of at least 500 pounds. When in transit, the device shall be secured in a crashworthy manner and shall be positioned so as not to obstruct both of the required doorways.

(b) Any ramp shall have a slip resistant surface and provide a rigid interlocked surface when in use.

(c) Any device which relies on electric, hydraulic or other power for its operation shall be capable of manual operation by an unassisted person or there shall be a manually operated backup device.

8:40-4.5 Vehicle markings

(a) The trade name which appears on the license, issued by the Department, shall appear in a size not less than three inches high on the two exterior sides of the vehicle.

(b) The vehicle recognition number shall appear in a size not less than ***[four]* *three*** inches high on the rear and the two exterior sides of the vehicle.

(c) The International Symbol of Access for the Handicapped shall appear in a size not less than 12 inches high on the rear and the two exterior sides of the vehicle.

(d) Signs shall appear in the patient compartment which state "Smoking Prohibited: Violator Subject to Fine."

(e) The required markings shall appear in a color and shade which contrasts with the background on which they appear.

(f) To avoid the appearance of an emergency vehicle, the following shall not appear on the vehicle:

1. Symbol(s) consisting of or resembling the "Star of Life," a Greek cross or a Maltese cross.
2. Words, or abbreviations of such words, such as "Emergency," "Emergency Medical Technician," "Paramedic," "Mobile Intensive Care," "Coronary Care" or "Intensive Care."

(g) The word(s) "ambulance" or "emergency" or an abbreviation of the word(s) may only appear when the word is part of the lawful incorporated name of the licensee.

8:40-4.6 Emergency warning devices prohibited

No Invalid Coach vehicle shall be equipped with, or appear to be equipped with, audible or visible emergency vehicle warning devices, such as flashing or rotating lights, sirens or airhorns. No licensee shall apply for, or possess, an emergency vehicle light and siren permit (as authorized under N.J.S.A. 39:3-50) for any vehicle licensed solely as an Invalid Coach.

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8:40-4.7 Litters and stretchers prohibited

No stretcher or litter shall be carried on, or within, the vehicle.

8:40-4.8 General equipment and supplies requirement

(a) When in-service, the vehicle shall be equipped with all the required equipment and supplies.

(b) All equipment and supplies shall be stored in a safe, crashworthy manner.

8:40-4.9 Oxygen administration devices

(a) Oxygen administration devices may, but need not, be carried in the vehicle. If carried, the oxygen and related equipment shall comply with the requirements of this section and the vehicle shall be staffed in accordance with the requirements of 8:40-4.12(a).

(b) Any installed oxygen system shall be capable of safely storing and supplying a minimum of 600 liters of medical oxygen. The oxygen cylinder controls shall be accessible from inside the vehicle. Cylinder opening handles or wrenches shall be affixed to, or shall be chained and clipped with, the oxygen cylinder. Any oxygen piping and/or hose shall be nonferrous and shall be suitable for medical oxygen. Any installed oxygen cylinder shall be retained in an oxygen tank holder certified by the manufacturer to comply with AMD Standard 003-Oxygen Tank Retention System.

(c) Any portable oxygen system shall be capable of safely storing and supplying at least 300 liters of medical oxygen. Cylinder opening handles/wrenches shall be chained to the regulator or affixed to the cylinder.

(d) Any oxygen system shall have a medical oxygen pressure reducing and regulating valve, an excess pressure relief valve set at 200 PSI maximum, and a gauge range of 0 to 2,500 PSI (4,000 PSI tested). The regulator shall be ***[present]* *present*** at 50 + / - 10 PSI line pressure.

(e) Any oxygen system shall have an oxygen flowmeter. The oxygen flowmeter shall have a gauge or dial with a range of 0 to 15 liters per minute in calibrated increments. The flowmeter on any portable oxygen system shall be non-gravity dependent.

(f) If oxygen administration equipment is carried, there shall be three clear adult size ***simple*** inhalation masks of the single service, ***[semi-open, non-rebreathing]*** type and two single service cannulas.

(g) If oxygen humidifiers (or nebulizers) are utilized, a new, unused, single service humidifier (or nebulizer) shall be used for each patient.

(h) Each oxygen cylinder shall:

1. Contain only medical grade oxygen;
2. Be color coded green;
3. Have a current hydrostatic test date; and
4. Be tagged (Full, In Use, Empty).

8:40-4.10 Safety equipment

(a) The vehicle shall have the following minimum safety equipment:

1. ***[There]* *Three*** portable red emergency reflective safety triangles;
2. One flashlight, two D cell size or larger;
3. One ***or two*** fire extinguisher*s*, U.L. rated at least 1A 10BC ***in total*** with current inspection tag.

8:40-4.11 Required staff

While in-service, each Invalid Coach vehicle shall be staffed by at least one person who shall meet the requirements of N.J.A.C. 8:40-3.7 and this subchapter. Any additional staff persons shall meet the requirements of N.J.A.C. 8:40-3.7.

8:40-4.12 Required training of staff

(a) If oxygen administration devices are carried in the vehicle, the required staff person shall possess valid certification as an Emergency Medical Technician-Ambulance, issued by the Department.

(b) If oxygen administration devices are not carried in the vehicle, the required staff person shall possess valid certification as:

i. An Emergency Medical Technician-Ambulance, issued by the Department; or

ii. An Invalid Coach Attendant, issued by the Department.

(c) In recognition of the necessity for staff to be trained, the required person may, for 24 full calendar months after the operative date of this chapter ***[that is, until April 30, 1987]***, possess valid documentation of "Advanced First Aid and Emergency Care" training, issued by the American Red Cross, ***or "CIM/First Responder" training, issued by the Department,*** in lieu of Department certification as an Invalid Coach Attendant.

8:40-4.13 Duties of staff

(a) The collective duties of each person who staffs an Invalid Coach vehicle shall include, but are not limited to:

1. Assisting patients to enter and to leave the vehicle, supervising the well being of patients while in the vehicle and ensuring the privacy and comfort of patients;

2. Assuring that all wheelchairs are restrained in the required restraints and requiring that the driver and all vehicle occupants wear automotive safety belts;

3. Operating the motor vehicle in a safe manner, starting and stopping the vehicle slowly and smoothly, and complying with all applicable motor vehicle laws;

4. Reporting verbally to the appropriate personnel when a patient is brought to a health care facility or other place of medical care;

5. Prohibiting smoking within the patient compartment and, if there is no solid bulkhead between the driver's compartment and patient compartment, within the driver's compartment.

8:40-4.14 Call report

(a) A call report shall be completed each time a patient is transported. The call report need not be prepared by the staff assigned to the vehicle. ***One call report will suffice for both legs of a round trip.*** The call report, which may be combined with another report or form, shall contain the following information typed or printed in ink:

1. Patient's name and home address;

2. Succinct description, including any observed changes, if the patient's condition worsens;

3. Vehicle recognition number, name(s) of driver and any other staff, and date.

8:40-4.15 Radio communications

(a) Any radio communications shall comply with rules and regulations of the Federal Communications Commission. The Department shall be provided with a copy of any FCC license(s) issued to the licensee.

(b) In recognition that:

1. Radio frequencies are a limited natural resource which cannot meet the needs of all health care providers (and the patients that they serve); and

2. Invalid Coach Service is elective and non-emergent and does not involve the rendition of medical services; and

3. Use of certain radio frequencies by Invalid Coach Services could cause harmful radio interference to, and delay the

provision of, essential and emergent medical services to patients served by other types of health care providers (such as Emergency Ambulance Services and Mobile Intensive Care Services);

4. Any radio communications shall comply with the radio frequency allocation cited in Table 4 of the JEMS Communications Plan published by the Department. ***The vehicle does not have to be equipped with a "JEMS radio."*** Specifically, the following radio frequencies shall not be used in radio communications to, or from, Invalid Coach vehicles:

i. Any of the UHF radio frequencies known as "Med 1" through "Med 10."

ii. Any of the VHF radio frequencies listed in Appendix C of this chapter.

iii. Any of the following radio frequencies: 155.280 MHz, 155.340 MHz, 153.785 MHz.

***5. The provisions of (b)4 (above) shall not apply if:**

i. **The Federal Communications Commission determines that Invalid Coach vehicles are eligible to use "Special Emergency Radio Frequencies"; and**

ii. **The provider was issued a Federal Communications Commission license before January 1, 1978 to use one (or more) of the cited frequencies; and**

iii. **The provider is using that same frequency(ies); and**

iv. **Use of that frequency(ies) does not cause harmful interference to other health care providers operating in accordance with the JEMS Plan.**

6. **For the purpose of this section, harmful interference is defined as:**

i. **A written complaint alleging radio interference from a health care provider(s) operating in accordance with the JEMS Plan; and**

ii. **A finding by the New Jersey Office of Frequency Coordination (or, if their services are not available, the Department) that the provider's radio operations are causing harmful interference.***

SUBCHAPTER 5. SPECIFIC TRANSPORT AMBULANCE REQUIREMENTS

8:40-5.1 Patient restrictions

(a) Except as prohibited in (b) below, non-emergency health care transportation by Transport Ambulance vehicles shall be provided to patients who are under the supervision and care of a physician and who:

1. Are ambulatory, or
2. Are wheelchair bound, or
3. Require transportation in a prone or supine position or who are bed or stretcher bound, or
4. Require constant attendance due to a medical and/or mental condition.

(b) Service shall not be provided to a patient who requires (based upon current medical condition or past medical history):

1. Aspiration; or
2. Management or observation of intravenous fluids and/or intravenous medications, or
3. Emergency medical services or other emergency services, such as emergency inter-hospital transfer, or
4. Treatment in the Emergency Department of a hospital (for other than routine, non-emergency, follow-up care of a previously diagnosed condition), or
5. Treatment in, or admission to:
 - i. The Obstetrical Unit (Labor and Delivery Suite) of a hospital, or
 - ii. The intensive and/or Coronary Care Unit of a hospital, or

- iii. The neonatal or newborn unit of a hospital, however
6. If a patient suddenly and unexpectedly requires Emergency Department treatment after transportation has begun, that patient shall be transported to an Emergency Department of a hospital.

8:40-5.2 General vehicle requirements

(a) When in-service, the Transport Ambulance vehicle shall meet the requirements of this chapter.

(b) Each vehicle used by the licensee to provide Transport Ambulance Service shall have and display a valid Transport Ambulance license decal, issued by the Department.

8:40-5.3 Patient compartment requirements

(a) The vehicle shall have a patient compartment. There need not be a partition between the driver's seating area (driver's compartment) and the patient compartment.

(b) The patient compartment shall have at least two exterior doorways.

1. One doorway shall be at the rear of the vehicle; the other at the curbside of the vehicle.

2. Each doorway opening shall be at least *[30]* *28* inches wide and at least 44 inches high.

3. The doorways shall not be obstructed except as permitted in N.J.A.C. 8:40-5.5(a).

4. The door(s) to each patient compartment doorway shall be capable of being opened and being used from inside the patient compartment and from the exterior of the vehicle.

5. There shall be a window in each door of the patient compartment. Rear windows shall be fixed, non-opening.

(c) The patient compartment shall be provided with a built-in lighting system. The lighting system shall use white or clear lenses. The lighting system shall not interfere with the driver's vision and shall be located so that no glare is reflected into the driver's eyes or line of vision.

(d) There shall be space and seating for an attendant within the patient compartment. The seat shall be at the head of the required litter and face rearward or shall be alongside the required litter. The seat shall be equipped with a safety belt.

(e) There shall be at least one aisle at least 10 inches wide next to the required wheeled litter.

(f) Occupied wheelchairs and/or stairchairs may, but need not, be transported in the vehicle. If transported in the vehicle, there shall be wheelchair restraint positions to secure and immobilize each occupied wheelchair or stairchair. When in use, each wheelchair restraint position shall secure and immobilize one wheelchair or stairchair in a crashworthy manner and so that movement of the occupied wheelchair or stairchair does not exceed one inch while the vehicle is in motion.

(g) There shall be sufficient crashworthy cabinets and other storage spaces to safely accommodate all equipment and supplies.

8:40-5.4 Patient compartment dimensions

(a) The patient compartment shall have the following minimum interior dimensions:

1. Height: At least 52 inches between the floor and ceiling when measured at, or near, the center of the patient compartment.

2. Width: At least 54 inches between the vehicle interior sides when measured at any point 22 inches above the floor and at least 47 inches between the sides when measured at any point 46 inches above the floor. (The width of cabinets, etc. will be included when measurements are made.)

3. Length: At least 92 inches between the interior surface of the rear door and the rear of the driver's seat, or, if present, the surface of any partition, when measured at floor level.

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8:40-5.5 Ramp or lift

(a) There may, but need not, be a ramp, lift or other device for the safe exit/entry of occupied standard size wheelchairs. While in use, any such device shall be securely fastened to the vehicle and be capable of accommodating a load of at least 500 pounds. When in transit, the device shall be secured in a crashworthy manner and shall be positioned so as not to obstruct both of the required doorways.

(b) Any ramp shall have a slip resistant surface and provide a rigid interlocked surface when in use.

(c) Any device which relies on electric, hydraulic or other power for its operation shall be capable of manual operation by an unassisted person or there shall be a manually operated backup device.

8:40-5.6 Vehicle markings

(a) The trade name which appears on the license, issued by the Department, shall appear in a size not less than three inches high on the two exterior sides of the vehicle.

(b) The vehicle recognition number shall appear in a size not less than ~~four~~ **three** inches high on the rear and the two exterior sides of the vehicle.

(c) The International Symbol of Access for the Handicapped shall appear in a size not less than 12 inches high on the rear and the two exterior sides of the vehicle.

(d) A sign shall appear in the patient compartment which states: "Smoking Prohibited: Violator Subject to Fine."

(e) The required markings shall appear in a color and shade which contrasts with the background on which they appear.

(f) The following shall not appear on the vehicle:

1. Symbol(s) consisting of a:

i. "Star of Life," or

ii. Greek Cross, or

iii. Maltese Cross, unless the vehicle is operated by a Fire Department.

2. The following words, or abbreviations of such words: "Coronary Care," "Special Care," "Intensive Care," "Mobile Intensive Care," or "Paramedic."

(g) The words "Emergency Medical Technician," or abbreviations of such words, shall only appear when the vehicle is staffed by two Emergency Medical Technicians.

(h) The word "ambulance," or an abbreviation of the word, may only appear when:

1. It is accompanied by the word "Transport" and appears as "Transport Ambulance," or

2. It is part of the lawful incorporated name of the licensee, and

3. The words "Transport Ambulance" appear on the vehicle in characters the same size as the word "ambulance."

(i) The word "Emergency," or an abbreviation of the word, shall only appear when it is part of the lawful incorporated name of the licensee.

8:40-5.7 Emergency warning devices

(a) When authorized by a permit issued in accordance with N.J.S.A. 39:3-50, the vehicle shall be equipped with:

1. Emergency warning lights which provide 360 degrees of visibility during emergency missions and are installed in accordance with SAE Standard J595b and/or SAE Recommended Practice J845, and an

2. Emergency warning siren.

(b) The following warning devices are prohibited:

1. Emergency warning lights which are not red in color. As clarification, either the bulb or the lens shall be red; the other may be clear.

2. Flashing headlight devices.

8:40-5.8 Use of emergency warning devices

(a) Emergency Warning Devices ("lights and/or siren") shall only be utilized in providing pre-hospital service when:

1. At the scene of the call, and the use of emergency warning lights is necessary for safety reasons.

2. Transporting a patient and:

i. The patient's condition, suddenly and unexpectedly, worsens to constitute a medical emergency, and

ii. The use of emergency warning devices is necessary to expedite travel to a hospital in the judgment of the staff person caring for the patient, provided

iii. Use of emergency warning lights and/or siren does not contribute to a worsening of the patient's condition.

(b) Any airhorn shall not be used:

1. Between 11 P.M. and 7 A.M.

2. Any time a patient is being transported. This prohibition shall not apply when a test made by a qualified agency in accordance with AMD Standard 006 determines that the airhorn sound level within the patient compartment does not exceed 86 decibels (A scale).

8:40-5.9 General equipment and supplies requirement

(a) When in-service, the vehicle shall be equipped with all the required equipment and supplies at the start of each work shift. Expended supplies and/or damaged equipment shall be replaced whenever the vehicle is returned to its normal storage location. Equipment may be temporarily left on/with a patient, when medically necessary, without being replaced on the vehicle. A record shall be made on the call report (required in N.J.A.C. 8:40-5.25) of any equipment left on/with a patient.

(b) All equipment and supplies shall be stored within the vehicle in a safe, crashworthy manner. The storage location shall be dictated by the relative importance of the material. A succinct list of contents shall appear on the door of any interior storage compartment.

8:40-5.10 Standard patient transport devices

(a) There shall be a wheeled litter for the transport of stretcher bound patients. The litter shall be at least 72 inches long (when flat) and at least 20 inches wide. The litter shall have a mattress at least two inches thick. The litter and mattress shall be adjustable from a flat to a semi-sitting position. The litter shall be adjustable from a minimum height of 9 to 18 inches to a maximum height of 33 to 40 inches (measured to the top of the mattress). There shall be a pillow, pillowcase and sheet on the litter.

(b) There shall be a portable stretcher for the safe transport of stretcher bound patients up and down flights of stairs. The stretcher may be of the "Reeves" (R) type, folding type, orthopedic stretcher type or of the combination stretcher/stairchair type.

(c) There shall be a portable stairchair for the safe transport of ~~wheelchair bound~~ patients up and down flights of stairs. The stairchair may be of the combination stretcher/stairchair type and also satisfy the requirements of N.J.A.C. 8:40-5.10(b).

(d) Each litter and portable stretcher shall have three sets of two-inch wide patient restraints with quick release buckles (positioned at the chest, waist and knees.) The quick release buckles may be of the "slide through" or "metal to metal" type. ("Reeves" type stretchers may have other types of buckles.) Each stairchair shall have two sets of two-inch wide safety restraints with quick release metal buckles.

(e) While the vehicle is in motion, the wheeled litter and any occupied stretcher(s) shall be restrained by a litter fasten-

er(s). The wheeled litter fastener shall be certified by the manufacturer to comply with AMD Standard 004—Litter Retention System.

8:40-5.11 Oxygen administration devices

(a) The vehicle shall have an installed oxygen system capable of safely storing and supplying a minimum of 1,200 liters of medical oxygen. (3,000-liter capacity is recommended.) The oxygen cylinder controls shall be accessible from inside the vehicle. Cylinder opening wrench(es) or handles shall be affixed to, or chained and clipped with, the oxygen cylinder(s). Components and accessories for the oxygen system shall include nonferrous piping and low pressure hose suitable for medical oxygen at a flow rate of at least 200 liters per minute. Installed oxygen cylinder(s) shall be retained in an oxygen tank holder(s) certified by the manufacturer to comply with AMD Standard 003—Oxygen Tank Retention System.

(b) There shall be a portable oxygen system capable of safely storing and supplying at least 300 liters of medical oxygen. Cylinder handles/wrenches shall be chained to the regulator or affixed to the cylinder. There shall be at least one spare cylinder of at least 300-liter capacity.

(c) Each oxygen system shall have a medical oxygen pressure reducing and regulating valve, an excess pressure relief valve set at 200 PSI maximum and a gauge range of 0 to 2,500 PSI (4,000 PSI tested). The regulator shall be present at 50 + / - 10 PSI line pressure.

(d) Each required oxygen system shall have an oxygen flowmeter. Each oxygen flowmeter shall have a gauge or dial with a range of 0 to 15 liters per minute in calibrated increments. The flowmeter on the portable oxygen system shall be non-gravity dependent.

(e) There shall be six clear ***simple*** inhalation masks (three each in adult and child sizes) of the single service ***[, semi-open, non-rebreathing]*** type and two single service type canulas.

(f) If oxygen humidifiers (or nebulizers) are utilized, a new, unused, single service humidifier (or nebulizer) shall be used for each patient.

(g) Each oxygen cylinder shall:

1. Contain only medical grade oxygen;
2. Be color coded green;
3. Have a current hydrostatic test date; and
4. Be tagged (Full, In Use, Empty).

8:40-5.12 Resuscitation devices

(a) The vehicle shall be equipped with an oxygen powered resuscitator or with an adult size bag-valve-mask resuscitator.

(b) Any oxygen powered resuscitator shall provide:

1. 100 percent oxygen;
2. an instantaneous flow rate of at least 100 liters per minute;
3. Inspiratory pressure between 35 to 55 cm water pressure; and
4. ¹⁵/₂₂ mm fittings.

(c) Any bag-valve-mask resuscitator shall meet the following criteria:

1. Have a self-refilling bag without sponge rubber inside;
2. Bag volume shall be:
 - i. About 1,700cc for adults.
 - ii. 700 to 750cc for infants.
3. Any adult size bags shall be capable of deflating/refilling at least 25 times per minute at room temperature. Any infant size bag(s) shall be capable of deflating/refilling at least 40 times per minute at room temperature;
4. Valve shall be a true non-rebreathing valve and have ¹⁵/₂₂ mm fittings

(d) There shall be at least three transparent domed resuscitation face masks (one each in large adult, medium adult and child size) with 22 mm fittings.

(e) No resuscitation device shall be carried in the vehicle unless it is suitable for use by an Emergency Medical Technician and meets the criteria in (b) and/or (c) above.

8:40-5.13 Aspirator/suction devices

(a) There shall be an installed aspirator powered by the vehicle. ***[I]*** (A 12 volt dc (vdc) powered vacuum supply pump is recommended. The device shall be securely mounted and located to permit aspiration of a stretcher bound patient. The device shall meet the criteria contained in (b) below during the entire normal range of vehicle operation.

(b) Any suction device shall provide:

1. A flow rate of at least 30 liters per minute at the end of the suction tube, and
2. A vacuum pressure of at least 300 mm mercury suction within four seconds and a maximum vacuum pressure of at least 400 mm.

(c) Any suction device shall be equipped with a non-breakable collection bottle, a suction rinsing water bottle, and at least three feet of transparent or translucent suction tubing with an interior bore of at least one quarter inch. Three-eighths of an inch bore is recommended. There shall be one semi-rigid pharyngeal suction tip and at least eight suction catheters for each device (two each in 8 French, 10 French, 12 French and 14 French sizes).

(d) No suction device shall be carried in the vehicle unless it is suitable for use by an Emergency Medical Technician and meets the criteria contained in (b) above or in N.J.A.C. 8:40-5.18(a)4.

8:40-5.14 Airway maintenance supplies

(a) There shall be at least the following airway maintenance supplies.

1. Two mouth gags (bite sticks) single-service type;
2. Oropharyngeal Airways which meet A.N.S.I. Standard Z 79.3 (Oropharyngeal and Nasopharyngeal Airways), single-service type. There shall be two of each of the following (in A.N.S.I. Z 79.3 sizes):
 - i. 11 cm size (large adult);
 - ii. 9 cm size (medium adult);
 - iii. 7 cm size (child);
 - iv. 5.5 cm size (infant).

8:40-5.15 External cardiac compression support

A short spine board or a specially designed rigid board (such as a "CPR Board" (R)) shall be immediately available within the patient compartment.

8:40-5.16 Spine boards, orthopedic litter and splints

(a) The following spine boards, orthopedic litter and splints shall be carried in the vehicle:

1. One long spine board made of wood at least three quarters of an inch thick, or of equivalent material, 72 inches long by 18 inches wide with associated strap holes and full length three-quarter inch runners,
2. One short spine board made of wood at least one half of an inch thick or, of equivalent material, measuring 32 inches to 34 inches high. Body section ***16 to*** 18 inches wide by 20 inches to 22 inches high with associated strap holes;
3. Four straps, ***[2]* *two*** 2 inches wide by ***[9]* *nine*** feet long with quick release type metal buckles. ("Slide-through" type strongly recommended.);
4. The following padded board splints, each three inches wide with base material at least three-eighths inch thick:

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- i. Two 15 inches long;
- ii. Two 36 inches long;
- iii. Two 54 inches long.

5. One adult size, lower extremity traction splint either half-ring or padded ischial support type. Half-ring or ischial support about nine inches in diameter; overall length, when in use, at least 43 inches. Complete with all associated straps, heel stand and accessories.

8:40-5.17 Wound dressing and burn treatment supplies

(a) The following wound dressing and burn treatment supplies shall be carried in the vehicle:

1. Six conforming roller bandages, four or six inches wide by 5 yards long;
2. Twelve triangular bandages (cravat) measuring 36 inches by 36 inches by 51 inches when unfolded;
3. Six sterile, individually packed universal (or multi-trauma) dressings measuring at least ***nine*** inches by 30 inches when unfolded;
4. Twelve sterile, individually packed gauze pads at least four inches by four inches;
5. One roll three-inch wide adhesive type tape;
6. Two sterile, individually packed occlusive dressings (such as Vaseline (R) impregnated dressings);
7. One sterile, individually wrapped burn sheets;
8. One liter sterile saline solution in a plastic container(s) (for flushing injury sites).

8:40-5.18 Obstetrical kit

(a) An obstetrical kit shall be carried in the vehicle. The items shall be sterile and may be individually wrapped or be contained in a "pack." Any pack shall have an exterior itemized list of contents. Items shall include the following:

1. Four towels;
2. Twelve gauze compresses, four inches by four inches;
3. Four cord clamps;
4. One ear syringe, soft rubber (for newborn aspiration);
5. One receiving blanket;
6. Three pairs surgeons' type gloves;
7. One pair scissors.

8:40-5.19 Poison treatment supplies

(a) The following poison treatment supplies shall be carried in the vehicle:

1. Four liquid ounces of Syrup of Ipecac;
2. One packet activated charcoal.

8:40-5.20 Other patient care equipment

(a) There shall be the following other minimum patient care equipment;

1. Diaphragm-type stethoscope;
2. Aneroid-type blood pressure manometer and adult size cuff;
3. Glucose in form easily ingested by mouth (four sugar packets or one fluid ounce);
4. Four cloth blankets at least 60 inches by 80 inches in size.

(b) The licensee shall provide such other equipment and supplies as may be necessary, provided no equipment or supplies shall be carried which would permit rendering of care contrary to N.J.S.A. 45:9-1 et seq (Practice of Medicine and Surgery Act).

8:40-5.21 Safety equipment

(a) The vehicle shall have the following minimum safety equipment:

1. Three portable red emergency reflective safety triangles;

2. One flashlight, two D cell size or larger.
3. One ***or two*** fire extinguisher*s* U.L. rated at least 1A 10BC ***in total*** with current inspection tag.

8:40-5.22 Required staff

(a) When in-service, each Transport Ambulance vehicle shall be staffed by at least two persons ***(including any time the vehicle is used as an invalid coach)*** who shall meet the requirements of N.J.A.C. 8:40-3.7 and this subchapter. All additional staff persons of the licensee shall meet the requirements ***of*** N.J.A.C. 8:40-3.7.

(b) Staff persons of a hospital or of another agency who accompany a patient need not meet the requirements of N.J.A.C. 8:40-3.7(a) and (b).

8:40-5.23 Required training of staff

(a) Except as permitted in (b) below, each of the required staff persons shall possess current valid certification as an Emergency Medical Technician-Ambulance, issued by the Department.

(b) The second required person may possess the following training in lieu of Department certification:

1. Valid documentation of "Advanced First Aid and Emergency Care" training issued by the American Red Cross, and

2. Valid documentation of "Cardiopulmonary Resuscitation" training issued by the American Heart Association or the American Red Cross, ***[provided]* *or**

3. Valid documentation of "CIM/First Responder" training issued by the Department, provided*

[i]* *4 The person certified as an Emergency Medical Technician-Ambulance is in charge of patient care and accompanies patients being transported in the patient compartment.

8:40-5.24 Duties of staff

(a) The collective duties of the persons who staff a Transport Ambulance vehicle shall include, but are not limited to:

1. Providing prompt, efficient and effective emergency medical care to the patient(s);

2. Attending the patient(s) at all times and continually monitoring the patient's condition;

3. Assisting patients to enter and to leave the vehicle, supervising the well-being of patients while in the vehicle, and ensuring the privacy and comfort of patients;

4. Assuring that any stretcher, wheelchair or other patient transport device is safely restrained, patients are restrained and all vehicle occupants wear automotive safety belts. The staff person(s) caring for the patient need not wear a safety belt when providing essential life support such as CPR;

5. Operating the motor vehicle in a safe manner, starting and stopping the vehicle slowly and smoothly and complying with all applicable motor vehicle laws;

6. ***[Reporting]* *Reporting*** verbally to the appropriate personnel when a patient is brought to a health care facility or other place of medical care;

7. Summoning an ***[e]**E*mergency* *[a]**A*mbulance, *and an established Mobile Intensive Care Unit,*** if necessary for patient care;

8. Prohibiting smoking within the patient compartment.

8:40-5.25 Call report

(a) A call report shall be completed each time a patient is transported. The call report need not be prepared by the staff assigned to the vehicle. The call report, which may be com-

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bined with another report or form, shall contain the following information typed or printed in ink:

1. Patient's name, age, sex and home address;
2. Succinct description of the patient's condition and any observed changes;
3. Succinct description of any care given to the patient;
4. Time when, and location where, patient was picked up and was discharged;
5. Vehicle recognition number, date, names of staff;
6. Whether or not emergency warning devices were used:
 - i. At the scene; or
 - ii. In transit to the medical facility.
7. Any required equipment left on/with a patient.

8:40-5.26 Radio communications

(a) Any radio communications shall comply with rules and regulations of the Federal Communications Commission. The Department shall be provided with a copy of any FCC license(s) issued to the licensee.

(b) In recognition that:

1. Radio frequencies are a limited natural resource which cannot meet the needs of all health care providers (and the patients that they serve); and

2. Normally, Transport Ambulance Service is elective and non-emergent and does not involve the rendition of medical services; and

3. Use of certain radio frequencies by Transport Ambulance Services could cause harmful radio interference to, and delay the provision of, essential and emergent medical services to patients served by other types of health care providers (such as Emergency Ambulance Services and Mobile Intensive Care Services);

4. Any radio communications shall comply with the radio frequency allocation cited in Table 4 of the JEMS Communications Plan published by the Department. ***(The vehicle does not have to be equipped with a "JEMS radio.")*** Specifically, the following radio frequencies shall not be used in radio communications to, or from, Transport Ambulance vehicles:

i. Any of the UHF radio frequencies known as "Med 1" through "Med 10."

ii. Any of the VHF radio frequencies listed in Appendix C of this chapter.

iii. Any of the following radio frequencies: 155.280 MHz, 155.340 MHz, 153.785 MHz.

***5. The provisions of (b)4 (above) shall not apply if:**

i. **The provider was issued a Federal Communications Commission license before January 1, 1978 to use one (or more) of the cited frequencies; and**

ii. **The provider is using that same frequency(ies); and**

iii. **Use of that frequency(ies) does not cause harmful interference to other health care providers operating in accordance with the JEMS Plan.**

6. For the purpose of this section, harmful interference is defined as:

i. **A written complaint alleging radio interference from a health care provider(s) operating in accordance with the JEMS Plan; and**

ii. **A finding by the New Jersey Office of Frequency Coordination (or, if their services are not available, the Department) that the provider's radio operations are causing harmful interference.***

SUBCHAPTER 6. SPECIFIC EMERGENCY AMBULANCE REQUIREMENTS

8:40-6.1 Patient restrictions

(a) Emergency *[medial]* ***medical*** care and transportation shall be provided to a patient who:

1. Requires, or may require, pre-hospital emergency medical services, or
2. Requires, or may require, emergency inter-hospital transfer, or
3. Requires, or may require, aspiration or observation of intravenous fluids and/or medications.

(b) Health care transportation may be provided to patients who are under the supervision and care of a physician and who:

1. Are ambulatory, or
2. Are wheelchair bound, or
3. Are bed or stretcher bound or who require transportation in a prone or supine position, or
4. Require constant attendance due to a medical and/or mental condition.

8:40-6.2 General vehicle requirements

(a) When in-service, the Emergency Ambulance vehicle shall meet the requirements of this chapter.

(b) Each vehicle used by the licensee to provide Emergency Ambulance Service shall have and display a valid Emergency Ambulance license decal, issued by the Department.

8:40-6.3 Patient compartment requirements

(a) The vehicle shall have a patient compartment. The patient compartment shall be separated from the driver's seating area (driver's compartment) by a bulkhead or partition, which may include a passageway.

(b) The patient compartment shall have at least two exterior doorways:

1. One doorway shall be at the rear of the vehicle; the other at the curbside of the vehicle;
2. Each doorway opening shall be at least *[30]* ***28*** inches wide and at least 44 inches high;
3. The doorways shall not be obstructed except as permitted in N.J.A.C. 8:40-6.6(a);
4. The door(s) to each patient compartment doorway shall be capable of being opened and being used from inside the patient compartment and from the exterior of the vehicle;
5. There shall be a window in each door of the patient compartment. Rear windows shall be fixed, non-opening.

(c) The patient compartment shall be provided with a built-in lighting system. The lighting system shall use white or clear lenses. The lighting system shall not interfere with the driver's vision and shall be located so that no glare is reflected into the driver's eyes or line of vision.

(d) There shall be space and seating for an attendant within the patient compartment. The seat shall be at the head of the required litter and face rearward or shall be alongside the required litter. The seat shall be equipped with a safety belt.

(e) There shall be at least one aisle at least 10 inches wide next to the required wheeled litter.

(f) Occupied wheelchairs and/or stairchairs may, but need not, be transported in the vehicle. If transported in the vehicle, there shall be wheelchair restraint positions to secure and immobilize each occupied wheelchair or stairchair. When in use, each wheelchair restraint position shall secure and immobilize one wheelchair or stairchair in a crashworthy manner and so that movement of the occupied wheelchair or stairchair does not exceed one inch while the vehicle is in motion.

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(g) There shall be sufficient crashworthy cabinets and other storage spaces to safely accommodate all equipment and supplies.

8:40-6.4 Patient compartment dimensions

(a) Vehicles manufactured up to 12 full calendar months after the operative date of this chapter, ***(that is, until April 30, 1986)*** with the following patient compartment dimensions, shall be eligible for licensing and use as an ambulance as long as they comply with this chapter.

1. Height: At least 54 inches between the floor and ceiling when measured at, or near, the center of the patient compartment. (A minimum of 60 inches is preferable.)

2. Width: At least 56 inches between the sides when measured at any point 52 inches above the floor. (The width of cabinets, etc. will be included when measurements are made.)

3. Length: At least 116 inches between the interior surface of the rear door and the surface of the bulkhead or partition, when measured at floor level.

(b) Vehicles which do not meet the requirements of (a) above, but which have the minimum patient compartment dimensions required in (c) ***below*** shall be eligible for "grandfather" licensing and use as an Emergency Ambulance vehicle for 24 full calendar months after the operative date of this chapter ***(that is, until April 30, 1987)*** if:

1. The vehicle has been regularly used to provide ambulance service in the State prior to the operative date of these regulations, ***(that is, before April 15, 1985)*** and

2. The vehicle is "grandfather" licensed by the Department prior to the ***end of the fourth full calendar month after the* operative date of these regulations *(that is, before September 1, 1985)*.**

(c) The patient compartment of a vehicle eligible for "grandfather" licensing under (b) above shall have the following minimum interior dimensions:

1. Height: At least 52 inches between the floor and ceiling when measured at, or near, the center of the patient compartment.

2. Width: At least 54 inches between the vehicle interior sides when measured at any point 22 inches above the floor and at least 47 inches between the sides when measured at any point 46 inches above the floor. (The width of cabinets, etc. will be included when measurements are made.)

3. Length: At least 105 inches between the interior surface of the rear door and the surface of the bulkhead or partition, when measured at floor level.

8:40-6.5 Certification to Federal specifications

(a) Any vehicle manufactured 12 full calendar months after the operative date of this chapter ***(that is, after April 30, 1986)*** shall be certified to meet Federal Specification KKK-A-1822.

(b) The certification shall be made by the vehicle manufacturer in accordance with KKK paragraph 1.1.3 and KKK paragraph 3.19 of Federal Specification KKK-A-1822.

(c) The licensee may permit the following exceptions and/or substitutions to Federal Specification KKK-A-1822:

1. Spare Tire and Storage (KKK paragraph 3.6.10)—optional.

2. Tools (tire changing) (KKK paragraph 3.6.13)—optional.

3. 115 volt AC utility power (KKK paragraph 3.7.8)—optional.

4. Utility power connector (KKK paragraph 3.7.8.1)—optional.

5. Electrical 115 volt VAC receptacles (KKK paragraph 3.7.8.2.)—optional.

6. Solid state inverter (KKK paragraph 3.7.8.3.)—optional.

7. Ambulance Emergency Lighting (KKK paragraph 3.8.2.). The licensee may specify emergency lights other than those required. The "one clear light" shall be red instead of "clear."

8. Spotlight (KKK paragraph 3.8.4.)—optional.

9. Interior storage accommodations (KKK paragraph 3.11.1.)—trash receptacle optional.

10. Exterior storage accommodation (KKK paragraph 3.11.2.)—optional.

11. Extrication equipment and storage (KKK paragraph 3.11.2.1)—optional.

12. Suction Aspirators (KKK paragraphs 3.12.3 and 3.12.4)—The installed and portable aspirators shall provide a free airflow of 30 LPM (rather than 20 LPM). A 12 vdc powered vacuum supply pump is recommended for the installed aspirator system.

13. Color, Paint and Finish (KKK paragraph 3.16.2) optional, but recommended.

14. Color standards and tolerances (KKK paragraph 3.16.2.1) optional, but recommended.

15. Emblems and markings (KKK paragraph 3.16.4 B ***[c.]* *and C***). Location of additional lettering and markings (required by the purchaser) is optional.

8:40-6.6 Ramp or lift

(a) There may, but need not, be a ramp, lift or other device for the safe exit/entry of occupied standard size wheelchairs. While in use, any such device shall be securely fastened to the vehicle and be capable of accommodating a load of at least 500 pounds. When in transit, the device shall be secured in a crashworthy manner and shall be positioned so as not to obstruct both of the required doorways.

(b) Any ramp shall have a slip-resistant surface and provide a rigid interlocked surface when in use.

(c) Any device which relies on electric, hydraulic or other power for its operation shall be capable of manual operation by an unassisted person or there shall be a manually operated backup device.

8:40-6.7 Vehicle markings

(a) The trade name which appears on the license, issued by the Department, shall appear in a size not less than three inches high on the two exterior sides of the vehicle.

(b) The vehicle recognition number shall appear in a size not less than ***[four]* *three*** inches high on the rear and the two exterior sides of the vehicle.

(c) The vehicle shall have the following other markings:

1. The word "ambulance" in a size not less than four inches high shall be mirror image, centered above the grill, on the front of the vehicle.

2. Block-type blue, "Star of Life" shall be in a size not less than three inches on a four-inch, white field, located both to the right and left of the word "ambulance" on the front of the vehicle.

3. Block-type blue, "Star of Life" shall be in a size of not less than 16 inches on each side of the vehicle. A block-type blue, "Star of Life" in a size not less than 12 inches shall be provided on each rear door window glass, or on rear door panels. ***If installed on the rear door window glass, the "Star of Life" shall be translucent or "cut-out."***

4. The word "ambulance" in a size not less than six inches high shall appear on each side and on the rear of the vehicle body. The word "ambulance" may be separate from, or may be incorporated in, the trade name required in (a) above.

(d) A sign shall appear in the patient compartment which states: "Smoking Prohibited: Violator Subject to Fine."

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(e) The required markings shall appear in a color and shade which contrasts with the background on which they appear.

(f) The following shall not appear on the vehicle:

1. Symbol(s) consisting of a:

i. Greek Cross; or

ii. Maltese Cross, unless the vehicle is operated by a Fire Department.

2. The following words, or abbreviations of such words: "Coronary Care," "Special Care" or "Intensive Care."

(g) The words "Paramedic" or "Mobile Intensive Care," or abbreviations of such words, shall only appear when the licensee is authorized to provide Mobile Intensive Care Unit Service in accordance with N.J.S.A. 26:2K-2 et seq.

(h) The words "Emergency Medical Technician," or abbreviations of such words, shall only appear when the vehicle is staffed by two Emergency Medical Technicians.

8:40-6.8 Emergency warning devices

(a) When authorized by a permit issued in accordance with N.J.S.A. 39:3-50, the vehicle shall be equipped with:

1. Emergency warning lights which provide 360 degrees of visibility during emergency missions and are installed in accordance with SAE Standard J595b and/or SAE Recommended Practice J845, and an

2. Emergency warning siren.

(b) The following warning devices are prohibited:

1. Emergency warning lights which are not red in color. As clarification, either the bulb or the lens shall be red; the other may be clear; and

2. Flashing headlight devices.

8:40-6.9 Use of emergency warning devices

(a) Emergency Warning Devices ("lights and/or siren") shall only be utilized in providing pre-hospital service when:

1. Responding to the location of a patient and:

i. There are reasonable grounds to believe that the patient's condition is serious enough to constitute a medical emergency; and

ii. The use of emergency warning devices is necessary to expedite travel to the patient's location.

2. At the scene of the call, and the use of emergency warning lights is necessary for safety reasons;

3. Transporting a patient to a hospital and:

i. The patient's condition is serious enough to constitute a medical emergency; and

ii. The use of emergency warning devices is necessary to expedite travel to the receiving hospital in the judgment of the staff person caring for the patient, provided

iii. Use of emergency warning lights and/or siren does not contribute to a worsening of the patient's condition.

(b) Emergency Warning Devices ("lights and/or siren") shall only be utilized in providing inter-hospital transfer when:

1. Responding to the "sending" hospital, and

i. The "sending" or "receiving" physician or his or her designee, clearly states that "emergency response" to the hospital is necessary, and

ii. The use of emergency warning devices is necessary to expedite travel to the "sending" hospital.

2. Transporting a patient to the "receiving" hospital, and

i. The "sending" or "receiving" physician or his or her designee, clearly states that "emergency transportation" to the "receiving" hospital is necessary, and

ii. The use of emergency warning devices is necessary to expedite travel to the "receiving" hospital.

3. Transporting a patient to another hospital and:

i. The patient's condition, suddenly and unexpectedly, worsens to constitute a medical emergency, and

ii. The use of emergency warning devices is necessary to expedite travel to a hospital in the judgment of the staff person caring for the patient, provided

iii. Use of emergency warning lights and/or siren does not contribute to a worsening of the patient's condition.

(c) Any airhorn shall not be used:

1. Between 11 P.M. and 7 P.M. and

2. Any time a patient is being transported. This prohibition shall not apply when a test made by a qualified agency in accordance with AMD Standard 006 determines that the airhorn sound level within the patient compartment does not exceed 86 decibels (A scale).

8:40-6.10 General equipment and supplies requirements

(a) When in-service, the vehicle shall be equipped with all the required equipment and supplies at the start of each work shift. Expended supplies and/or damaged equipment shall be replaced whenever the vehicle is returned to its normal storage location. Equipment may be temporarily left on/with a patient, when medically necessary, without being replaced on the vehicle. A record shall be made on the call report (see N.J.A.C. 8:40-6.29) of any equipment left on/with a patient.

(b) All equipment and supplies shall be stored within the vehicle in a safe, crashworthy manner. The storage location shall be dictated by the relative importance of the material. A succinct list of contents shall appear on the door of any interior storage compartment.

8:40-6.11 Standard patient transport devices

(a) There shall be a wheeled litter for the transport of stretcher bound patients. The litter shall be at least 72 inches long (when flat) and at least 20 inches wide. The litter shall have a mattress at least two inches thick. The litter and mattress shall be adjustable from a flat to a semi-sitting position. The litter shall be adjustable from a minimum height of 9 to 18 inches to a maximum height of 33 to 40 inches measured to the top of the mattress. There shall be a pillow, pillowcase and sheet on the litter.

(b) There shall be a portable stretcher for the safe transport of stretcher bound patients up and down flights of stairs. The stretcher may be of the "Reeves" (R) type, folding type, orthopedic stretcher type or of the combination stretcher/-stairchair type.

(c) There shall be a portable stairchair for the safe transport of *[wheelchair bound]* patients up and down flights of stairs. The stairchair may be of the combination stretcher/stairchair type and also satisfy the requirements of (b) above.

(d) Each litter and portable stretcher shall have three sets of two-inch wide patient restraints with quick release buckles positioned at the chest, waist and knees. The quick release buckles may be of the "slide through" or "metal to metal" type. ("Reeves" type stretchers may have other types of buckles.) Each stairchair shall have two sets of two-inch wide safety restraints with quick release metal buckles.

(e) While the vehicle is in motion, the wheeled litter and any occupied stretcher(s) shall be restrained by a litter fastener(s). The wheeled litter fastener shall be certified by the manufacturer to comply with AMD Standard 004—Litter Retention System.

8:40-6.12 Special patient transport devices

(a) When necessitated by the patient's medical conditions and required by a physician, a patient may be transported in a

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special device such as, but not limited to, a "Stryker" (R) frame or specially designed incubator. The special device and patient shall be restrained in a crashworthy manner and in accordance with the intent of AMD Standard 004 and applicable Federal Motor Vehicle Safety Standards.

(b) The patient transport devices required in N.J.A.C. 8:40-6.11 may be removed from the vehicle to make room for the special transport device.

8:40-6.13 Oxygen administration devices

(a) The vehicle shall have an installed oxygen system capable of safely storing and supplying a minimum of 1,200 liters of medical oxygen. (3,000-liter capacity is recommended.) The oxygen cylinder controls shall be accessible from inside the vehicle. Cylinder opening wrench(es) or handles shall be affixed to, or chained and clipped with, the oxygen cylinder(s). Components and accessories for the oxygen system shall include nonferrous piping and low pressure hose suitable for medical oxygen at a flow rate of at least 200 liters per minute. Installed oxygen cylinder(s) shall be retained in an oxygen tank holder(s) certified by the manufacturer to comply with AMD Standard 003—Oxygen Tank Retention System.

(b) There shall be a portable oxygen system capable of safely storing and supplying at least 300 liters of medical oxygen. Cylinder handles/wrenches shall be chained to the regulator or affixed to the cylinder. There shall be at least one spare cylinder of at least 300-liter capacity.

(c) Each oxygen system shall have a medical oxygen pressure reducing and regulating valve, an excess pressure relief valve set at 200 PSI maximum and a gauge range of 0 to 2,500 PSI (4,000 PSI tested). The regulator shall be preset at 50 + / - 10 PSI line pressure.

(d) Each required oxygen system shall have an oxygen flowmeter. Each oxygen flowmeter shall have a gauge or dial with a range of 0 to 15 liters per minute in calibrated increments. The flowmeter on the portable oxygen system shall be non-gravity dependent.

(e) There shall be at least six clear inhalation masks (three each in adult and child sizes) of the single service, semi-open, non-rebreathing type and two single service type cannulas.

(f) If oxygen humidifiers (or nebulizers) are utilized, a new, unused, single service humidifier (or nebulizer) shall be used for each patient.

(g) Each oxygen cylinder shall:

1. Contain only medical grade oxygen;
2. Be color coded green;
3. Have a current hydrostatic test date;
4. Be tagged (Full, In Use, Empty).

8:40-6.14 Resuscitation devices

(a) The installed oxygen system shall be equipped with a positive pressure oxygen powered resuscitator.

(b) Either the required portable oxygen system, or a separate portable oxygen system (which complies with N.J.A.C. 8:40-6.13(b) and (c)), shall be equipped with a positive pressure oxygen powered resuscitator.

(c) The vehicle shall be equipped with an adult size and an infant size bag-valve-mask resuscitator.

(d) Any oxygen powered resuscitator shall provide:

1. 100 percent oxygen;
2. An instantaneous flow rate of at least 100 liters per minute;
3. Inspiratory pressure between 35 and 55 cm water pressure;
4. ¹⁵/₂₂mm fittings.

(e) Any bag-valve-mask resuscitator shall meet the following criteria:

1. Have a self-refilling bag without sponge rubber inside;
2. Bag volume shall be:
 - i. About 1,700cc for adults;
 - ii. 700 to 750cc for infants.
3. Adult size bags shall be capable of deflating/refilling at least 25 times per minute at room temperature. Infant size bag(s) shall be capable of deflating/refilling at least 40 times per minute at room temperature;
4. Valve shall be a true non-rebreathing valve and have ¹⁵/₂₂mm fittings.

(f) There shall be at least nine resuscitation face masks:

1. At least three transparent domed resuscitation face masks (one each in large adult, medium adult and child size) with 22mm fittings for each of the two required oxygen powered resuscitators.

2. Two transparent domed resuscitation face masks (one each in large adult and medium adult size) with 22mm fittings for the required adult size bag-valve-mask resuscitator.

3. One transparent domed infant size mask with 22mm fittings for the required infant size bag-valve-mask resuscitator.

(g) No resuscitation device shall be carried in the vehicle unless it:

1. Is suitable for use by an Emergency Medical Technician and meets the criteria in (d) and/or (e) above, or

2. Is prescribed by a physician for a patient being transported and is operated by a physician, nurse, respiratory therapist or inhalation therapist.

8:40-6.15 Aspirator/suction devices

(a) There shall be an installed aspirator powered by the vehicle. A 12 volt dc powered vacuum supply pump is recommended. The device shall be securely mounted and located to permit aspiration of a stretcher bound patient. The device shall meet the criteria contained in (c) below during the entire normal range of vehicle operation.

(b) There shall be a portable aspirator powered by an integral battery or by gas, such as oxygen. (Battery powered is recommended.) The device shall meet the criteria contained in (c) below for at least 20 minutes.

(c) Any suction device shall provide:

1. A flow rate of at least 30 liters per minute at the end of the suction tube, and
2. A vacuum pressure of at least *[30]* *300* mm mercury suction within four seconds and a maximum vacuum pressure of at least 400mm.

(d) Each suction device shall be equipped with a non-breakable collection bottle, a suction rinsing water bottle, and at least three feet of transparent or translucent suction tubing with an interior bore of at least one quarter inch. Three-eighths of an inch bore is recommended. There shall be one semi-rigid pharyngeal suction tip and at least eight suction catheters for each device (two each in 8 French, 10 French, 12 French and 14 French sizes).

(e) No suction device shall be carried in the vehicle unless it:

1. Is suitable for use by an Emergency Medical Technician and meets the criteria contained in (c) above or in 8:40-6.20(a)4, or

2. Is prescribed by a physician for a patient being transported and is operated by a physician, nurse, respiratory therapist or inhalation therapist.

8:40-6.16 Airway maintenance supplies

(a) There shall be at least:

1. Two mouth gags (bite sticks) single-service type;

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2. Oropharyngeal Airways which meet A.N.S.I. Standard Z 79.3 (Oropharyngeal and Nasopharyngeal Airways), single-service type. There shall be six of each of the following (in A.N.S.I. Z 79.3 sizes):

- i. 11 cm size (large adult);
- ii. 9 cm size (medium adult);
- iii. 7 cm size (child);
- iv. 5.5 cm size (infant).

8:40-6.17 External cardiac compression support

A short spine board or a specially designed rigid board (such as a "CPR Board" (R)) shall be immediately available within the patient compartment.

8:40-6.18 Spine boards, orthopedic litter and splints

(a) The following spine boards, orthopedic litter and splints shall be carried in the vehicle:

1. One long spine board made of wood at least three quarters of an inch thick, or of equivalent material, 72 inches long by 18 inches wide with associated strap holes and full length three-quarter inch runners.
2. One short spine board made of wood at least one half of an inch thick*,* or *[,]* of equivalent material, measuring 32 inches to 34 inches high. Body section *16 to * 18 inches wide by 20 inches to 22 inches high with associated strap holes.
3. Four straps, 2 inches wide by 9 feet long with quick release type metal buckles. ("Slide-through" type strongly recommended.)
4. Orthopedic litter at least 78 inches long (when extended) by at least 16 inches wide. It shall open/close (separate/rejoin) along its long axis into two halves, and be fitted with three sets of two-inch wide restraining straps with quick release (slide through or metal to metal type) metal buckles.
5. Two filled sand bags at least three inches in diameter by 12 inches long.
6. The following padded board splints, each three inches wide with base material at least three-eighths inch thick:
 - i. Two 15 inches long;
 - ii. Two 36 inches long;
 - iii. Two 54 inches long.
7. One adult size, lower extremity traction splint either half-ring or padded ischial support type. Half-ring or ischial support about nine inches in diameter; overall length, when in use, at least 43 inches. Complete with all associated straps, heel stand and accessories.

8:40-6.19 Wound dressing and burn treatment supplies

(a) The following wound dressing and burn treatment supplies shall be carried in the vehicle:

1. Twelve conforming roller bandages, four or six inches wide by 5 yards long;
2. Twenty-four triangular bandage*s*s* (cravat) measuring 36 inches by 36 inches by 51 inches when unfolded;
3. Twelve sterile, individually packed universal (or multi-trauma) dressings measuring at least nine inches by 30 inches when unfolded;
4. Twenty-four sterile, individually packed gauze pads at least four inches by four inches;
5. Two rolls three-inch wide adhesive type tape;
6. Four sterile, individually packed occlusive dressings (such as Vaseline (R) impregnated dressings);
7. Two sterile, individually wrapped burn sheets;
8. Two liters sterile saline solution in a plastic container(s) (for flushing injury sites).

8:40-6.20 Obstetrical kit

(a) An obstetrical kit shall be carried in the vehicle. The items shall be sterile and may be individually wrapped or be contained in a "pack." Any pack shall have an exterior itemized list of contents. Items shall include the following:

1. Four towels;
2. Twelve gauze compresses, four inches by four inches;
3. Four cord clamps;
4. One ear syringe, soft rubber (for newborn aspiration);
5. One receiving blanket;
6. Three pairs surgeons' type gloves;
7. One pair scissors.

8:40-6.21 Poison treatment supplies

(a) The following poison treatment supplies shall be carried in the vehicle:

1. Four liquid ounces *[s]**S*yrup of Ipecac;
2. One packet activated charcoal.

8:40-6.22 Other patient care equipment

(a) There shall be the following other minimum patient care equipment:

1. Diaphragm-type stethoscope;
2. Aneroid-type blood pressure manometer and adult size cuff;
3. Four *[super]* *sugar* packets or one fluid ounce of glucose in form easily ingested by mouth.
4. Four cloth blankets at least 60 inches by 80 inches in size.

(b) The licensee shall provide such other equipment and supplies as may be necessary, provided no equipment or supplies shall be carried which would permit rendering of care contrary to N.J.S.A. 45:9-1 et seq. (Practice of Medicine and Surgery Act).

8:40-6.23 Extrication equipment

(a) Except as permitted in (b) below the following minimum extrication and related equipment shall be carried on the vehicle:

1. One wrench, 12-inch size, adjustable open end;
2. One screwdriver, 12-inch size, regular blade;
3. One screwdriver, 12-inch size, Phillips type;
4. One set hacksaw, 12-inch blade capability with three wire carbide blades;
5. One pliers, 10-inch size "vise grip" (R) type;
6. One hammer, five pounds with at least a 15-inch handle;
7. One fire axe, butt type, with at least a 24-inch handle;
8. One wrecking bar, at least 24-inch length; (Items 6, 7 and 8 can be combined as one tool.)
9. One crow bar, at least 51-inch length with pinch point;
10. One bolt cutter *with* at least one and a quarter inch jaw opening;
11. One *[set]* portable hydraulic set consisting of at least one hand operated 4-ton or greater capacity hydraulic pump and one ton capacity spreading jaws and at least one spare pint of hydraulic fluid;
12. One shovel, pointed blade, at least 49 inches long when open (either folding or non-folding type acceptable);
13. Tin snips, double action hand operated with handles at least eight inches long;
14. Two manila ropes three quarters of an inch in diameter or equivalent, 50 feet long;
15. One set hand operated *[ratchet]* *ratchet* hoist set ("come along" (R) type) two-ton capacity with separate 15-foot long, two-ton capacity chain (one end with grab hook, other end with running hook);

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16. Sheet metal cutting tool (such as a rotary type lawn mower blade);

17. Two pairs safety goggles, clear;

18. Two hard hats, bump-type or heavier;

19. Two pair gloves, leather palm with wrist gauntlets.

(b) The extrication and related equipment required in (a) above need not be carried when:

1. The Ambulance does not respond to automobile, industrial or other accidents. However, Ambulances which do not carry extrication equipment may stop and render emergency medical care at an accident scene which they pass by chance; or,

2. A rescue vehicle is available and:

i. Can respond to an accident location within six minutes and;

ii. The rescue vehicle carries all of the equipment and related material required in (a) above and;

iii. Operators of the rescue vehicle agree, in writing, to provide extrication services for patients under the licensee's care under the direction of the licensee.

8:40-6.24 Safety equipment

(a) The vehicle shall have the following minimum safety equipment:

1. Three portable red emergency reflective safety triangles;

2. One flashlight, two D cell size or larger;

3. One ***or two*** fire extinguisher*(s)*, U.L. rated at least 1A 10BC ***in total*** with current inspection tag.

8:40-6.25 Required staff

(a) When in-service, each Emergency Ambulance vehicle shall be staffed by at least two persons ***including anytime the vehicle is used as an Invalid Coach*** who shall meet the requirements of N.J.A.C. 8:40-3.7 and this subchapter. All additional staff persons of the licensee shall meet the requirements ***of*** N.J.A.C. 8:40-3.7.

(b) Staff persons of a hospital or of another agency who accompany a patient need not meet the requirements of N.J.A.C. 8:40-3.7(a) and (b).

8:40-6.26 Required training of staff

(a) Except as permitted in (b) below ***[and in N.J.A.C. 8:40-6.28,]*** each of the required staff persons shall possess current valid certification as an Emergency Medical Technician-Ambulance, issued by the Department.

(b) In recognition of the necessity for staff to be trained, the second required person may, for 12 full calendar months after the operative date of this chapter, ***(that is, until April 30, 1986)*** possess the following training in lieu of Department certification:

1. Valid documentation of "Advanced First Aid and Emergency Care" training issued by the American Red Cross, and

2. Valid documentation of "Cardiopulmonary Resuscitation" training issued by the American Heart Association or the American Red Cross, ***[provided]* ***or*****

3. Valid documentation of "CIM/First Responder" training issued by the Department, provided

[3.]* ***4. The person certified as an Emergency Medical Technician-Ambulance is in charge of patient care and accompanies patients being transported in the patient compartment.**

8:40-6.27 Duties of staff

(a) The collective duties of the persons who staff an Emergency Ambulance vehicle shall include, but are not limited to:

1. Providing prompt, efficient and effective emergency medical care to the patient(s);

2. Attending the patient(s) at all times and continually monitoring the patient's condition;

3. If necessary, extricating the patient from confinement;

4. Assisting patients to enter and to leave the vehicle, supervising the well being of patients while in the vehicle, and ensuring the privacy and comfort of patients;

5. Assuring that any stretcher, wheelchair or other patient transport device is safely restrained, patients are restrained and all vehicle occupants wear automotive safety belts. The staff person(s) caring for the patient need not wear a safety belt when providing essential life support such as CPR;

6. Operating the motor vehicle in a safe manner, starting and stopping the vehicle slowly and smoothly and complying with all applicable motor vehicle laws***[.]* ***.*****

7. Reporting verbally (and when required in N.J.A.C. 8:40-6.29(b), in writing) to the appropriate personnel when a patient is brought to a health care facility or other place of medical care;

8. For serious patients, notifying the medical facility, prior to arrival, that special professional services and assistance will be needed;

9. Complying with N.J.S.A. 52:17B-78 et seq. on the handling of the deceased;

10. Entering data into and signing the required call report;

11. Prohibiting smoking within the patient compartment.

8:40-6.28 Special staff required

(a) When the Emergency Ambulance is utilized to provide an inter-hospital transfer of a neonatal patient, the vehicle shall be staffed by:

1. ***[At least one of the]* ***The two*** persons required in N.J.A.C. 8:40-6.25, and**

2. A physician or a nurse who has been specially trained to care for neonatal patients.

(b) When the Emergency Ambulance is utilized to transport a patient receiving intravenous fluids and/or medications, the vehicle shall be staffed by:

1. ***[At least one of the]* ***The two*** persons required in N.J.A.C. 8:40-6.25, and**

2. A physician or a registered nurse, or

3. A licensed Mobile Intensive Care Unit Paramedic providing medical care as part of a designated Mobile Intensive Care Program operated in accordance with N.J.S.A. 26:2k-2 et seq.***, or***

4. An employee of the "sending" or "receiving" hospital, specifically assigned by the hospital, to care for the patient who is receiving intravenous therapy. It is the hospital's responsibility to ensure that any assigned employee is certified, or otherwise qualified, to oversee intravenous therapy.

8:40-6.29 Call report

(a) A call report shall be completed each time a patient is transported. ***One call report will suffice for both legs of a round trip.*** The call report shall be prepared by the staff assigned to the vehicle and shall contain the following information printed in ink:

1. Patient's name, age, sex and home address;

2. Succinct description of the patient's condition at the scene and in transit;

3. Succinct description of care given to the patient at the scene and in transit;

4. Time when, and location where, patient was picked up and was discharged;

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5. Vehicle recognition number, date, names of staff;
6. Whether or not emergency warning devices were used:
 - i. Responding to the scene;
 - ii. At the scene;
 - iii. In transit to the medical facility;
7. Any required equipment left on/with a patient.

(b) When an emergency patient is brought to a medical facility, a copy of the call report shall be given to the appropriate person at the medical facility.

8:40-6.30 Radio communications

(a) Any radio communications shall comply with rules and regulations of the Federal Communications Commission (FCC). The Department shall be provided with a copy of any FCC license(s) issued to the licensee.

(b) In recognition that:

1. Radio frequencies are a limited natural resource which cannot meet the needs of all health care providers (and the patients that they serve); and

2. Normally, Emergency Ambulance Services which do not routinely serve a political subdivision and/or do not respond to accidents and/or do not do "street work" do not involve the rendition of essential emergency medical services; and

3. Use of certain radio frequencies by Emergency Ambulance Services which do not serve a political subdivision could cause harmful radio interference to, and delay the provision of, essential and emergent medical services to patients served by Emergency Ambulance Services which serve a political subdivision and *by* Mobile Intensive Care Services; and

4. Use of certain radio frequencies by any Emergency Ambulance Service could cause harmful radio interference to, and delay the provision of, essential and emergent medical services to patients served by Mobile Intensive Care Services;

5. Any radio communications shall comply with the radio frequency allocation cited in Table 4 of the JEMS Communications Plan published by the Department. Specifically:

i. None of the UHF radio frequencies known as "Med 1" through "Med 10" shall be used in radio communications to, or from, any Emergency Ambulance vehicle; and

ii. None of the VHF radio frequencies listed in Appendix C of this chapter shall be used in radio communications to, or from, any Emergency Ambulance vehicle which does not routinely serve a political subdivision.

iii. The radio frequency 155.340 MHz shall only be used for essential communications between an emergency ambulance and a hospital Emergency Department.

iv. The radio frequency 155.280 MHz shall only be used for essential communications between cooperating emergency ambulances and as a "back-up" dispatch channel for Emergency Ambulance vehicles which serve a political subdivision.

***6. The provisions of (b)5 (above) shall not apply if:**

i. The provider was issued a Federal Communications Commission license before January 1, 1978 to use one (or more) of the cited frequencies; and

ii. The provider is using that same frequency(ies); and

iii. Use of that frequency(ies) does not cause harmful interference to other health care providers operating in accordance with the JEMS Plan.*

***7. For the purpose of this section, harmful interference is defined as:**

i. A written complaint alleging radio interference from a health care provider(s) operating in accordance with the JEMS Plan; and

ii. A finding by the New Jersey Office of frequency Coordination (or, if their services are not available, the Department) that the provider's radio operations are causing harmful interference.*

(c) Each Emergency Ambulance shall be equipped with a mobile radio*s* with the following minimum capabilities:

1. Two-way, *[four-frequency,] VHF high-band with Effective Radiated Power (ERP) as approved by the New Jersey Office of Frequency Coordination;

2. Able to select, and to transmit and receive on, each of the four required radio frequencies from the driver's compartment*[.] * *;

3. Able to transmit and receive on the selected radio frequency from the patient compartment by suitable means (such as a handset-type microphone);

4. Functional, dual-tone, multi-frequency ("Touch-tone" (R) type) encoder in either the driver's or patient compartment;

5. Four operating radio frequencies and functional continuous tone coded squelch system (CTCSS) as follows when installed in an ambulance used to provide service to a political subdivision:

i. 155.xxx MHz (local EMS frequency and CTCSS as listed in Appendix *[D]* *C*;

ii. 155.340 MHz (ambulance-to-hospital *[e]**E*mergency Department);

iii. 155.280 MHz (statewide EMS coordination);

iv. 153.785 MHz (statewide public safety coordination for police, fire and EMS), or

6. Two operating radio frequencies and functional continuous tone coded squelch (CTCSS) as follows when installed in other ambulances:

i. 155.340 MHz (ambulance-to-hospital *[e]**E*mergency Department); and

ii. 155.280 MHz (statewide EMS coordination).

(d) In recognition of the need to budget funds, licensees are granted the following time periods to install the mobile radio(s) required in (c) above:

1. Each Emergency Ambulance used to provide service to a political subdivision(s) shall be so equipped within 18 full calendar months of the operative date of this chapter ***(that is, by October 31, 1986)***.

2. At least fifty percent of the licensee's Emergency Ambulances shall be so equipped within 18 full calendar months of the operative date of this chapter ***(that is, by October 31, 1986)***.

3. All Emergency Ambulances shall be so equipped within 30 full calendar months of the operative date of this chapter ***(that is, by October 31, 1987)***.

(e) Each in-service Emergency Ambulance used to provide service to a political subdivision shall be equipped with at least one portable radio with the following minimum capabilities:

1. Two-way, four-frequency, VHF high-band;

2. Able to select, and to transmit and receive on *,* each of the four required radio frequencies;

3. The same four operating radio frequencies and CTCSS as required in (c)5 above.

(f) In recognition of the need to budget funds, licensees are granted 24 full calendar months after the operative date of this chapter ***(that is, until April 30, 1987)*** to equip the affected ambulances with the portable radio(s) required in (e) above.

8:40-6.31 Disaster planning required

(a) Each licensee which provides service to a political subdivision shall develop and maintain a current up-to-date written disaster plan. The disaster plan shall be reviewed and tested at least twice a year. The method of testing the plan shall be at the discretion of the licensee. Each employee of the

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licensee shall be informed of his/her role and responsibilities under the disaster plan at least twice a year.

(b) The plan shall define the licensee's role in providing immediate emergency medical care as part of a community response. The plan shall be based on scenarios which can be reasonably expected to occur in the licensee's service area such as train/bus/aircraft accident, tornado or other weather induced accidents, fire or structural collapse or off-shore sinking.

(c) The plan shall describe the specific means as to how:

1. Off-duty personnel of the licensee would be summoned including specific telephone numbers and/or paging/tone alerting instructions;

2. Mutual aid ambulances would be summoned including specific telephone numbers and/or radio frequencies and encoding means.

(d) The plan shall specify when or whether the licensee's ambulance(s) and when or whether mutual aid ambulance(s) will be used to provide service to the unaffected portion of the licensee's service area. If mutual aid ambulances are to be used, the plan shall specify what means (guide, map, police escort, etc.) will be provided to enable the mutual aid ambulances to locate sites of any calls.

SUBCHAPTER 7. SPECIFIC HELICOPTER AMBULANCE REQUIREMENTS

8:40-7.1 Patient restrictions

(a) Emergency medical care and transportation shall be provided to a patient who:

1. Requires, or may require, pre-hospital emergency medical services *,* or

2. Requires, or may require, emergency inter-hospital transfer.

8:40-7.2 General helicopter requirements

(a) When in service, the aircraft shall meet the requirements of this chapter.

(b) Each helicopter licensed under this chapter shall be licensed and operated in accordance with Federal Aviation Regulations (FAR) Part 135.

(c) The helicopter shall be in safe operating condition. All required equipment shall be functional and operable when the helicopter is in service.

(d) Each helicopter used by the licensee to provide helicopter air ambulance service shall have and display a valid Helicopter Ambulance License, issued by the Department.

8:40-7.3 Patient compartment requirements

(a) The helicopter shall have a patient compartment. If the patient compartment is not separated from the pilot's seating area, the pilot shall be protected, by a partition, bulkhead, or similar device, from the movements of the patient.

(b) The patient compartment shall have at least two exterior doorways.

1. At least one doorway shall be large enough to allow the loading/unloading of an occupied stretcher without rotating it more than:

- i. 30 degrees about the longitudinal (roll) axis; and
- ii. 45 degrees about the lateral (pitch) axis.

2. The other doorway shall be large enough to permit the entrance/exit of an ambulatory person.

3. The door(s) to each doorway shall be capable of being opened and being used from inside the patient compartment and from the exterior of the aircraft. The exterior of each doorway shall be marked with a sign which states how the door can be opened.

(c) The patient compartment shall be provided with a built-in lighting system supplied by the aircraft power supply. The lighting system shall not interfere with the pilot's vision and shall be located so no glare is reflected into the pilot's eyes or lines of vision.

(d) There shall be space and seating for an attendant within the patient compartment. The seat shall be equipped with a safety belt.

(e) There shall be sufficient crashworthy cabinets and other storage spaces to safely accommodate all equipment and supplies.

8:40-7.4 Patient compartment dimensions

(a) The patient compartment*[s]* shall have the following interior dimensions:

1. Height: at least 30 inches (40 inches preferable) between the top of the required litter and the ceiling.

2. Width: at least 24 inches from the inboard side of the required litter to the other side of the aircraft.

3. Length: at least long enough to accommodate the required litter.

8:40-7.5 Certification to manufacturer/FAA standards

The aircraft shall be certified to the aircraft manufacturer**s standards and to FAA standards.

8:40-7.6 Special lighting required

Each helicopter used to provide pre-hospital emergency medical services (that is, "street work" or "on-scene care") shall be equipped with an exterior high-powered floodlight ("Sun Light"—tm—or equivalent) remotely controlled by the pilot.

8:40-7.7 General equipment and supplies requirement

(a) Each helicopter used to provide prehospital emergency medical services (that is, "street work" or "on-scene care") shall be equipped with all the equipment and supplies required in this chapter at the start of each mission.

(b) Each helicopter used to provide interhospital patient transfer service shall be equipped with all the equipment and supplies required in this chapter at the start of each transfer.

(c) All equipment and supplies shall be stowed within the aircraft in a safe, crashworthy manner. The stowage location shall be dictated by the relative *importance* *[location]* of the material. A succinct list of contents shall appear on the door of any interior stowage compartment.

8:40-7.8 Standard patient transport devices

(a) There shall be a litter for the transport of stretcher bound patients. The litter shall be at least 72 inches long (when flat) and at least 20 inches wide. The litter shall have a mattress at least one inch thick. The litter shall be adjustable from a flat to a semi-sitting position. There shall be a pillow, pillow case and sheet on the litter.

(b) The litter shall have three sets of two-inch wide patient restraints with quick release buckles positioned at the chest, waist and knees. The quick release buckles may be of the "slide-through" or "metal to metal" type.

(c) While the aircraft is in motion, the litter shall be restrained by a litter fastener. The litter fastener shall be securely fastened to the aircraft, shall be installed under a FAA Supplemental Type Certificate and shall meet the same "g" requirements as those contained in FAR Part 23.561 or FAR Part 25.561 for seats.

8:40-7.9 Oxygen administration devices

(a) The aircraft shall have an oxygen system capable of safely storing and supplying a minimum of 600 liters of medi-

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cal oxygen. Aviation oxygen is not acceptable. For flights longer than twenty minutes, additional oxygen supplies shall be carried to permit administration of oxygen to the patient at a rate of at least 15 liters per minute during the entire period the patient is aboard the aircraft.

(b) The oxygen cylinder controls shall be accessible from the required attendant's seat. Cylinder opening wrench(es) or handles shall be affixed to or chained and clipped with the oxygen cylinder(s).

(c) When the aircraft is in motion, each oxygen cylinder shall be secured in a safe, crashworthy manner in oxygen tank holders affixed to the aircraft frame which meet the same "g" requirements as those contained in FAR Part 23.561 or FAR Part 25.561 for seats.

(d) Each oxygen system shall comply with the requirements of N.J.A.C. 8:40-6.13(c) through (g).

8:40-7.10 Resuscitation devices

(a) The required oxygen system shall be equipped with a positive pressure oxygen powered resuscitator.

(b) The aircraft shall be equipped with resuscitation devices in accordance with N.J.A.C. 8:40-6.14(c) through (g).

8:40-7.11 Aspirator/suction devices

(a) There shall be an installed suction device powered by the aircraft's electrical system. The device shall be securely mounted and located to permit aspiration of any stretcher bound patient. The device shall meet the criteria contained in N.J.A.C. 8:40-6.15(c) through (e) during the entire normal range of aircraft operation.

(b) There shall be a portable suction device powered by an integral battery. The device shall meet the criteria contained in N.J.A.C. 8:40-6.15(c) through (e) for at least 20 minutes. In recognition of aircraft weight limitations, the portable suction device may also be used as the installed device provided it meets the requirements of (a) above.

8:40-7.12 Airway maintenance supplies

(a) There shall be at least:

1. Two mouth gags (bite sticks) single-service type;
2. Oropharyngeal Airways which meet A.N.S.I. Standard Z 79.3 (Oropharyngeal and Nasopharyngeal Airways), single-service type. There shall be two of each of the following (in A.N.S.I. Z 79.3 sizes):
 - i. 11 cm size (large adult);
 - ii. 9 cm size (medium adult);
 - iii. 7 cm size (child);
 - iv. 5.5 cm size (infant).

8:40-7.13 External cardiac compression support

A short spine board or a specially designed rigid board (such as a "CPR Board" (R)) shall be immediately available within the patient compartment.

8:40-7.14 Spine boards, orthopedic litter and splints

(a) The equipment required in N.J.A.C. 8:40-6.18 shall be available when Helicopter Ambulance Service is being provided at the scene of an accident. In recognition of the aircraft weight limitations, the equipment may be carried to the accident scene either by the aircraft or by a cooperating ground ambulance or Mobile Intensive Care Unit.

(b) In recognition of the airborne environment, splints or similar devices which rely on inflation or vacuum to provide stabilization of possible fractures are specifically prohibited.

8:40-7.15 Wound dressing and burn treatment supplies

(a) The following wound dressing and burn treatment supplies shall be carried in the aircraft:

1. Four conforming roller bandages, four or six inches wide by five yards long.

2. Four triangular bandage*s*s* (cravat) measuring 36 inches by 36 inches by 51 inches when unfolded.

3. Four sterile, individually packed universal dressings measuring at least nine inches by 30 inches when unfolded.

4. Twenty-four sterile, individually packed gauze pads at least four inches by four inches.

5. One roll of three-inch wide adhesive *type* tape.

6. Two sterile, individually packed occlusive dressings (such as Vaseline (R) impregnated dressings).

7. Two sterile, individually wrapped burn sheets.

8. One liter sterile saline solution in a plastic container(s) (for flushing injury sites).

8:40-7.16 Obstetrical kit

An obstetrical kit shall be carried in the aircraft when a patient, known to be pregnant, is being transported. The obstetrical kit shall meet the requirements of N.J.A.C. 8:40-6.20.

8:40-7.17 Other patient care equipment

(a) There shall be the following other minimum patient care equipment.

1. Doppler type stethoscope. The stethoscope shall not cause electromagnetic interference to aircraft equipment;

2. Aneroid type blood pressure manometer and cuff;

3. Four sugar packets or one fluid ounce of glucose in a form easily ingested by mouth;

4. Two cloth blankets at least 60 inches by 80 inches in size.

(b) The licensee shall provide such other equipment and supplies as may be necessary, provided no equipment or supplies shall be carried which would permit rendering of care contrary to N.J.S.A. 45:9-1 et seq. (Practice of Medicine and Surgery Act).

8:40-7.18 Required staff

(a) When in service, each Helicopter Ambulance shall be staffed by at least two persons, one of whom may be the pilot, who shall meet the requirements of N.J.A.C. 8:40-3.7 and of this subchapter. All additional staff persons of the licensee shall meet the requirements of N.J.A.C. 8:40-3.7.

(b) The pilot shall:

1. Hold a current Rotocraft Helicopter Commercial License with a current F.A.A. Class II Medical Certificate.

2. Have at least 2,000 hours experience as pilot in command; 1,500 of which must be in rotowing aircraft.

8:40-7.19 Required training of staff

(a) Except as permitted in (b) below and in N.J.A.C. 8:40-7.21, each of the required staff persons shall possess current valid certification as an Emergency Medical Technician-Ambulance issued by the Department.

(b) In recognition of the need for staff to be trained, the *[pilot]* ***the second required person*** need not possess the required Emergency Medical Technician-Ambulance certification for six full months after the operative date of this chapter ***(that is, until October 31, 1985)*** provided the person certified as an Emergency Medical Technician-Ambulance is in charge of patient care and accompanies patients being transported in the patient compartment.

8:40-7.20 Duties of staff

(a) The collective duties of the persons who staff a helicopter ambulance shall include, but are not limited to:

1. The duties cited in N.J.A.C. 8:40-6.27 (excluding 8:40-6.27(a)6).

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2. Assuring that all ground personnel who may help load/unload the aircraft observe appropriate safety procedures.
3. Prohibiting smoking within 100 feet of the aircraft when refueling is being done with a patient aboard the aircraft.

8:40-7.21 Special staff required

(a) When the Helicopter Ambulance is used to provide an inter-hospital transfer of a neonatal patient, the aircraft shall be staffed by:

1. The pilot*[,]* *;*, and
2. A physician or a nurse who has been specially trained to care for neonatal patients.

(b) When the Helicopter Ambulance is utilized to transport a patient receiving intravenous fluids and/or medications, the aircraft shall be staffed by:

1. The pilot; and
2. A physician or a registered nurse; or
3. A licensed Mobile Intensive Care Paramedic providing medical care as part of a designated Mobile Intensive Care Program operated in accordance with N.J.S.A. 26:2K-2.

8:40-7.22 Call report

(a) A call report shall be completed each time a patient is transported. The call report shall be prepared by the medical staff who provided in-flight patient care and shall contain the information required in N.J.A.C. 8:40-6.29 printed in ink.

(b) A copy of the call report shall be given to the appropriate person at the medical facility which receives the patient.

8:40-7.23 Radio communications

(a) All radio communications shall comply with rules and regulations of the Federal Communications Commission and shall comply with the JEMS Communications Plan. The Department shall be provided with a copy of any FCC license(s) issued to the licensee.

(b) Each Helicopter Ambulance shall be equipped with communications equipment, approved by the Office of Emergency *[Medical]* *Health* Services of the New Jersey State Department of Health, to permit direct contact with:

1. Participating hospitals; and
 2. Mobile Intensive Care Units; and
 3. (Ground) Emergency Ambulances*[,]* *.*
- *[(d)]* *(e)* In recognition of the potential for harmful radio interference due to aircraft height, no radio equipment, which operates on the UHF radio frequencies known as "Med 1" through "Med 10", shall be used aboard the aircraft without the specific approval of the Office of Emergency *[Medical]* *Health* Services of the New Jersey State Department of Health.

8:40-7.24 Written agreements required

(a) Licensees which provide pre-hospital emergency medical services (that is, "street-work" or "on-scene care") shall have a written agreement to provide Helicopter Ambulance Service with:

1. The "receiving hospital(s)" which routinely provide hospital care to the patients transported by the licensee, and
2. The designated Mobile Intensive Care Program operated in accordance with N.J.S.A. 26:2K-2 which provides service to the geographic area, or
3. If there is no designated Mobile Intensive Care Program, the *[Basic Life Support]* Ambulance Service which provides service to the geographic area.

(b) Licensees which provide inter-hospital patient transfers shall have a written agreement to provide Helicopter Ambulance Service with:

1. The "sending hospital(s)" which routinely utilize the licensee's services to transport patients, and
2. The "receiving hospital(s)" which routinely provide hospital care to the patients transported by the licensee.

8:40-7.25 Special prohibitions

(a) In recognition of the potential hazards of the aircraft environment, the following are specifically prohibited:

1. Conducting a flight contrary to the recommendations of the aircraft pilot or the responsible FAA controller;
2. Refueling an aircraft with a patient aboard the aircraft unless prompt refueling is necessary to sustain human life;
3. Free swinging traction weights or intravenous containers;
4. Glass or rigid plastic intravenous containers;
5. Any patient care or other equipment which causes electromagnetic interference to the aircraft equipment;
6. Transport of a patient with an indwelling, air filled, balloon type device.

APPENDIX C

Local EMS Radio Frequency Table

County (Where licensee provides service)	Required Radio Frequency	Required CTCSS (continuous tone coded squelch system)	Specific Area
Atlantic County	155.175 MHz.	118.8	County, except Atlantic City
	155.220 MHz.	118.8	Atlantic City
Bergen County	155.205 MHz.	*	Eastern portion
	155.175 MHz.	*	Western portion
Burlington County	155.295 MHz.	127.3	Countywide
Camden County	155.235 MHz.	192.8	Countywide
Cape May County	155.295 MHz.	118.8	Countywide
Cumberland County	155.220 MHz.	179.9	Countywide
Essex County	155.295 MHz.	*	County, except Newark City
	155.400 MHz.	*	Newark City
Gloucester County	155.265 MHz.	167.9	Countywide
Hudson County	155.235 MHz.	*	Countywide
Hunterdon County	155.205 MHz.	192.8	Countywide
Mercer County	155.265 MHz.	103.5	Countywide
Middlesex County	155.220 MHz.	103.5	Countywide
Monmouth County	155.175 MHz.	151.4	Countywide
Morris County	155.265 MHz.	241.8	Countywide
Ocean County	155.205 MHz.	186.2	Countywide
Passaic County	155.220 MHz.	*	Countywide
Salem County	155.295 MHz.	186.2	Countywide
Somerset County	155.235 MHz.	*	Countywide
Sussex County	155.295 MHz.	*	Countywide
Union County	155.175 MHz.	*	County, except Elizabeth City
	* MHz.	*	Elizabeth City
Warren County	155.265 MHz.	*	Countywide

* As assigned by N.J. State Department of Health

(a)

PUBLIC HEALTH COUNCIL

**Immunization of Pupils in Schools
Emergency Powers for the Commissioner of Health**

Readopted Amendment: N.J.A.C. 8:57-4.16

Proposed: February 19, 1985 at 17 N.J.R. 483(a).
 Adopted: March 25, 1985 by Evelyn Geddes, Chairperson, Public Health Council.
 Filed: March 25, 1985 as R.1985 d.195, **without change**.
 Authority: N.J.S.A. 26:1A-7.

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Effective Date: March 25, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): July 18, 1988.

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

Full text of the readopted amendment follows.

8:57-4.16 Emergency powers of the State Commissioner of Health

(a) In the event the State Commissioner of Health determines either that an outbreak or threatened outbreak of disease exists or other public health immunization emergency, the Commissioner may issue either additional immunization requirements to control the outbreak or threat of an outbreak or modify immunization requirements to meet the emergency.

(b) (No change.)

(c) These requirements or amendments to the requirements shall remain in effect until such time the State Commissioner of Health determines that an outbreak or a threatened outbreak no longer exists or the emergency is declared over, or for three months after the declaration of the emergency, whichever one comes first. The State Commissioner of Health may redeclare a state of emergency if the emergency has not ended.

(a)

CONSUMER HEALTH SERVICES

**Controlled Dangerous Substances
 Addition to Schedule IV**

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

Proposed: December 17, 1984 at 16 N.J.R. 3390(a).
 Adopted: March 22, 1985 by J. Richard Goldstein, M.D., Commissioner of Health.
 Filed: March 25, 1985 as R.1985 d.190, **with technical and substantive changes** not requiring additional public notice and comments (N.J.A.C. 1:30-3.5).

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

Effective Date: April 15, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): Exempt under N.J.S.A. 24:21-3.

Summary of Public Comments and Agency Responses:

One firm contacted the Department by telephone to indicate that their product TRIAZOLAM was listed in bold face type and has valid medical usage, although the intent of the amendment stated that the 21 substances had no medical use.

The Department responded that the original material submitted for publishing did not have this product in bold face or underlining to indicate it was part of the proposal.

The Department also noted that the first substance listed also was not included in bold face and to be considered part of the 21 substances being added. The Department also noted that there were only 20 new products being added as one—NITRAZEPAM—was omitted.

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

8:65-10.4 Controlled dangerous substances; schedule IV

(a) (No change.)

(b) The following is Schedule IV listing the controlled dangerous substances by generic, established ***[as]* *or*** chemical name and the controlled dangerous ***substances*** code numbers.

1. (No change.)

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

Alphazolam	2862
Barbital	2145
Bromazepam	2748
Camazepam	2749
Chloral betaine	2460
Chloral hydrate	2465
Chlordiazepoxide ² (except Librax and Menrium)	2744
Clobazam	2751
Clonazepam ²	2737
Clorazepate ²	2768
Clotiazepam	2752
Cloxazolam	2753
Delorazepam	2754
Diazepam ²	2765
Estazolam	2756
Ethchlorvynol	2540
Ethinamate	2545
Ethyl loflazepate	2758
Fludiazepam	2759
Flunitrazepam	2763
Flurazepam ²	2767
Halazepam	2762
Haloxazolam	2771
Ketazolam	2772
Loprazolam	2773
Lorazepam ⁵	2885
Lormetazepam	2774
Mebutamate ²	2800
Medazepam	2836
Meprobamate	2820
Methohexital	2264
Methylphenobarbital (mephobarbital)	2250
Nimetazepam	2837
Nitrazepam	2834
Nordiazepam	2838
Oxazepam ²	2835
Oxazolam	2839
Paraldehyde	2585
Petrichloral	2591
Phenobarbital	2285
Pimazepam	2883
Prazepam ³	2764
Temazepam ³	2925
Tetrazepam	2886
Triazolam	2887

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3. Other substances: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts (listed by generic/established or chemical name with CDS code):

Pentazocine 9709

4. (No change.)

(a)

CONSUMER HEALTH SERVICES

**Controlled Dangerous Substances
Addition to Schedule IV**

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

Proposed: November 5, 1984 at 16 N.J.R. 2901(a).
Adopted: March 22, 1985 by J. Richard Goldstein,
M.D., Commissioner of Health.
Filed: March 25, 1985 as R.1985 d.191, **without change**.
Authority: N.J.S.A. 24:21-3.

Effective Date: April 15, 1985.
Expiration Date pursuant to Executive Order No.
66(1978): Exempt under N.J.S.A. 24:21-3.

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

Full text of the adoption follows.

8:65-10.4 Controlled Dangerous Substances; Schedule IV
(a) (No change.)
(b) The following is schedule IV listing the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substances code numbers.

1. (No change.)
2. Depressants: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (listed by generic/established or chemical name with CDS code):

.....

Phenobarbital	2285
Prazepam	2764
Temazepam	2928
Triazolam	2887

3.-4. (No change.)

(b)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: June 18, 1984, at 16 N.J.R. 1436(a).
Adopted: March 15, 1985 by the Drug Utilization Review Council, Leroy L. Schwartz, M.D., Chairman.
Filed: March 18, 1985 as R.1985 d.170, with portions of the proposal **not adopted** and portions not adopted but still **pending**.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: April 15, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

Summary of Public Comments and Agency Responses:

Regarding tolazamide, the Upjohn Company's objections were previously summarized at 17 N.J.R. 200(b).

The Council received an expert clinical opinion on the possible therapeutic effects of the differences between Upjohn's Tolinase and the proposed generic by Zenith: in the expert's opinion the differences would not be clinically detrimental to diabetic patients.

The following products and their respective manufacturers were **adopted**:

Doxycycline Hyclate tabs 100 mg Zenith
Tolazamide tabs 250,500 mg Zenith

The following product and its manufacturer were **not adopted**:

Thioridazine tabs 10, 15, 25, 50 mg Chelsea

The following products remain **pending**:

Amitriptyline HCL tabs
10, 50, 75, 100 mg Purepac/Kalipharma
Spironolactone tabs 25 mg Purepac/Kalipharma

OFFICE OF ADMINISTRATIVE LAW NOTE: Related Notices of Adoption appear at 16 N.J.R. 2672(b) and 17 N.J.R. 200(b).

(c)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: October 1, 1984 at 16 N.J.R. 2483(a).
Adopted: March 15, 1985 by the Drug Utilization Review Council, Leroy L. Schwartz, M.D., Chairman.
Filed: March 18, 1985 as R.1985 d.171, with portions of the proposal still **pending**.

Authority: N.J.S.A. 24:6E-6(b).

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Effective Date: April 15, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

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

The following products and their respective manufacturers were **adopted**:

Gramicidin, Neomycin, Polymyxin B Sulfate Ophth. Soln.	Solopak
Pilocarpine HCL Ophth. Soln. 0.5, 1, 2, 3, 4, 5, 6%	Solopak

The following products remain **pending**:

Clomiphene Citrate tabs 50 mg	Ikapharm
Hydrochlorothiazide tabs 50 mg	Quantum
Sulfacetamide Sodium Ophth. 10%, 15%, 30%	Solopak
Sulfasalazine tabs 0.5g	VIP
Thioridazine HCL tabs 100 mg	Danbury
Thioridazine HCL tabs 10, 15, 25, 50, 100 mg	Barr

OFFICE OF ADMINISTRATIVE LAW NOTE: A related Notice of Adoption appears at 17 N.J.R. 201(a).

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(a)

DIVISION OF MENTAL RETARDATION

Community Residences for the Developmentally Disabled Manual of Standards for Skill Development Homes, Family Care Homes and Family-based Respite Care Homes

Adopted New Rule: N.J.A.C. 10:44B

Proposed: February 19, 1985 at 17 N.J.R. 359(b).
 Adopted: March 25, 1985 by George J. Albanese, Commissioner, Department of Human Services.
 Filed: March 25, 1985 as R.1985 d.181, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:11B-4.

Effective Date: April 15, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): April 15, 1990.

Summary of Public Comments and Agency Responses:

Comments were received from the Department of the Public Advocate, Division of Advocacy for the Developmentally Disabled, and from two components of the Department of Human Services. The comments received were generally supportive. Recommendations for some technical and grammatical changes were submitted and those comments which served to further clarify a standard were incorporated in this adoption.

The designation of community training homes for the facilities to be regulated was changed to the former designation of skill development homes and family care homes. This administrative decision by the Department was reached after careful analysis revealed the expected benefits of increased flexibility in contracting and licensing practices would create undue confusion for the licensees.

Three suggestions received from the Public Advocate were adopted as presented. A provision was added to 10:44B-2.1(a) prohibiting the licensure of a home in which an occupant has been adjudged civilly or criminally liable for abuse of another person. Standard 10:44B-4.1(d) was amended as suggested to ensure compliance with N.J.S.A. 30:6D-13 et seq. The suggestion that the Division of Mental Retardation's hotline number should be posted along with the other emergency phone numbers which are required was added to Standard 10:44B-6.1(f).

The advocate also suggested that at least one fire drill per year be conducted under the observation of the Division of Mental Retardation's licensing authority and that special measures be included in regard to clients who are mobility impaired and require assistance to evacuate. The observation of fire drills at each licensee's home appears to be an undue burden if employed unilaterally for all licensees. A compromise was adopted: in individual cases, because of mobility limitations or other special needs, a fire drill would be required under the observation of staff of the Division of Mental Retardation. The information contained in both the client's individual record, as well as the fire drill record, provide sufficient opportunity to identify where such increased surveillance is necessary.

A comment was received from within the Department questioning the need to require licensees to have periodic documentation of their health status. Experience has shown that some degree of accountability regarding the licensee's health is required to ensure the well-being of both licensee and the developmentally disabled persons in his/her care. Furthermore, a medical examination to determine special health needs is a recommended practice for the general public. Another comment suggested that periodic documentation of health status not be required of alternates. This suggestion has been incorporated because of the limited amount of time the alternate spends with the clients and the responsibility of the licensee to choose appropriate alternates.

Standard 10:44B-2.2 was amended to prohibit a licensee from becoming the beneficiary for a client in order to avoid exploitation of developmentally disabled individuals.

Standard 10:44B-1.4 was deleted after discussion confirmed this policy was intended for group homes and large congregate living arrangements. After further discussion, the Department has decided to maintain the maximum licensure period at one year. The Department determined that such a change was premature in light of the adoption of new standards. The possibility of extending this period to two years will be evaluated after the standards have been in place for a period of time. In order to avoid discouraging new applicants, the Department also decided not to increase the licensing fee from two to five dollars.

Some of the comments received from components of the Department seem to reflect a lack of understanding regarding the intent of certain standards. Additionally, some of the issues raised involved policy decisions and questions regarding implementation practices, and do not belong in licensing standards. These comments will be addressed in individual correspondence to provide clarification for the commenting parties.

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The Department found merit in three other comments received which require further evaluation before being included as amendments. These comments addressed the need for a time frame for notifying the Regional Office of any intention to voluntarily cease operation of a home, the placing of restrictions on a client's receiving visitors, and maintenance of records pertaining to a client's income. If the Department determines any of these comments are viable, additional amendments will be proposed.

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

CHAPTER 44B

MANUAL OF STANDARDS FOR
[COMMUNITY TRAINING HOMES]
***SKILL DEVELOPMENT HOMES, FAMILY CARE
HOMES* AND FAMILY-BASED RESPITE
CARE HOMES**

SUBCHAPTER 1. GENERAL PROVISIONS

10:44B-1.1 Definitions

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

"Abuse" is any act or omission of an act that willfully deprives a resident of his/her rights or which may cause or causes actual physical injury or emotional harm, and is not limited to physical injury. Examples of abuse are acts that cause pain, cuts, bruises, temporary loss of a body function, temporary or permanent disfigurement, death; striking with a closed or open hand; pushing to the ground or shoving aggressively; twisting a limb; pulling hair; dousing with water; intentionally ignoring a resident; withholding food; forcing a client to eat obnoxious substances; or use of verbal or other communication to curse, vilify, degrade a client or threaten a client with physical injury. This list is by no means exhaustive.

"Autism" is a behaviorally-defined syndrome affecting both children and adults. The essential features are typically manifested prior to 5 years of age and include: disturbances of developmental rates and sequences; disturbances of responses to sensory stimuli; disturbances of speech, language-cognition, and non-verbal communication; and disturbances of the capacity to relate appropriately to people, events and objects.

"Boarder" shall mean any person residing in the home who is not a member of the family ***[and] * ,* who is not developmentally disabled*.[.]* ***and who receives room, board and personal guidance.*****

"Capacity" shall mean the maximum number of individuals, including boarders, who may be accommodated in the home, other than family members, at any time under the terms of the home's license.

"Case Manager" shall mean the authorized representative of any agency, who coordinates the provision of social services to boarders or clients residing in the home.

"Cerebral Palsy" shall mean a persisting qualitative motor disturbance appearing before the age of three, due to non-progressive damage of the brain.

"Chores" shall mean those duties which are normally performed by members of a household as a matter of routine.

"Client" shall mean a developmentally disabled person admitted to or eligible for admission to a community residence.

"Community residence for the developmentally disabled" shall mean any community residential facility housing up to 16 developmentally disabled persons which also provides food, shelter, personal guidance and/or training for developmentally disabled persons who require assistance, temporarily or permanently, in order to live independently in the community. Such residences shall not be considered health care facilities within the meaning of the "Health Care Facilities Planning Act", P.L. 1971 c.136 (C.26:2H-1 et seq.) and shall include, but not be limited to, group homes, halfway houses, supervised apartment living arrangements, hostels, ***[community training homes,]* ***skill development homes, family care homes* and respite homes.****

["Community training home" shall mean a family-based community residence in which room, board, laundry services, and personal guidance are provided. Depending on the needs of the client(s), operators of these homes may be expected to carry out specialized individual training programs under the direction of a case manager. Services shall be contracted for on the basis of Individualized Habilitation Plans and shall center on basic self-care and social skills, activities of daily living, and behavior shaping.]

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

"Epilepsy" shall mean a chronic disease of the central nervous system characterized by convulsions and often unconsciousness.

"Exploitation" shall mean any unjust or improper use of another person for one's profit or advantage.

"Family care home" shall mean a private home or apartment in which an adult person or family contracts to provide developmentally disabled persons with room, board and personal guidance. Although individualized training is not provided in the home, the licensee must assist the individuals in working toward their personal development.

"Immediate family" shall mean the licensee's spouse, parents, step-parents, children, step-children, grandchildren, and grandparents.

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

"License" is the authorization issued by the Department of Human Services for a period of up to ***[two years]* ***one year* to ***operate* a community residence providing services to developmentally disabled persons. A license can be denied, revoked, suspended, or can be placed on provisional status by the Department of Human Services for violations of minimum standards promulgated herein.******

"Licensee" shall mean one or more adults, otherwise known as ***[a]* providers, responsible for the overall operation of the home, and who are named on the license.**

"Licensing agency" shall mean the Office of Licensing and Inspections, within the Department of Human Services, Division of Mental Retardation.

"Mental retardation" shall mean a state of significant sub-average intellectual functioning, existing concurrently with

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deficits in adaptive behavior and manifested during the developmental period.

“Natural person” shall mean an individual human being, as opposed to a corporation (an “artificial” or “legal” person).

“Neglect” shall mean the failure of an individual to provide for or maintain the care and safety of clients under his or her supervision, including, but not limited to, failure to provide and maintain proper and sufficient food, clothing, health care, shelter, and/or adult supervision.

“Provisional license” is that authorization to operate issued to new homes or used to prompt corrective actions in existing homes. A provisional license shall be for less than 12 months.

“Respite care home” is a family-based community residence in which room, board, and personal guidance are provided on a temporary basis, not to exceed 30 days. Unless otherwise specified within the body of this chapter, all regulations herein apply to these facilities.

“Skill development home” shall mean a private home or apartment in which an adult person or family contracts to provide developmentally disabled persons with care and training. The individual or family are paid for the developmentally disabled client’s room and board as well as a fee for one to one, goal-directed training which is conducted in accordance with the client’s Individual Habilitation Plan and overseen by the case manager.*

“Substantial non-compliance” exists when not meeting licensing requirements directly endangers the health, safety, or well-being of a client(s); when the unmet requirements exist in significant number; when the degree of the condition(s) is ***[(are)]* severe**; when one or more requirements have been left unmet with great frequency; and/or when the terms of the license have been violated.

“Variance” shall mean the permission granted to the licensee to meet the intent of a standard in an alternative manner.

“Waiver” shall mean the temporary suspension of a standard.

“Willful non-compliance” exists when the applicant or licensee has knowledge of conditions which are in violation of licensing rules and/or terms of the license, has been advised of the consequences of not achieving compliance and has not achieved compliance after being given an adequate opportunity to do so.

10:44B-1.2 Application ***[of]* *for*** license

(a) All initial inquiries for a license to operate a ***[Community Training]* *Skill Development Home, Family Care Home*** or Respite Care home shall be made to the appropriate Regional Office of the Division of Mental Retardation.

Regional Office:	Counties of Jurisdiction:
Northern Regional Office	Sussex, Morris, Warren, Hunterdon, Somerset
Metropolitan Regional Office	Bergen, Passaic, Essex, Hudson, Union
Central Regional Office	Middlesex, Monmouth, Mercer, Ocean, Burlington
Southern Regional Office	Camden, Atlantic, Gloucester, Cumberland, Salem, Cape May

(b) All applicants shall complete an Initial Application and submit three personal/professional references and one medical reference.

(c) An initial interview and review of the applicant’s home (“Home Study”) shall be conducted.

(d) Applicants shall attend and successfully complete a training and orientation program conducted or otherwise approved by the Division of Mental Retardation.

10:44B-1.3 Licenses and inspection

(a) Upon receipt of the Initial Sponsor Application, personal and medical references, Home Study Report, and training evaluation, a licensure inspection shall be arranged by:

Office of Licensing and Inspections
 Division of Mental Retardation
 Capital Place One
 222 South Warren Street CN 700
 Trenton, New Jersey 08625

(b) A license shall be issued if the inspection provides reasonable assurance that the home will be operated in the manner required by the standards.

(c) The initial license shall ***[be issued as a temporary]* permit *[to grant providers]* *a provider to operate for*** a six month period in which to demonstrate their ability to comply with minimum standards.

(d) The license shall be issued by the Department of Human Services only to natural persons and is not transferable to any other person or address. All licenses remain the property of the Department of Human Services and shall be returned upon termination.

(e) The license shall specify the maximum bed capacity of the home, including boarders and clients. Although individuals receiving services of another agency may reside in the home, there shall be a written agreement signed by the Regional Administrator of Community Services and the director of the placing agency serving the boarder.

(f) The license fee shall be set at ***[five]* *two*** dollars per year.

(g) No licensee shall operate more than one ***[Community Training]* *Skill Development Home, Family Care Home*** or Respite Care Home.

(h) The residence shall be subject to inspection by the licensing agency at least annually, and as deemed necessary, without limitation or notice, to allow for inquiry into the facilities, records, equipment, sanitary conditions, accommodations, and management of the clients.

(i) The license shall be kept on the premises at all times and be available upon request.

(j) The Department of Human Services may revoke the license whenever the licensee shall be found to be violating any State or Federal law pertaining to community residences for the developmentally disabled, or whenever such ***[residences]* *residence*** shall fail to comply with the minimum standards established by the Department of Human Services.

(k) A licensee shall not deny access to a community residence to any individual or group with proper identification and statutory authority to protect the rights of, and advocate on behalf of, the individuals placed in the home. Such persons may include, but not be limited to, the case manager, guardian, or guardianship worker, and licensing personnel.

(l) Failure of an applicant or licensee to provide necessary information in connection with an inspection or investigation by representatives of the Division of Mental Retardation shall be considered grounds for denial, suspension, revocation, or refusal to renew a license.

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(m) Waivers of specific standards may be granted at the discretion of the Division of Mental Retardation, provided that:

1. Strict enforcement of the rule would result in unreasonable hardship on the facility.
2. The waiver is not simply for the convenience of the licensee or other non-clients.
3. The waiver is in accordance with the particular needs of clients.
 - i. The waiver does not adversely affect the health, safety, welfare, or rights of any client.
 - ii. Verification that the waiver is in accordance with client needs may be requested from the case manager by the licensing agency.
4. The waiver is requested in writing by the licensee complete with substantial detail justifying the request.

*[10:44B-1.4 Notification of municipal officials

In accord with the provisions of Department of Community Affairs Binding Interpretation #12, (June 4, 1981) each licensee shall file a copy of their license with the local construction official. If a community residence for the developmentally disabled should become unlicensed, the licensing agency shall issue a notice to that effect to the local construction official.]*

[10:44B-1.5] *10:44B-1.4* Options on non-compliance with standard

(a) After each inspection, the licensee shall be provided with a copy of the inspection report. At the discretion of the licensing agency, it shall be the obligation of the provider to provide a plan of correction with 30 days of the issuance of the report. Unless a plan for earlier correction is required, all deficiencies shall be corrected by the time of the next inspection. Failure to make such corrections shall be considered grounds for action against the license.

(b) If the inspection report indicates substantial non-compliance and/or willful non-compliance with the regulations contained in this manual, or if any of the regulations not met represent a threat to the health, safety, or rights of the clients or boarders, licensure may be denied or revoked, following 30 day notice to the provider of such intent. Any subsequent application may be denied.

(c) In cases of non-compliance where licensure denial or revocation may be deemed by the Division of Mental Retardation to be too harsh an action, intermediate sanctions may be invoked following 30 day notice to the licensee of such intent. These include removal of clients from the residence, imposition of a moratorium or suspension of admissions into the home, reduction of capacity or licensure term, and/or reclassification of the residence.

(d) Licensees whose license has been suspended, revoked, or not renewed, or who have had intermediate sanctions invoked against them have the right to appeal the licensing agency's decision in accordance with N.J.A.C. 10:48.

SUBCHAPTER 2. ADMINISTRATIVE POLICIES AND PRACTICES

10:44B-2.1 Licensee requirements

(a) The licensee shall have overall responsibility for the clients and boarders in the home.

1. Except as otherwise provided in the Rehabilitated Offenders Act, no license will be issued to any person who, at any time, has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, crimes against the person or other like

offense(s). ***Additionally, no license shall be issued for a home in which any occupant has been adjudged civilly or criminally liable for abuse of another person.***

2. The licensee shall read, write, and understand English or otherwise demonstrate that he/she can sufficiently comply with the licensing requirements.

3. The licensee and members of the licensee's family participating in client care shall be of sound physical and emotional health.

i. Every two years, the licensee shall provide a statement from his/her physician to the effect that he/she is physically capable of performing his/her duties.

(b) Falsification of any information contained in the application or provided during any inspection shall be sufficient grounds for licensure denial, suspension, revocation, or non-renewal.

(c) Any applicant who receives or applies, subsequent to licensure, for public assistance shall document in writing to the licensing agency that he/she has notified the welfare agency or Board of Social Services of his/her intention to seek licensure as a Community Residence for the Developmentally Disabled as well as information on the allowable rates for reimbursement in the program.

(d) In instances where the licensee must be absent, a person 18 years of age or older shall be identified to assume the licensee's responsibility.

1. An alternate must be available in case of emergency.

2. Use of an alternate of six or more hours daily is prohibited.

3. The alternate must be familiar with the client(s), the licensee's home, and all emergency procedures.

4. The alternate shall meet the requirements of N.J.A.C. 10:44B-2.1(a)*[.]* ***with the exception of 2.1(a)3.i.***

5. The licensee shall provide the name, address, and telephone number of the alternate to representatives of both the placing agency and licensing agency.

i. Whenever the licensee changes the alternate, the placing and licensing agencies shall be notified in writing.

(e) Physical and verbal abuse, corporal punishment, physical discipline, use of aversive stimuli, neglect, and exploitation shall be prohibited.

1. Substantiation of such mistreatment of any client by the licensee shall be sufficient cause for immediate licensure revocation.

2. Clients shall not be directed or allowed to discipline other clients in the home.

3. All alleged and suspected mistreatment of clients shall be reported immediately to the responsible placing agency representative.

i. After normal working hours, the Regional Office of the Division of Mental Retardation can be reached at the appropriate hotline number.

ii. In the case of minors, allegations of abuse or neglect shall be reported to the local district office of the Division of Youth and Family Services or the Office of Child Abuse Control (800-792-8610) as well as the Division of Mental Retardation.

(f) The licensee shall immediately notify the responsible placing agency representative in the case of:

1. Death of a client or boarder;

2. Admission of the client or boarder to a hospital or treatment in an emergency room;

3. Emergency removal of a client or boarder;

4. A client or boarder missing for more than two hours, or a client's returning from a home or other visit two hours or more past scheduled time;

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5. Injuries to a client or boarder involving sutures, fractures, lost teeth, etc;

6. Any fire requiring the services of a fire department;

7. The disruption of any vital utility, e.g., heat, water, electricity, etc.

(g) The licensee shall notify the placing agency within five days of:

1. Any disruption of day program;

2. The grossly negative impact of any client's visits to or with family or friends; or

3. An increase in the number of family members in the home.

(h) The use of mechanical restraints or isolation shall be prohibited.

(i) There shall be no charge for any services to the client beyond those contracted and actually provided.

(j) No licensee or his/her relative shall be the legal guardian ***[or]**, * representative payee *or beneficiary of an insurance policy*** for any client residing in the licensee's home.

(k) The licensee shall be required to complete a course of instruction provided by the Division of Mental Retardation.

10:44B-2.2 Placements and departures

(a) There shall be no more than five persons in the home requiring care and assistance, including but not limited to: family members, children (natural, adopted, or foster), clients and boarders.

1. No more than four clients of the Division of Mental Retardation shall be placed in any one home.

(b) The Division of Mental Retardation shall set the total bed capacity of the home, excluding family members.

(c) The licensee shall at no time exceed the licensed bed capacity of the home.

(d) Third floor occupancy by clients shall be prohibited.

(e) Clients who are mobile non-ambulatory (capable of independent bed-to-wheelchair transfer) or with ambulation difficulties shall be housed on ground floors exclusively.

(f) The licensee shall accept only clients for whom he/she can provide adequate care.

1. If a client, because of a changed physical or mental condition, is no longer suitable for the living arrangement, he/she shall not be maintained in the home after consultation between the licensee and the placing agency representative.

2. Clients requiring skilled nursing care shall not be maintained in the home.

(g) The licensee shall notify the Regional Office of any intention to voluntarily cease to operate a community residence.

10:44B-2.3 Records

(a) All records shall be maintained in the licensee's home. Maintenance of records in any other place, either permanently or temporarily, is prohibited.

(b) Client records shall be considered the property of the agency providing case management services, and shall be relinquished to that agency's representative if the client is discharged or transferred from the licensee's home, or if otherwise necessary to safeguard the records.

(c) Records shall be stored in such a manner as to properly provide access only to the client, the licensee, alternate, involved agency or other persons authorized by ***law or*** a court of competent jurisdiction.

(d) The licensee ***and alternate*** shall protect and maintain the confidentiality of all records.

1. The licensee shall not make copies or allow copies to be made of client records without explicit written permission of the involved agency representative.

(e) An individual client folder shall be maintained and be appropriately marked with his/her name.

(f) Individual client records shall include:

1. Full name of client;

2. Date of birth;

3. Date of placement into home;

4. Names and addresses of persons or agencies responsible for placement;

5. Name and address of all personal physicians and dentists;

6. Name, address and telephone numbers of legal guardian (or guardianship worker), next of kin, and other interested person(s);

7. A contract for each person placed or boarder which shall note at least the following:

i. Responsibilities of all parties;

ii. Rate of payment to the licensee;

iii. Effective dates of contract;

iv. Amount of client spending money/personal needs allowance;

v. Signature of all parties.

8. Background information to include:

i. Client abilities;

ii. Religious preference;

iii. Social Security number;

iv. Special dietary needs;

v. Behavioral characteristics;

vi. Additional handicaps or disabilities;

vii. Interests, hobbies;

viii. Medical history to include:

(1) Allergies;

(2) Seizure history;

(3) Present medication;

(4) Special medical problems;

(5) For children, an immunization record.

9. Monthly reports of client's social and behavioral progress or regression (Does not apply to Respite Care Homes);

i. Reports shall include, but not be limited to, client's progress on Individual Habilitation Plan goals.

ii. If the client is subject to seizures, the sponsor shall indicate all seizure activity in the monthly report (including date, time, duration, surrounding circumstances, and treatment given).

10. A copy of the current Individual Habilitation Plan (Does not apply to Respite Care Homes);

11. Annual physical examination;

12. A medication record, if the client receives prescribed medication;

13. Authorization for emergency medical treatment (for clients requiring a guardian);

14. Medical insurance information regarding payment for emergency services;

(g) If the client is not capable of managing his/her own funds, the licensee shall maintain a record of all expenditures of the client's personal funds. The record shall include:

1. The date client funds were disbursed;

2. Amount disbursed;

3. Purpose of each disbursement or expenditure;

4. All receipts related to disbursements or expenditures over \$10.00, which shall be saved by the licensee until the case manager signs off on the financial record.

(h) The licensee shall keep on file, at the home, the following administrative records:

1. A placement agreement with all social service agencies from which the licensee will accept clients;

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2. A record of all admissions and departures, including names and dates, for *[a]* ***the previous*** twelve-month period;

3. A current copy of this Manual of Standards;

4. A record of monthly fire/evacuation drills, as specified in N.J.A.C. 10:44B-6.2(f)1;

5. A copy of his/her current license.

SUBCHAPTER 3. CLIENT CARE

10:44B-3.1 Client rights and responsibilities

(a) Clients' civil, human and legal rights shall not be abridged solely on the basis of diagnosed mental retardation, nor without due process.

1. The exercise of clients' rights shall not be prohibited or be used as a cause for retribution against the client.

(b) The licensee may establish reasonable house rules.

1. These rules shall include provisions to ensure that clients exercise their rights in such a way as not to infringe upon the rights of or endanger others.

2. The licensee shall make certain that the private life of the client is respected at all times.

i. The licensee shall avoid any unreasonable schedule concerning the hours at which clients shall rise or retire.

ii. Clients shall be permitted to rest in their homes for such periods as may be consistent with personal needs.

iii. Complete privacy shall be afforded during visits.

3. Visiting is to be permitted during reasonable hours.

(c) Clients shall have the opportunity to associate with members of the opposite sex.

(d) Clients shall have the right to participate in social, religious, or community groups of their choice.

1. Licensees shall not impose their religious beliefs on clients under their care.

2. Licensees shall provide each client with adequate substitutes for foods which the client's religious beliefs forbid him/her to eat.

(e) Clients shall have an opportunity to register and vote.

(f) Clients shall have free use of all living areas within the home without infringing on the privacy of others.

(g) Clients shall have the right to use the community for recreation, education, shopping, and employment.

(h) Clients shall have access to a telephone for unmonitored incoming and outgoing calls.

(i) Clients shall have the right to open their own mail and packages without surveillance.

(j) Licensees shall not read clients' ***incoming or*** outgoing mail unless requested by the client.

(k) If the client requests, he/she shall receive assistance in reading and writing letters.

(l) Clients shall be allowed to handle their own money consistent with their ability as determined by the casemanager, licensee, and guardian (guardianship worker).

(m) Clients shall be permitted to exercise all those rights outlined in the pamphlet "Your Rights as a Developmentally Disabled Person", distributed by the Division of Mental Retardation.

10:44B-3.2 Personal health, hygiene, and grooming

(a) Clients shall be encouraged to exercise maximum independence in health, hygiene, and grooming practices.

(b) Within the home each client shall have the opportunity for personal care, with assistance if necessary, to include:

1. A daily bath or shower;

2. Oral hygiene twice daily;

3. Opportunity to shave;

4. Care of fingernails and toenails;

5. Grooming of hair.

(c) Individual toilet articles—soap, wash cloths, towels and toilet tissue—shall be available without additional expense to clients.

(d) Individual toothbrushes, hair brushes, combs, and razors shall be available for each client at their own expense.

(e) Female clients shall be assisted as necessary to attain maximum independence in caring for menstrual needs.

10:44B-3.3 Food

(a) The licensee shall ensure that a client is provided with three meals daily, either in the home itself or in the community.

(b) There shall not be more than a 14-hour span between the evening meal and breakfast.

(c) Snacks shall be available for clients who desire them, unless there is a documented medical or programmatic reason not to supply them.

(d) The daily diet for each client shall include foods from the four basic good groups:

1. Milk, cheese, and other dairy products;

2. Bread, cereal, grains;

3. Vegetables, fruits;

4. Meats, fish, poultry, and eggs.

(e) Food shall be wholesome, stored in a manner to keep it clean and safe for human consumption, prepared in the form that meets the medical and dietary needs of the clients, and served family-style.

(f) Clients shall be consulted for preferences in determining menus.

(g) If a medically prescribed diet is required, the menu planning shall be appropriate to client needs, and be properly documented.

10:44B-3.4 Clothing

(a) Each client shall have the opportunity to select and purchase their own clothing as independently as possible.

1. Each client shall have adequate, clean, well-fitting and attractive clothing appropriate to age, gender, individual needs, community standards, and season.

2. The licensee shall assist the client in maintaining a good appearance, and using their personal money properly to make reasonable clothing purchases.

(b) The licensee shall provide laundry services without additional charge to the clients.

(c) Clients' undergarments shall be changed daily and outerwear changed at least three times a week.

SUBCHAPTER 4. HABILITATION

10:44B-4.1 Individualized Habilitation Plan

(a) There shall be a copy of the current Individualized Habilitation Plan developed in accordance with N.J.S.A. 30:6D-10 et seq. on file at the home for every developmentally disabled person receiving services from any agency, organization, or institution, and a copy of an Individual Education Plan for school age residents shall be available. (Does not apply to Respite Care Homes.)

(b) The licensee shall participate in the development of the Individualized Habilitation Plan. (Does not apply to Respite Care Homes.)

(c) Training received by a resident in the home shall be consistent with the Individual Habilitation Plan.

(d) If a client is *[being considered for discharge]*, ***is to be transferred or discharged*** the Individual Habilitation Plan shall specify the plan to be followed upon his/her ***transfer or*** discharge. ***Except in an emergency, the Individual Hab-**

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itation Plan shall be prepared at least 30 days prior to the time the actual discharge or transfer takes place.*

10:44B-4.2 Day programs

(a) No client shall be prohibited by the licensee from participating in an organized program of habilitation or rehabilitation.

1. Every client between the ages of *[5]* *3* and *[21]* *22* years shall receive an appropriate education in accordance with Federal and State laws.

2. All individuals over *[21]* *22* years of age, who so desire, shall be provided with a program, unless a physician certifies in writing that such activity is medically inadvisable.

(b) The client shall be paid for productive work, except for assisting with normal chores within the home.

SUBCHAPTER 5. HEALTH SERVICES

10:44B-5.1 General medical and health care

(a) A personal, primary physician shall be provided for each client.

(b) Each client shall have an annual medical examination.

1. No licensee shall accept into *[their]* *his/her* home any client being placed directly from an institution who has not been certified by a physician to be contagion-free within 24 hours prior to placement, and who has not had a complete physical examination within 30 days prior to placement.

2. A copy of the annual examination*, **signed and dated by the physician,*** shall be kept on file at the home.

(c) Each client*[, as appropriate,]* shall have at least an annual dental examination.

1. Documentation from the dentist of this examination*, **signed and dated by the dentist,*** shall be kept on file at the home.

(d) The licensee shall follow-up on all client health needs, including medical treatment, pharmaceutical, dental or other needed services.

(e) The licensee shall make arrangements for medical care to be available for emergencies.

(f) The licensee shall have a first aid kit to include:

1. Antiseptic;
2. Two-inch rolled gauze bandage;
3. 2" x 2" gauze pads;
4. Adhesive tape;
5. Scissors;
6. Adhesive bandage (e.g., band-aids).

10:44B-5.2 Medication and drugs

(a) Clients receiving medication shall be evaluated for their ability to take their own medication. (Does not apply to Respite Care Homes.)

1. The determination of whether a particular client is capable of self-administering medication should be made and documented at the time the Individual Habilitation Plan is developed or revised.

i. Upon written certification that a client is capable of taking medication without assistance, no daily medication record is required; however, the licensee must record in the individual's file the date the medication was prescribed, name of medication, dosage, frequency and where the medication is stored.

(b) If a client is found capable of learning to take his/her own medication, training shall be provided.

1. Life-sustaining drugs, such as injectable insulin, may be self-administered if the client has documented training from licensed medical personnel.

i. If the client is unable to learn to self-administer the injectable medication, a licensee who has documented training from licensed medical personnel and is approved by the licensing agency may administer the medication.

(c) If the client is not responsible or capable enough to take his own medication, the licensee or his/her alternative shall give it to him to take exactly as prescribed, and assure that the medication is taken.

1. The licensee shall maintain a record of all medication taken where assistance is required. The medication record shall include:

i. Signature of any persons administering medication followed by his/her initials;

ii. Type of medication;

iii. Dosage;

iv. Date and time of administration;

v. A record of each dosage administered identified by the initials of the person administering the medication.

(d) Medications shall only be used by the person for whom they are prescribed.

(e) The licensee shall ensure that an adequate supply of medication is maintained at all times.

(f) The licensee shall supervise the storage and accessibility of all medication.

1. Prescribed medication shall be kept separate from other household items.

i. No disinfectants, insecticides, bleaches, rubbing alcohol, or household poisons shall be stored with medications, food supplies, or utensils.

2. All medications shall be kept in their original containers and shall be properly identified.

(g) Medication errors and drug reactions shall be reported, at the time of the occurrence, to the client's physician and case manager.

(h) The licensee shall not change or discontinue any client's prescription without documented approval of the physician.

SUBCHAPTER 6. PHYSICAL PLANT AND SAFETY

10:44B-6.1 General home requirements

(a) The licensee shall take such measures as may be reasonably necessary to protect the occupants from hazards to health and safety arising from the location or environment of the residence.

(b) Any one or two family dwelling shall be subject to the requirements of New Jersey Uniform Construction Code (Use Group Category R-3) and Department of Community Affairs Binding Interpretation #12 (June 4, 1981).

(c) In single family homes which have been subdivided into more than two (2) apartment units, the following shall apply:

1. If the licensee is renting, he/she shall obtain a copy of the Certificate of Occupancy.

2. If the licensee is the owner, the building shall comply with the Uniform Construction Code Use Group Category R-2 (Multi-family dwelling).

(d) Every home shall have heating facilities which are properly installed, maintained in good and safe working condition, and capable of maintaining all habitable rooms at a temperature of 65° Fahrenheit (18°C) when the outdoor temperature is 0° Fahrenheit (- 18°C).

1. Heat sources exceeding 110°F (43°C), which are accessible to clients, must be equipped with protective guards or insulated to prevent clients from coming into direct contact with the heat source.

(e) Hot and cold running potable water shall be available in adequate supply at all times.

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- (f) The licensee shall have an operable telephone.
 - 1. *[Telephone numbers of]* ***The telephone number of the DMR hotline, as well as*** the nearest hospital, fire department, ambulance service, and police department shall be posted by each phone.
 - (g) All stair treads and landings shall be equipped with non-slip surfaces.
 - (h) Stair treads shall be at least 9" deep and have risers no more than 8¼" high.
 - (i) All stairways and hallways shall be kept free and clear of obstructions at all times.
 - (j) Stairways shall be a minimum of 2'8" wide from handrail to handrail or wall.
 - (k) From May through October, all openable windows and doors used for natural ventilation shall be provided with insect screening in good condition.
 - (l) Every porch, balcony, staircase, or place higher than 30 inches off the ground accessible to clients shall be provided with adequate railings. Such railings shall be no less than 30 inches nor more than 34 inches in height.
 - (m) All outside stairways consisting of four or more steps shall be provided with a secure handrail.
 - (n) Separate living and dining areas shall be provided which are large enough to provide seating for all occupants of the home at one time.
 - (o) Every home shall be provided with one flush type toilet, lavatory, and bathtub or shower for every 8 persons living in the home.
 - 1. Every toilet, lavatory, bathtub, or shower shall be accessible without passing through any other sleeping unit and shall be available within one floor above or below the client's room, unless it is a "master-bedroom" type suite for the sole use of that bedroom's occupants.
 - 2. Toilet paper shall be available at each toilet.
 - 3. Non-slip surfaces shall be available for each shower or bath.
 - (p) The accumulation of garbage or waste shall be prevented. Garbage containers shall be non-corrosive and non-combustible, leak-proof, and provided with tight fitting covers.
 - (q) Floors, walls, ceilings, and other interior surfaces shall be kept clean and in good repair.
 - (r) The exterior of the premises shall be maintained free of hazards to the health, safety, and welfare of the clients.
 - (s) Outside walkways shall be kept clean of ice, snow, leaves, and other hazards.
 - (t) Exterminator services shall be arranged, and documentation retained, by the licensee when there is evidence of infestation.
 - (u) If the home is to house clients using wheelchairs, it shall incorporate barrier-free design appropriate to the individual; e.g., ramps; handrails in bathroom areas; and corridors, doorways, and rooms of adequate size to accommodate wheelchairs.
 - 1. Design of the home shall be approved by the licensing agency prior to placement of such clients.
 - (v) Basements may be used for storage, laundry, heating, water supply equipment, and other utilities.
 - 1. They may be used as activity rooms so long as they are dry, warm, and adequately lighted and have two independent means of egress.
 - (w) Kitchen facilities;
 - 1. Storage space shall be clean and well ventilated.
 - i. Containers of food shall be covered and appropriately stored at least 12 inches above the floor on shelves or other clean surfaces.

- 2. Refrigeration and storage of food shall be provided at not more than 45° Fahrenheit (7°C). Freezer compartments shall operate at no more than 32°F (0°C).
- 3. All food and drink shall be safe for human consumption, clean, wholesome, and free of spoilage.
- 4. All food and drink shall be prepared and served in a sanitary manner.
- 5. All equipment and utensils used for eating, drinking, preparation and serving of food shall be kept clean and in good condition.
 - i. All equipment and utensils used for eating, drinking, preparation and serving of food shall be thoroughly washed after each use.
- 6. Floors, walls, and work surfaces of food preparation and food serving areas shall be kept clean and in good condition at all times.

10:44B-6.2 Fire safety

- (a) Independent battery-powered smoke detectors shall be installed on each floor, including the basement, and located in the following areas:
 - 1. One unit on the hallway ceiling of any floor with sleeping areas.
 - 2. One unit in the general living area of the home.
 - 3. Additional units may be required in areas designated as high hazard or without adequate coverage.
- (b) The licensee shall test the smoke detectors monthly.
- (c) One 1A:10B:C rated fire extinguisher shall be maintained in the kitchen, stored in clear view, and readily accessible.
- (d) The licensee shall demonstrate a knowledge of the use of the fire extinguisher.
- (e) The licensee shall develop and have available for review a written diagram for fire evacuation.
- (f) Fire drills shall be conducted once a month. Drills should be held at varying times of the day and night.
 - 1. Records of these drills shall be maintained and shall include the date and time of drill, time required for evacuation, and names of persons involved.
 - 2. Evacuation time shall be 2½ minutes or less.
 - 3. A fire drill shall be conducted within 48 hours of any admission.
 - i. Respite Care providers shall conduct a fire drill within 24 hours of any admission.
 - 4. Locations of the hypothetical fire shall vary.
- *5. If there is any reason to believe that an evacuation problem exists, a representative of DMR shall observe a fire drill conducted in the home.***
 - (g) Combustible materials shall not be stored within 3 feet of the furnace or hot water heater.
 - (h) Portable area or space heaters shall be prohibited.
 - (i) The licensee shall establish smoking rules on the basis of fire safety, and provide ash trays in all areas where smoking is permitted.
 - (j) Woodburning stoves shall be permitted only if proof of inspection by the local building official is provided.
 - 1. An A-rated fire extinguisher shall be available in the same room as the woodburning stove.
 - 2. Protective screening shall be provided as necessary.
 - (k) Combustible materials shall be stored in non-combustible containers.
 - (l) The accumulation of combustible material in attics, basements, or other parts of the home is prohibited.
 - (m) There shall be two ground level doors for egress.

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10:44B-6.3 Client rooms

(a) Every client room shall be provided with at least one window facing directly outdoors.

(b) Clients' bedrooms shall not be a means of access to any other room.

(c) Client occupancy shall be limited to floors on or above grade level. However, under certain conditions, basement occupancy may be permitted.

1. Such occupancy shall be allowed if:

i. More than half the height of the room is above grade level;

ii. The basement is provided with two or more independent means of egress, at least one of which leads directly outside; and

iii. There are no other conditions which hinder the health, safety, or welfare of the client.

(d) There shall be a limit of 3 clients to a bedroom.

(e) Bedrooms used by clients shall contain the following minimum areas per person:

- 1. 70 square feet for occupancy by one person;
- 2. 130 square feet for occupancy by two people;
- 3. 190 square feet for occupancy by three people.

(f) At least one half of the floor area of every client room shall have a ceiling height of 7½ feet. The floor area of that part of any room where the ceiling is less than 5 feet shall not be considered in determining allowable floor space.

(g) Every client room shall be provided with sufficient electrical outlets and lamps or light fixtures.

1. No temporary wiring shall be used except U.L.-listed extension cords, which do not run under rugs, through walls, or through doorways.

(h) Each client shall be provided:

1. A separate bed of proper size and height for his/her convenience. High hospital beds shall not be used except for physically handicapped persons requiring them.

i. The bed may not be of the fold-up or convertible type. Roll-aways, cots, hide-a-beds, trundle beds, double deck beds, and day beds shall be prohibited.

2. A clean, comfortable mattress of fire resistant material not less than four inches thick.

3. A bed spring in good repair.

4. A pillow, of non-allergenic material if necessary.

5. Drawers or a closet for the storage of personal possessions.

6. Sufficient light for reading or hobbies.

7. Adequate sheets and blankets.

8. A mirror.

(i) Bed linen shall be changed a minimum of once a week.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual; Long Term Care Services Manual Completion of a Field Audit

Adopted Amendment: N.J.A.C. 10:49-1.27, 10:63-1.22

Proposed: September 17, 1984 at 16 N.J.R. 2143(a).

Adopted: March 22, 1985, George J. Albanese, Commissioner, Department of Human Services.

Filed: March 22, 1985 as R.1985 d.177, **without change.**

Authority: N.J.S.A. 30:4D-17(f).

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Expiration Date pursuant to Executive Order No. 66(1978): April 30, 1985 for 10:49-1; March 21, 1989 for 10:63-1.

Summary of Public Comments and Agency Responses:

The rule concerns the assessment of interest on audits of long term care facilities (LTCFs). There was one comment submitted by James E. Cunningham, President, New Jersey Association of Health Care Facilities. Mr. Cunningham objected to isolating a special class of audits, namely those pending on March 1, 1983, which are still subject to interest penalties while a criminal investigation is being conducted.

The Division's position is that this rule memorializes an agreement that was reached with legal counsel for the New Jersey Nursing Home Association. The essence of the agreement was that the Division agreed to retain its right to collect interest while cases were being investigated for possible criminal violations for audits and audit recoveries pending on March 1, 1983. For audits commenced after this date, the Division limits its right to collect interest during pending criminal investigations when no criminal action results if no notice is issued within one year plus 180 days after the decision to refer the matter was made. Interest then stops running thereafter until the notice is issued. When the referral of an audit initiated on or after March 1, 1983 results in criminal action, the interest assessment rule is the same as this proposal, i.e., the Division's right to collect interest even when no notice is issued continues until the date the Office of Program Integrity Administration receives authorization to take administrative action plus 180 days. Interest stops running thereafter until the required notice is given in accordance with current policy and New Jersey law (N.J.S.A. 30:4D-17(f)).

Consequently, the Division is not making any changes in the text of the rule upon adoption.

Full text of the adoption follows.

10:49-1.27 Audits

(a) Field audits shall be subject to the following:

1. "Completion of the field audit" for long-term care facility providers for purposes of N.J.S.A. 30:4D-17(f) shall be defined in the following manner:

i. (No change.)

ii. For all such audits and audit recovery cases pending on March 1, 1983, which are, have been or will be referred either to the Legal Action Committee, or to the Division of Criminal Justice or other agency for criminal investigation, it shall mean the date the Office of Program Integrity Administration (OPIA) receives authorization to take administrative action.

iii. (No change in text.)

2.-5. (No change.)

(b) (No change.)

10:63-1.22 Audits

(a) "Completion of the field audit" for long-term care facility providers for purposes of N.J.S.A. 30:4D-17(f) shall be defined in the following manner:

1. (No change.)

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2. For all such audits and audit recovery cases pending on March 1, 1983, which are, have been or will be referred either to the Legal Action Committee, or to the Division of Criminal Justice or other agency for criminal investigation, it shall mean the date the Office of Program Integrity Administration (OPIA) receives authorization to take administrative action.

3. (No change in text.)

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

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Prosthetic and Orthotic Services Shoes

Adopted Amendments: N.J.A.C. 10:55-1.5, 1.8, 3.1

Proposed: January 21, 1985 at 17 N.J.R. 162(a).

Adopted: March 14, 1985 by George J. Albanese, Commissioner, Department of Human Services.

Filed: March 15, 1985 as R.1985 d.167, **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. 30:4D-6b(6)(12), 7, 7a, 7b; 30:4D-12; 42 CFR 447.325.

Effective Date: April 15, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): March 11, 1990 for 10:55-1; June 4, 1989 for 10:55-3.

Summary of Public Comments and Agency Responses:

There were two commentators on the proposal. Jerome S. Kessler, President, Prosthetic and Orthotic Society of New Jersey, supported the reimbursement formula of invoice cost plus 50 per cent. However, he requested that certain procedure codes that were asterisked (*) in the proposal be limited specifically to certified prosthetists and orthotists.

The Division's response is that the asterisked (*) procedure codes, which may be performed by providers other than certified prosthetists and orthotists, will remain intact upon adoption.

The other commentator was Christine V. Bator, Esq., of the law firm of Carella, Byrne, Bain & Gilfillan representing the New Jersey Pedorthic Society. This commentator agreed to accept the fee increase that was proposed, and requested that it be made retroactive. The Division's response is that fee increase will be effective April 15, 1985, which is the date of publication in the New Jersey Register. It should be noted that federal regulations require public notice prior to any significant change in reimbursement methodology (42 CFR 447.205).

The commentator also mentioned that the reimbursement formula of invoice cost plus 50 per cent would be difficult to apply to fabricated items. Therefore, the Division plans to submit a separate proposal that will increase fees for procedure codes governing shoe appliances (procedure codes 5000

through 5118). Ms. Bator's comment also requested that providers other than certified prosthetists and orthotists be allowed to be reimbursed for procedure codes 6939 and 6941, which pertain to labor and travel time respectively. The Division agreed to place an asterisk (*) next to these codes to make them consistent with procedure codes 6644 and 6645 which were part of the original proposal. The commentator also requested the addition of seven new items but the Division believes these can be covered by the existing procedure codes.

Summary of Changes Between Proposal and Adoption:

The Division is adopting only that portion of the rule that governs the asterisked (*) procedures with the addition of asterisks (*) for procedure codes 6939 and 6941 to make them consistent with procedure codes 6644 and 6645. The Division is also adopting only that portion of the rule pertaining to procedure codes 5120 through 5260. As was indicated in the proposal, the existing fee schedule is being deleted and replaced with the reimbursement formula of invoice of cost plus 50 per cent. The text of N.J.A.C. 10:55-1.5 is being amended to indicate that the reimbursement formula will be limited to certain procedure codes. An additional subsection (f) has been added to indicate that procedure codes (5000 through 5118) will still be reimbursed according to the existing fee schedule. A subsequent proposal will consider a fee increase for these items.

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

10:55-1.5 Policy on shoes

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

(d) Reimbursement for ***shoes (procedure codes 5120 through 5260)*** ***[shoe and shoe appliances]*** will be made in the following manner:

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

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

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

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

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

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

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

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

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(f) Providers will be reimbursed for shoe appliances (procedure codes 5000 through 5118) according to the price listing under the heading maximum pair price that corresponds to the appropriate procedure code and narrative description. It is not necessary to attach an invoice to the claim form for these particular procedure codes.

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

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

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

10:55-3.1 Prosthetic and orthotic code lists

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

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

NOTE: The full Prosthetic and Orthotic Code list is not printed in the New Jersey Administrative Code but may be obtained from:

Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN 712
Trenton, N.J. 08625

or

It may be reviewed at:

Office of Administrative Law
Quakerbridge Plaza, Bldg. #9
Trenton, N.J. 08625

(a)

DIVISION OF PUBLIC WELFARE

**General Assistance Manual
Household Size**

Adopted Amendment: N.J.A.C. 10:85-3.1

Proposed: January 7, 1985 at 17 N.J.R. 37(a).
Adopted: March 14, 1985 by George J. Albanese, Commissioner, Department of Human Services.
Filed: March 15, 1985 as R.1985 d.168, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

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

Effective Date: April 15, 1985.

Operative Date: May 1, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): July 25, 1988.

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

Summary of Changes Subsequent to Proposal:

The change at N.J.A.C. 10:85-3.1(b)2iii is a simplification of language for clarification purposes.

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

10:85-3.1 Persons eligible for General Assistance

(a) (No change.)

(b) Eligibility for general assistance is determined according to the number of persons applying as a unit (eligible unit) and the number of persons with whom such person(s) lives (household size).

1. (No change.)

2. Household size: Household size is defined as the number of related persons living together as a family unit. It is not necessarily the same as eligible unit size. In room and board or residential treatment situations, each person is a household of one. Each roomer is a household of one. In all other situations, the household shall consist of:

i. (No change.)

ii. Any spouse of any member of the eligible unit when the spouse lives in the same home and has not been included in the eligible unit, and

iii. If all members of the eligible unit are under age 60, all other persons who are under age 60 who live in the same home and who are not roomers or roomer-boarders and who are related by blood or marriage to any member of the eligible unit. If any member of the eligible unit is over age 60, the household size ***[is that of the eligible unit plus any spouse of an eligible unit member who was included in the household size in accordance with (b)2i above]*** ***consists only of those listed in (b)2i and 2ii above***.

3. (No change.)

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

(b)

DIVISION OF PUBLIC WELFARE

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

Adopted Amendment: N.J.A.C. 10:87-1.14

Proposed: January 21, 1985 at 17 N.J.R. 166(a).
Adopted: March 22, 1985 by George J. Albanese, Commissioner, Department of Human Services.
Filed: March 25, 1985 as R.1985 d.179, **without change**.

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

Effective Date: April 15, 1985.

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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.

10:87-1.14 Confidentiality and disclosure of information

(a) Confidentiality of information: The county welfare agency shall restrict the use or disclosure of information obtained from applicant households to persons directly connected with the administration or enforcement of the Food Stamp Program, AFDC, SSI, Medicaid, Child Support and Paternity program, or with any other federally aided, means-tested assistance programs.

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

1.-7. (No change.)

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

(a)

DIVISION OF PUBLIC WELFARE

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

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

Proposed: January 21, 1985 at 17 N.J.R. 167(a).
Adopted: March 22, 1985 by George J. Albanese, Commissioner, Department of Human Services.
Filed: March 25, 1985 as R.1985 d.180, **without change.**

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

Effective Date: April 15, 1985.
Operative Date: May 1, 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 adoption follows.

10:87-2.16 Subsequent refusal to cooperate

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

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10:87-2.17 Refusal to cooperate with Quality Control reviews

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

1. The household agrees to cooperate with the reviewer; or

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

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

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

10:87-8.2 CWA responsibility to provide fair hearing information

The CWA shall make Form FSP-196, “Fair Hearings in the Food Stamp Program”, available to any interested party upon request.

(b)

DIVISION OF PUBLIC WELFARE

**Medicaid Only Manual
Allowance for Health Insurance Premiums**

Adopted Amendment: N.J.A.C. 10:94-5.6

Proposed: January 7, 1985 at 17 N.J.R. 39(a).
Adopted: March 14, 1985 by George J. Albanese, Commissioner, Department of Human Services.
Filed: March 15, 1985 as R.1985 d.169, **without change.**

Authority: N.J.S.A. 44:7-87 and 30:4D-7; 42 CFR 435, 725(c)(4).

Effective Date: April 15, 1985.
Operative Date: May 1, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): August 22, 1988.

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

Full text of the adoption follows.

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10:94-5.6 Income eligibility standards

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

(e) Living allowance deductions: When an individual is in a Title XIX facility and program eligibility has been determined under the Medicaid "Cap", certain income deductions shall be made in the calculation of excess income available for payment to the facility. These amounts shall be clearly noted on Form PA-3L (Statement of Income Available for Long Term Care Facility Payment).

1.-3. (No change.)

4. Health insurance premiums: Health insurance premiums covering the recipient may also be deducted.

i. If the premium is not paid monthly, the amount shall be prorated over the period it is intended to cover.

ii. If the premium covers other individuals in addition to the recipient, only that portion attributable to the recipient shall be deducted.

(f)-(g) (No change.)

**INSURANCE
(a)**

**DIVISION OF THE REAL ESTATE
COMMISSION**

**Branch Office Compliance (Maintained
Offices)**

Adopted Amendment: N.J.A.C. 11:5-1.19

Proposed: August 20, 1984 at 16 N.J.R. 2228(a).

Adopted: March 25, 1985 by Hazel Frank Gluck, Commissioner, Department of Insurance.

Filed: March 25, 1985 as R.1985 d.187, **without change.**

Authority: N.J.S.A. 45:15-6 and 45:15-17.

Effective Date: April 15, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1988.

Summary of Public Comments and Agency Responses:

The Real Estate Commission received one comment suggesting that the amendment require salespersons and broker-salespersons to be licensed to a particular branch office.

The Commission acknowledges that while this may provide a further degree of order in that the Commission would be aware of the specific business location of each licensee in a firm with branch offices, it would interfere with the free transfer of employees at the discretion of the licensed broker. Such transfers often occur in practice. Furthermore, it would increase the administrative burden on the agency without any real increase in regulatory authority, since the licensed broker is ultimately responsible for the conduct of salespersons and broker-salespersons licensed with his or her firm, regardless at which branch office the individual is assigned.

Full text of the adoption follows.

11:5-1.19 Branch offices

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

(f) When a branch license is issued to a broker it shall specifically set forth the name of the broker and the address of the branch office, and shall be conspicuously displayed at all times in the branch office. The branch office shall also

prominently display the name of the licensee in charge as "office supervisor" and the names of all broker-salespersons or salespersons doing business at that branch office.

(b)

**DIVISION OF THE REAL ESTATE
COMMISSION**

Office Closing and Transfer Procedures

Adopted Amendment: N.J.A.C. 11:5-1.24

Proposed: August 20, 1984 at 16 N.J.R. 2228(b).

Adopted: March 25, 1985 by Hazel Frank Gluck, Commissioner, Department of Insurance.

Filed: March 25, 1985 as R.1985 d.186, **without change.**

Authority: N.J.S.A. 45:15-6 and 45:15-17.

Effective Date: April 15, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1988.

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

Full text of the adoption follows.

11:5-1.24 Return of license when broker ceases to be active; office closing; change of broker of record

(a) Each broker who ceases to be active shall immediately return to the Commission his license, and licenses of all salespersons and broker-salespersons for cancellation.

(b) Each employee's license must be accompanied by a letter terminating employment in compliance with N.J.S.A. 45:15-14.

(c) No broker engaging in the real estate brokerage business as a sole proprietor, as a broker of record of a partnership or as a broker of record of a corporation shall be relicensed as broker or salesperson unless within 30 days of the date on which the broker ceases engaging in the real estate brokerage business he or she shall complete and submit an affidavit to the Commission certifying that:

1. The broker's license, the corporate or partnership license, and the licenses of all salespersons and broker-salespersons have been returned to the Commission for cancellation;

2. The broker's trust account has been closed and that all funds held in trust for others have been disbursed to proper parties;

3. All commissions owed to salespersons and broker-salespersons have been paid, or, if not yet received by the broker, will be paid upon receipt;

4. No further commissions are due the broker except that any commissions for services previously rendered and payable in the future upon the occurrence of specified events are described on a list attached to the affidavit. The list shall describe the nature and amounts of such outstanding commissions with sufficient information to identify each transaction;

5. The broker has notified all principals in ongoing transactions, in writing, that the broker has ceased engaging in the real estate brokerage business or that the broker will hereinafter engage in the real estate brokerage business in another capacity. The notice shall describe the disposition of pending

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transactions and the name of custodian and place of deposit of any funds received from principals;

6. The broker has removed from the licensed premises all signs indicating that the premises contains the office of a licensed real estate broker;

7. The broker has recalled all signs and other advertisements or trade materials indicating that the broker is engaged in the real estate brokerage business;

8. The broker has advised the appropriate telephone services that the firm is no longer engaged in the real estate brokerage business, and that further telephone directories should not contain the name of the individual or firm as licensed brokers;

9. There are no outstanding fines or penalties due and owing the Real Estate Commission;

10. The broker acknowledges his or her responsibility to maintain permanent type records as required in N.J.A.C. 11:5-1.12. The broker must provide the address of the place of depository of such records and acknowledge responsibility to advise the Commission of any change in the name of the custodian or place of depository for a period of six years.

(d) When a new broker of record of a corporation or partnership is being substituted for the existing broker or record, the existing broker of record satisfies the certification requirements of (c) above when in compliance with the substitution procedures of (e) below.

(e) No new broker of record of a corporation or partnership shall be substituted unless the new broker of record and the former broker of record prepare and submit a joint affidavit to the Commissioner certifying that:

1. Custody of all funds held in trust for principals has been assumed by the new broker of record;

2. The new broker of record has reviewed all pending transactions and is satisfied that all funds held in trust have been accounted for;

3. All salespersons' commissions are paid to date;

4. The new broker acknowledges responsibility to pay salespersons' commissions in accordance with the policy for payment existing on the date of substitution;

5. No fines are presently owed to the Real Estate Commission, and if any fines are assessed after the date of substitution for actions occurring prior to substitution, both the former broker and new broker are jointly and severally responsible for payment;

6. All signs and advertisement have been changed to reflect the broker now authorized to transact business in the name of the firm;

7. All records required to be maintained pursuant to N.J.A.C. 11:5-1.12 have been turned over to the new broker, and the new broker acknowledges responsibility to maintain such records for a period of six years;

8. The new broker acknowledges that he or she will be responsible to transact business in the name and on behalf of the firm.

**LAW AND PUBLIC SAFETY
(a)**

DIVISION OF MOTOR VEHICLES

**Enforcement Service
Self-inspection of Certain Classes of Motor
Vehicles**

**Adopted Amendments: N.J.A.C. 13:20-26.5
and 26.12**

Adopted New Rule: N.J.A.C. 13:20-26.16

Proposed: February 4, 1985 at 17 N.J.R. 270(a).

Adopted: March 13, 1985 by Clifford W. Snedeker,
Director, Division of Motor Vehicles.

Filed: March 22, 1985 as R.1985 d.174, **without change.**

Authority: N.J.S.A. 39:3-43, 39:8-2 and 39:8-10.

Effective Date: April 15, 1985.

Operate Date: April 15, 1985 for adopted amendments;
July 1, 1985 for adopted new rule.

Expiration Date pursuant to Executive Order
No.66(1978): April 15, 1990.

**Summary of Public Comments and Agency Response:
No comment received.**

Full text of the adoption follows.

13:20-26.5 Inspection of motor vehicles

(a) Every State police officer, and every employee of the Division of Motor Vehicles, Department of Law and Public Safety, may enter upon and perform inspections of vehicles in operation upon the highways of this State or at the premises or places of business of the owner or lessee of such vehicles; provided, however, that such officer or employee has been authorized to inspect by the Director of the Division of Motor Vehicles and provided he has been trained in the techniques and procedures of inspection now or hereafter established by the Division of Motor Vehicles.

(b) (No change.)

13:20-26.12 Standards of inspection

(a) (No change.)

(b) The Director may, in accordance with the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), alter or amend any standard if, in his discretion, he finds that such standard is contrary to safe operation.

13:20-26.16 State inspection required; time for inspection

(a) Notwithstanding, and in addition to any other provision or requirement of this chapter, all "vehicles" except trailers, semi-trailers, pole trailers and diesel trucks registered at a gross weight of 10,000 lbs. or more and diesel truck tractors as defined in N.J.S.A. 39:1-1 shall be required to be inspected at State inspection stations or by examiners designated by the Director.

(b) The expiration of the windshield inspection sticker of each vehicle shall be the last day of the month in which the vehicle registration expires. Each such vehicle shall be presented for inspection after registration has been renewed and prior to the expiration date shown on the windshield inspection sticker.

LAW AND PUBLIC SAFETY

ADOPTIONS

(a)

BOARD OF DENTISTRY

General Provisions

Readoption as New Rules: N.J.A.C.

13:30-8.1 to 8.3, 8.5, and 8.7 to 8.13.

Proposed: February 19, 1985 at 17 N.J.R. 378(a).
Adopted: March 25, 1985 by New Jersey State Board of Dentistry, Arthur Yeager, D.D.S., President.
Filed: March 26, 1985 as R.1985 d.196, with portions of the proposal not adopted but still pending.

Authority: N.J.S.A. 45:6-1 et seq., N.J.S.A. 45:6-19.4.

Effective Date: April 15, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 15, 1990.

Summary of Public Comments and Agency Responses:

On March 13, 1985 the State Board of Dentistry at its regular meeting conditionally adopted a proposed readoption as new rules, said proposed readoption appearing at 17 N.J.R. 378. The Board's adoption was contingent upon not receiving additional public comments on the proposal. Prior to said adoption two comments were received which are discussed hereafter. On March 19, 1985 the Board received comments from the Federal Trade Commission. Said comments are limited to N.J.A.C. 13:30-8.4 and 8.6 (professional advertising) and address no other aspect of the proposal. In view of its prior action, the Board is withholding final adoption of N.J.A.C. 13:30-8.4 and 8.6 pending consideration of the Federal Trade Commission's comments.

The Board adopted all provisions as proposed and without charge, except N.J.A.C. 13:30-8.1(a)2ii, iii and 8.1(a)3 dealing with certain new fees for dental hygienists and assistants, and N.J.A.C. 13:30-8.4 and 8.6 which have been withheld from final adoption pending consideration of comments received from the Federal Trade Commission on March 19, 1985.

As to the remainder of the proposal, namely 13:30-8.1 to 8.3, 8.5, and 13:30-8.7 to 8.13, they are adopted without change from the original proposal, except for N.J.A.C. 13:30-8.1(a)2ii, 8.1(a)2iii and 8.1(a)3 establishing new fees for dental hygienists and dental assistants. These provisions are withheld pending further evaluation.

Two comments were received in relation to the initial proposal. The first voiced support for N.J.A.C. 13:30-8.12 which in general requires disclosure by dentists to third party payors if the dentist intends to waive all or part of a fee or co-payment. This requirement has been judicially recognized in previous litigation. The comment suggested technical amendments to clarify that information inserted in the new disclosure format be accurate and truthful. The Board deemed the suggested change unnecessary in view of a current statutory standard prohibiting licensees from using misrepresentation and deception. The comment further suggested that the proposal make it clear that the standard embodied therein was merely a disclosure standard. Again, the Board felt the proposal was sufficiently clear in that its language expressly contemplates only a written disclosure to a third party payor.

A second comment was received from two Board licensees directed at N.J.A.C. 13:30-8.9. This section was to be re-

adopted without change from a prior regulation and provided, in general, that licensees report to the Board incidents occurring in dental offices requiring patient removal to a hospital for observation or treatment and the reporting of any death relating to dental treatment provided by a licensee. The Board reviewed the comments which, in essence, raised the questions as to how the proposed standard would be applied in a number of hypothetical situations and concluded that the comments more appropriately addressed the subject of how and when the standard should be applied rather than its basic propriety. Given the Board's prior lengthy and satisfactory history with this regulation, it was concluded that no change from the proposal was needed.

Full text of the adoption follows:

SUBCHAPTER 8. GENERAL PROVISIONS

13:30-8.1 Fee schedules

(a) The Biennial Registration fees charged by the Board of Dentistry shall be the following:

- 1. Dentists:
i. Active registration \$50.00
ii. Inactive registration \$10.00
iii. Branch office..... \$10.00
2. Dental Hygienists:
i. Active registration \$10.00

(b) Except for the fee herein established, other fees prescribed by statute shall continue to be assessed by the Board in the lawful amount.

13:30-8.2 Additional dental hygiene functions
(No change in text from Code.)

13:30-8.3 Use of general anesthesia
(a)-(b) (No change in text from Code.)

(c) General provisions concerning use of general anesthesia are as follows:

1. No dentist shall employ or use general anesthesia on an outpatient basis for dental patients after November 1, 1977, unless such dentist possesses a permit or authorization issued by the State Board of Dentistry. The dentist holding such permit shall be subject to review, and such permit shall be renewed biennially.

2. In order to receive such a permit the dentist shall apply on an official application form and submit certified proof that he or she:

i. Has completed a minimum of three years postdoctoral training in oral surgery, or a minimum one-year training course in anesthesiology; or

(1) Is a diplomate in oral surgery or is Board-eligible in oral surgery; or

(2) Is a fellow of the American Dental Society of Anesthesiology, or is a member of the American Society of Oral Surgeons and/or is a member of the New Jersey Society of Oral Surgeons; or

(3) Has administered general anesthesia on a regular routine basis in his every day practice during the three-year period next preceding the effective date of this original rule (effective November 19, 1976) and thereafter successfully completes not less than 300 credit points of refresher courses in general anesthesia as prescribed by the Board and presented by an accepted program in a suitable institution prior to November 1, 1979; and

ii. Employs sufficient personnel (as deemed by the Board) to assist in monitoring the patient under general anesthesia;

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such personnel shall be certified by the permit holder as being trained in and capable of monitoring vital signs, and of assisting in emergency procedures; and

iii. Possesses basic equipment and supplies to deal with emergency situations, which equipment and supplies shall be readily accessible and in good order. This shall consist of no less than the list that shall be supplied by the Board.

3. Each and every anesthesia facility shall be inspected and approved by the State Board of Dentistry or its designee, only once every six years.

(d)-(h) (No change in text from Code.)

13:30-8.5 Complaint review procedures
(No change in text from Code.)

13:30-8.7 Jurisprudence examination for licensure
(No change in text from Code.)

13:30-8.8 Patient records
(No change in text from Code.)

13:30-8.9 Reporting of incidents or deaths
(No change in text from Code.)

13:30-8.10 Display of names; identifying badges
(No change in text from Code.)

13:30-8.11 Intravenous sedation
Every licensee who utilizes intravenous sedation on a regular basis shall employ sufficient auxiliary personnel to monitor the administration of this procedure and shall certify to the Board upon request that said personnel is or are capable of assisting in and trained for the procedure.

13:30-8.12 Dental insurance forms; professional misconduct
(a)-(b) (No change in text from Code.)

(c) A licensee who renders dental services or procedures to a patient enrolled in any dental prepayment contract plan with co-payment features and intends to waive any further payment by the patient shall, when submitting any claim form or bill to the third party payor, complete the claim form or bill as follows:

1. Enter on the attending dentist's statement a fee in the amount he actually intends to collect for the procedure billed for upon the assumption that the recipient will treat the procedure as a covered dental expense; or

2. Type, print or stamp on the face of the statement, or on a label affixed thereto, in legible characters at least ten points in height, the following words:

I/WE WAIVE COPAYMENTS, IT IS MY/OUR INTENTION EITHER TO (Check One)
() BILL THE PATIENT \$ AFTER RECEIPT FROM YOU OF \$
() WAIVE ANY FURTHER PAYMENT FROM THE PATIENT AFTER RECEIPT FROM YOU OF \$

13:30-8.13 Removable prosthesis identification

(a) Definitions:

1. The term "prosthesis" shall refer to an artificial substitute for a missing part of the oral cavity, such as a tooth, used for functional and/or cosmetic reasons.

2. The term "rebasings" means the act of replacing the base material of a denture without changing the occlusal relationship of the teeth.

(b) Ever complete maxillary and mandibular denture and removable partial denture prosthesis constructed by a Board licensee or fabricated pursuant to his work order shall be

marked in an appropriate area with the name and social security number of the patient for whom the prosthesis is prepared unless the patient objects thereto. In the event the patient, after being so informed, objects to the marking of the prosthesis, the licensee shall place such objection on the patient's permanent dental record.

(c) The marking of a dental prosthesis shall be accomplished during processing and shall be permanent, legible and cosmetically acceptable. The exact location of the markings and the methods used to place them shall be determined by the licensee.

(d) If, in the licensee's professional judgment, marking of the prosthesis with the patient's complete name and social security number is not practicable, identification shall be provided as follows:

1. The social security number may be omitted if the patient's complete name is marked; or

2. The initials of the patient may be marked alone if the marking of the patient's full name is impracticable; or

3. The identification marks may be omitted in their entirety if none of the forms of identification specified in 1 and 2 above are practicable or clinically safe.

(e) Any complete or partial removable dental prosthesis in existence prior to the effective date of this regulation, which has not been marked in accordance with (b) above, shall be so marked at the time of any subsequent rebasing or repair.

(f) A reasonable fee may be charged for the marking of the complete or partial removable dental prosthesis.

(a)

BOARD OF MORTUARY SCIENCE

Fees and Charges

Adopted Amendment: N.J.A.C. 13:36-1.6

Proposed: January 7, 1985 at 17 N.J.R. 50(a).

Adopted: February 13, 1985 by Paul Ippolitto, President, Board of Mortuary Science.

Filed: March 22, 1985 as R.1985 d.175, **without change.**

Authority: N.J.S.A. 45:1-3.2.

Effective Date: April 15, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): August 6, 1989.

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

Full text of the adoption follows.

13:36-1.6 Fees and charges

(a) There shall be paid to the State Board of Mortuary Science the following fees set forth:

1. Certification fee	\$ 25.00;
2. Practitioner examination fee	\$100.00;
3. Practitioner reexamination fee	\$100.00;
4. Embalmer examination fee	\$100.00;
5. Funeral director examination fee	\$100.00;
6. Intern registration fee	\$ 50.00;
7. Intern reregistration fee	\$ 25.00;
8. New installation fee	\$100.00;

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9. New licenses	\$ 40.00;
10. Rules and regulations	\$ 1.00;
11. License renewal fee:	
i. Practitioner	\$ 40.00;
ii. Embalmer	\$ 40.00;
iii. Funeral director	\$ 40.00;
iv. †License revival fee	\$ 75.00;
v. Certificates of registration	\$ 85.00;
12. Duplicate license card fee	\$ 10.00;
13. Duplicate certificate fee	\$ 10.00;

† Plus \$25.00 for each year that said license is not renewed.

PUBLIC UTILITIES
(a)

BOARD OF PUBLIC UTILITIES

**Bills and Payments for Service
Termination of Service for Non-Payment of
Combined Utilities**

**Adopted Amendments: N.J.A.C. 14:3-7.12
and 7.13**

Proposed: October 15, 1984 at 16 N.J.R. 2747(a).

Adopted: March 11, 1985 by Board of Public Utilities,
Barbara A. Curran, President.

Filed: March 14, 1985 as R.1985 d.166, **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. 48:2-12.

Effective Date: April 15, 1985.

Expiration Date pursuant to Executive Order No.
66(1978): July 2, 1989.

Docket No. 835-371.

Summary of Public Comments and Agency Responses:

The Consumer League of New Jersey approves of the proposed amendments. They believe a specific rule on the subject of separate billing is necessary because even though the Board has previously approved of the concept, they have not heard of a case in which PSE&G offered it to a customer. Also, utility employees are hostile to the suggestion of separate billing when broached by legal aid attorneys.

The Consumer League also voices concern that by the time a tenant's utilities are shut-off, the bill is so high that after paying rent, a person on a fixed income cannot pay the 25 percent needed to obtain a deferred payment agreement. Enclosed was a study by the National Consumer Law Center comparing energy costs with the limited incomes of the poor, elderly and the unemployed. They called for a comprehensive solution by the Board to address the problem of unaffordable utilities for those on a fixed income but the proposed amendments were fine for solving part of the problem.

PSE&G supports the proposed amendments as published. The preparation of separate payment arrangements for each service on an account will require additional time and costs but PSE&G did not find this burden too onerous. PSE&G

wants only residential customers affected; including commercial and industrial customers would only benefit companies attempting to avoid payment for services used because they can easily switch their equipment from gas to oil. The Board agrees that separate deferred payment agreements should only be available to residential customers.

The Division of Rate Counsel, Department of the Public Advocate, has several suggestions about the proposed amendments. In order to save utilities "unnecessary headaches" they agree that a customer should only be able to direct his payment when the customer has an outstanding balance and is sent a discontinuance notice. However, under the current rules, the customer is entitled to only one agreement per year for each service. Rate counsel is concerned that if a customer breaks deferred payment agreements for both services he would no longer be able to choose which service to pay for if the utility decides not to negotiate another agreement. The customer would have to pay the **entire** balance before the service could be restored. Rate Counsel would like to delete the sentence in 14:3-7.13(d) stating that deferred payment agreements need not be entered into more than once a year and substitute a clause which required the utility to enter into good faith negotiations whenever the customer requests another agreement. Another remedy to the problem would be a separate subsection under 14:3-7.13 allowing **any** customer who is disconnected to direct payments to a specific service. The payments could be incorporated into the deferred payment agreement previously negotiated.

The Board cannot accept this recommendation. The regulation does not prohibit the negotiation of a second deferred payment agreement(s). If a customer has the ability to pay current bills, plus a reasonable amount on the outstanding balance, a utility should agree to a deferred payment agreement. A customer may appeal a negative utility decision to the Board.

Rate Counsel would also like the customer to have the option of having only one deferred payment agreement and having the other service disconnected. Thus, the customer would not have to sign agreements which run concurrently for each and every service in arrears. They propose that the following provision be inserted at the end of subsection (c):

The utility shall not require such a customer to accept two or more deferred payment agreements that extend over the same time period. The customer shall have the option to enter into (a) deferred payment agreement(s) for (a) particular service(s), and have the remaining service(s) disconnected until satisfactory arrangements for payment can be made.

The proposed regulation was intended to allow customers such an option, therefore, the Board has added the suggested provision to subsection (c).

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

14:3-7.12 Notice of discontinuance

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

(c) On all notices of discontinuance to residential customers, there shall be included:

1.-2. (No change.)

3. A statement that if a customer is presently unable to pay an outstanding bill, the customer may contact the utility to discuss the possibility of entering into a reasonable deferred payment agreement. In the case of a ***residential*** customer

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receiving more than one different service from the same utility, the statement shall state that deferred payment agreements are available separately for each utility service.

(d)-(e) (No change.)

14:3-7.13 Disputes as to bills

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

(c) Whenever a residential customer advises the utility prior to the date of a proposed discontinuance for nonpayment that he wishes to discuss a deferred payment agreement because he is presently unable to pay a total outstanding bill, the utility shall make a good faith effort to provide the customer with an opportunity to enter into (a) reasonable deferred payment agreement(s). Such an opportunity shall be extended to a residential electric and/or gas customer either prior to or after the occurrence of discontinuance of service for non-payment. In negotiating such (a) deferred payment agreement(s); a residential electric and/or gas customer may not be required to pay, as a down payment more than 25 percent of the total outstanding bill due at the time the agreement(s) is made or executed. In the case of ***a*** residential customer who received more than one utility service from the same utility and the amount which is in arrears is a combination of those services the utility shall offer a separate deferred payment ***agreement* *plan*** for each service based on the outstanding balance for that service prior to any proposed discontinuance for non-payment. ***The utility shall not require such a customer to accept two or more deferred payment agreements that extend over the same time period. The customer shall have the option to enter into (a) deferred payment agreement(s) for (a) particular service(s), and have the remaining service(s) disconnected until satisfactory arrangements for payment can be made.***

(d) Such agreements which extend for more than two months shall be in writing and shall provide that a customer who is presently unable to pay an outstanding debt for utility services may make reasonable periodic payments until the debt is liquidated while continuing payment of current bills. ***While a *A* deferred payment agreement *for each separate service* need not be entered into more than once a year*, the utility may offer more than one such agreement in a year. The Board of Public Utilities may order a utility to accept more than one deferred payment agreement in a year if said action is reasonable.*** If the customer defaults on any of the terms of the agreement, the utility may discontinue service after providing the customer with a notice of discontinuance. In the case of a residential customer who receives more than one utility service from the same utility and has subsequently entered into ***a*** separate ***agreement* *plan*** for each separate service, default on one such ***agreement* *plan*** shall constitute grounds for discontinuance of only that service.

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(a)

THE COMMISSIONER

Vehicles Exempted from the Table of Maximum Gross Weights

Adopted New Rule: N.J.A.C. 16:32-2

Proposed: August 6, 1984 at 16 N.J.R. 2072(a).

Adopted: March 25, 1985 by James A. Crawford, Assistant Commissioner for Transportation Services and Planning.

Filed: March 25, 1985 as R.1985 d.194, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:3-84 and 39:3-84.1.

Effective Date: April 15, 1985.

Expiration Date under Executive Order No. 66(1978): April 15, 1990.

Summary of Public Comments and Agency Responses:

On August 6, 1984, the Department published proposed rule as N.J.A.C. 16:32-2, "Vehicles Exempted from the Table of Maximum Gross Weights," in compliance with Section 2 of P.L. 1983, c. 349, approved September 22, 1983, which applied the "federal bridge formula" to New Jersey's Interstate highways by incorporating a Table of Maximum Gross Weights at N.J.S.A. 39:3-84b(5) and Section 1 of P.L. 1983, c. 374, approved October 31, 1983, which provided for certain possible exemptions. As a result of this proposal written comments were received from the following: New Jersey Motor Truck Association; Fuel Merchants Association; Bass Transportation Co., Inc.; and Haddonfield Lumber Company.

All of the comments received argued for expanding the list of classes of vehicles exempted from the Table of Maximum Gross Weights. As indicated in the specific responses below, the Department did not feel able to accede to any of these requests at the present time, although a number of them are under further review. No comments argued against any of the exemptions already in the proposed rule. Therefore, the Department has adopted the proposed rule without change.

COMMENT:

Paul J. Stalknecht, managing director of the New Jersey Motor Truck Association, East Brunswick, supported the proposed rule on behalf of the association but requested that the Department delay adoption of the rule "until such time as negotiations between the trucking industry, Federal Highway Administration and NJDOT are completed with reference to specific categories of vehicles that were not included in either the temporary or permanent exemption list."

RESPONSE:

The Department is not party to any negotiations outside the present rulemaking process. Since enactment of P.L. 1983, c. 374 (approved October 31, 1983), the statute which authorizes the granting of exemptions, the Department has engaged in discussions with all interested parties in an effort to develop an exemptions list that would give the greatest possible relief to the industry without jeopardizing compliance with Federal requirements. The proposed rule is the result of that process. As described in various responses below, the Department is undertaking further review of all requests for exemptions which have been submitted during the rulemaking process.

Furthermore, notwithstanding adoption of the proposed rule, the Department will give serious attention to any new request for exemption, additional evidence in support of a request for exemption or any other pertinent information brought to the Department's attention.

COMMENT:

Jerem M. Gordon Esq., Marlton, submitted two separate comments on behalf of the New Jersey Motor Truck Association and the Fuel Merchants Association.

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(1) Mr. Gordon submitted a memorandum captioned "The Impact of the Federal Aid Highway Act on the State of New Jersey" and requested the Department's consideration. The memorandum offers an analysis of the legal issues involved in the application of Federal statutory truck dimension requirements to New Jersey and argues that there are significant exemptions that should be made based on "grandfather" rights under Federal law.

(2) Mr. Gordon further requested that the Department seek a legal opinion concerning certain arguments put forward by L.P. Lamm, dupty administrator of the Federal Highway Administration, in a July 23, 1984 letter to Paul Stalknecht, managing director of the New Jersey Motor Truck Association. In the letter, which Mr. Gordon submitted for the record, Mr. Lamm noted the existence at one time in New Jersey law of certain provisions for "gross controls on multi-axled vehicles" and suggested that the Attorney General of New Jersey be asked whether these provisions might serve as a legal basis for advancing a "grandfather" claim for exemption of certain classes of vehicles from the Table of Maximum Gross Weights.

RESPONSE:

Both of Mr. Gordon's submissions involve complex legal arguments which are beyond the competence of the Department to address. The Department has therefore sought an opinion on these submissions from the Attorney General of the State of New Jersey. Should the Attorney General find that previously unrecognized "grandfather" privileges may apply to certain classes of vehicles, the Department will explore what form of relief might be possible and appropriate for those classes of vehicles.

COMMENT:

James P. O'Donnell, president of Bass Transportation Co., Inc., Flemington, requested that "five-axle dry bulk carriers" and "five-axle dry vans" be granted temporary exemptions from the Table of Maximum Gross Weights.

RESPONSE:

The Department believes that the proposed rule already grants the exemptions that Mr. O'Donnell has requested. The rule includes "five-axle bulk carriers" in the temporary exemptions list. Bulk carriers are defined in the rule as "vehicles or combinations of vehicles which are designed to carry or transport bulk commodities as described and defined in the 'Bulk Commodities Transportation Act' (Laws 1977, c. 259) N.J.S.A. 39:5E-3." "Bulk commodities" are defined in that Act as "liquids or gases, not in containers, and dry fungible commodities, not in containers; slurries not in containers; loaded in bulk in a carrier's vehicle and unloaded in bulk from a carrier's vehicle. It shall not include agricultural, farm or dairy products in their natural, processed, concentrated or treated states, whether packaged or unpackaged." Accordingly, the Department believes that "five-axle dry bulk carriers" and "five-axel dry vans" conform to the definition of "five-axle bulk carriers" in the proposed rule and will be granted a temporary exemption.

COMMENT:

David F. Norcross Esq., of Cherry Hill, writing on behalf of Haddonfield Lumber Company, requested a temporary exemption from the Table of Maximum Gross Weights for a class of vehicles called "boom trucks," which he described as trucks equipped with cranes and used primarily to transport sheet rock for construction purposes from the supplier to a construction site. Mr. Norcross said that these vehicles would

not comply with the Table of Maximum Gross Weights when fully loaded and that operating them with less than full loads would create an economic and social burden on operators of boom trucks and on the housing sector of the economy, which they service. He noted that boom trucks share many characteristics with other types of construction equipment which would be granted temporary exemptions in the proposed rule.

RESPONSE:

The Department notes that it is not certain whether boom trucks, as described by Mr. Norcross, can be considered as being included in any of the categories of vehicles described in N.J.S.A. 39:3-84.1 (as amended by P.L. 1983, c. 374) for which the Commissioner of Transportation is authorized to grant exemptions from the Table of Maximum Gross Weights. Nevertheless, the Department has requested the Federal Highway Administration to review whether granting an exemption for boom trucks would maintain New Jersey in a state of compliance with Federal requirements. If the Federal Highway Administration finds that an exemption for these vehicles would not bring New Jersey into a state of noncompliance, the Department will explore what form of relief would be possible and appropriate.

Full text of the adoption follows.

**CHAPTER 32
TRUCKS**

**SUBCHAPTER 1. DESIGNATED ROUTES FOR
SPECIAL CATEGORIES OF
TRUCKS**

16:32-1.1-16:32-1.4 (No change).

**SUBCHAPTER 2. VEHICLES EXEMPTED FROM THE
TABLE OF MAXIMUM GROSS
WEIGHTS**

16:32-2.1 Definition

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

"Federal bridge formula" shall mean the total gross weight, in pounds, imposed on the highway or other surface by any group of two or more consecutive axles of a vehicle or combination of vehicles, including load or contents, which shall not exceed that listed in the TABLE OF MAXIMUM GROSS WEIGHT as found at N.J.S.A. 39:3-84b(5) (Laws 1983, c. 349, §2).

"Tandem-axle" shall mean a combination of consecutive axles consisting of only two axles, where the distance between the axle centers is 40 inches or more but no more than 96 inches, as defined at N.J.S.A. 39:3-84b (Laws 1983 c. 349, §2).

"Bulk and liquid bulk carriers" shall mean only those vehicles or combinations of vehicles which are designed to carry or transport bulk commodities as described and defined in the "Bulk Commodities Transportation Act" (Laws 1977, c.259) N.J.S.A. 39:5E-3.

"Dump truck or dump trailer" shall mean a vehicle or combination of vehicles designed to unload its cargo by elevating one end of the cargo body.

"Intermodal ocean container" shall mean a permanent reusable article of transport equipment durably constructed of metal or other permanent substance and equipped with doors for easy access to its interior, which is utilized on various

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modes of transport without the necessity of loading or unloading the contents within each time the mode of transport is changed.

“Tandem-axle dump truck” shall mean a single vehicle dump truck with only three axles as follows: a single steering axle and a tandem drive or rear axle.

“Five axle dump trailer” shall mean a combination of vehicles consisting of a truck-tractor drawing unit and a semi-trailer dump trailer drawn unit with a total of only five axles for the entire combination.

“Two axle dump truck” shall mean a single vehicle dump truck with only two axles.

“Four axle dump truck and tri-axle dump truck” shall mean a single vehicle dump truck with only four axles as follows: a single steering axle and three drive or rear axles.

“Three axle and four axle ready-mix transit truck” shall mean a single vehicle designed solely for the purpose of transporting ready-mix construction materials with either: 1. three axles as follows: a single steering axle and a tandem rear or drive axle; or 2. with four axles as follows: a single steering axle and three rear or drive axles.

“Five axle bulk carrier and five axle liquid bulk carrier” shall mean a combination of vehicles consisting of a truck-tractor drawing unit and a semi-trailer bulk or liquid bulk drawn unit with a total of only five axles for the entire combination.

“Two axle liquid bulk carrier” shall mean a single liquid bulk carrier vehicle with only two axles.

“Three axle liquid bulk carrier” shall mean either a single liquid bulk carrier vehicle with three axles as follows: 1. a single steering axle and a tandem drive or rear axle; or 2. a combination of vehicles consisting of a truck-tractor drawing unit with two axles and a semi-trailer liquid bulk drawn unit with a single axle.

“Four axle liquid bulk carrier” shall mean either: 1. a single liquid bulk carrier vehicle with four axles as follows: a single steering axle and three rear or drive axles; or 2. a combination of vehicles consisting of truck-tractor drawing unit and a semi-trailer liquid bulk drawn unit with a total of only four axles for the entire combination.

16:32-2.2 Permanent exemptions

(a) Under authority granted by N.J.S.A. 39:3-84.1b, the following class of vehicles registered in the State of New Jersey, is exempted from compliance with the Table of Maximum Gross Weights, N.J.S.A. 39:3-84b(5), known as the “federal bridge formula”:

1. Trailers and semitrailers operated under a permit granted under N.J.S.A. 39:4-26.

16:32-2.3 Temporary exemptions

(a) Under authority granted by N.J.S.A. 39:3-84.1b, the following classes of vehicles registered in the State of New Jersey are exempted from compliance with the Table of Maximum Gross Weights, N.J.S.A. 39:3-84b(5), known as the “federal bridge formula,” until October 1, 1988:

1. Tandem-axle dump trucks;
2. Five-axle dump trailers;
3. Two-axle dump trucks;
4. Tri-axle dump trucks;
5. Four-axle dump trucks;
6. Three-axle and four-axle ready-mix transit trucks;
7. Five-axle bulk carriers;
8. Two-axle, three-axle, four-axle and five-axle liquid bulk carriers; and
9. Intermodal ocean containers.

TRANSPORTATION

(a)

PUBLIC TRANSPORTATION

Financial and Accounting Conditions and Criteria for Bus Operating Assistance Program

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

Proposed: February 4, 1985, at 17 N.J.R. 272(a).

Adopted: March 11, 1985 by James A. Crawford, Assistant Commissioner for Transportation Services and Planning.

Filed: March 25, 1985 as R.1985 d.193, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 27:25-5 et. seq.

Effective Date: April 15, 1985.

Expiration Date pursuant to Executive Order 66(1978): April 15, 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. 16:53A.

(b)

AERONAUTICS

Air Safety and Hazardous Zoning

Adopted New Rule: N.J.A.C. 16:62

Proposed: April 16, 1984 at 16 N.J.R. 860(b)

Adopted: March 20, 1985 by James A. Crawford, Assistant Commissioner for Transportation Services and Planning.

Filed: March 22, 1985 as R.1985 d.173 with substantive and technical changes not requiring additional public notice or comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29, 6:1-32 and “Air Safety and Hazardous Zoning Act of 1983,” P.L. 1983, c.260.

Effective Date: April 15, 1985.

Expiration Date under Executive Order 66(1978): April 15, 1990.

Summary of Public Comments and Agency Responses:

On April 16, 1984 the Department published proposed rule as N.J.A.C. 16:62 “Air Safety and Hazardous Zoning” in compliance with the “Air Safety and Hazardous Zoning Act of 1983,” P.L. 1983, c.260. Because of the interest expressed in the proposed rule, a Notice of Public Hearing was subsequently published in the New Jersey Register of January 7, 1985 at 17 N.J.R. 59(b), notices also appeared in various newspapers and all commentators were advised. Each affected municipality was individually notified of the place and date of

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the public hearing. A public hearing was held on January 16, 1985, at 10:00 A.M. in Room #140 (Hearing Room) at the Department, at which there was one oral presenter. (Mark Sininsky, Esq; Lakewood Township) Comments were received from the following: Council, City of Linden; Councilman, Joseph Suliga, City of Linden; Solvents Recovery Service of New Jersey, Inc; Assemblyman Thomas W. Long; Bureau of Green Trust Management; Exxon Company, U.S.A.; Assemblyman Thomas J. Deverin; General Motor Assembly Division; Merck Chemical Manufacturing Division; Mrs. A. Woytovich; New Jersey CASP III: New Jersey Alliance of Aviation Business; Township of Branchburg; Township of Fairfield; the Port Authority of NY & NJ; and the Township of Stafford.

Comments: The Council of the City of Linden by resolution opposed the regulations because it will severely impede the growth and development of the Linden Municipal Airport and the acreage surrounding it to the detriment of the entire city and the denial of much needed ratables. Additionally, it would have a disastrous economic impact on The City of Linden, because it proposed a "Prohibitive Zone" wherein plans have been formulated for development. Councilman Joseph Suliga; Committee person Anna Woytovich; Solvents Recovery Service of New Jersey, Inc., Assemblyman Thomas W. Long; Bureau of Green Trust Management; Exxon Company, U.S.A.; Assemblyman Thomas J. Deverin; General Motors Corporation and Merck & Co., Inc.; all expressed similar comments supporting the City of Linden.

Response: The Department's Director of Aeronautics met with the council members, State officials and representatives from the major corporations and expressed the Department's anxiety to insure the resolution of any potential conflict that would affect the economic stability of Linden. Subchapter 7, provides a means by which an airport could adopt a special standard when local conditions require it. It is specifically for unique existing circumstances, such as those at Linden, that the provisions for a special or amended standard exists within the proposed regulation. In further anticipation of exercising such an option, N.J.A.C. 16:62-7.2 concerning Amended and special standards was created and marked as "Reserved" in order to address situations similar to the one of Linden. Additional information available indicates that legislation has been introduced to exempt The Linden Airport from the regulations.

Comment: The F.A.A. Easter Region Office commented that the proposed rules did not include provisions for bringing non-conforming existing "Prohibited Land Uses" under compliance and quite specific in assuring no interference with the continuance of any non-conforming use. The F.A.A. further suggested enforcement of the Federal standard criteria (FAR Part 77) and use Subchapter 7: Provisions for Amended and Special Airport Standards to adopt a special standard for an airport when the Commissioner determines that local conditions require it.

Response: In regard to existing non-conforming land uses, Section 5 of the Airport Safety Act specifically prohibits the Department from requiring the lowering, removal, or other changes to situations existing at the time of rule adoption. Strict enforcement of FAR Part 77 at some larger airports would be contingent upon the adoption of a special standard under Subchapter 7 of this rule. Additionally, new language has been added under 16:62-1.2(m) to ensure that no portion of the rule could be interpreted as relieving a responsible party

of agreement entered with the FAA to control airport hazards.

Comment: New Jersey Alliance of Aviation Businesses felt that the regulations were an important step in the right direction. However, the rules did not state a specific date by which the required municipal ordinances must be enacted nor is there any mention of specific penalties to be imposed in cases where municipalities do not enact the required ordinances.

Response: The Department welcomes the endorsement of the regulations and has amended the proposed rule to establish the specific time frame for implementation of ordinances as N.J.A.C. 16:62-10.1.

Comment: The Township of Branchburg stated that an appropriate time limit for revising master plans and land use ordinances should be specified and the relationship of permitted to prohibited uses is confused by the condition to permitted land uses, "except in conjunction with a prohibited land use". The implication of the condition is that such ordinance requirements are not allowed.

Response: The rule has been amended to delete the condition "except in conjunction with a prohibited land use" (see N.J.A.C. 16:62-5.1(a)1).

Comment: The Township of Fairfield stated that the hazard areas delineated 3,000 feet on either side of the runways cause problems since the area covers a considerable amount of existing residential area and some undeveloped tracts. To zone other than residential to conform with the proposed rule would cause serious zoning problems.

Response: The Department may, under Subchapter 7 adopt a special or amended standard to accommodate unique local situations. Petition by local authorities to the Commissioner to consider unique local situations is specifically provided for in the rule to provide for such inquiries or local input.

Comment: The Port Authority of NY & NJ stated that the land development and use at airports, and in surrounding municipalities, continue to be subject to the appropriate regulations of the Federal Aviation Administration (including FAR Part 77—Objects Affecting Navigable Airspace) to which the proposed regulations do not conform. Consideration should be given to additional requirements for areas in the vicinity of runways equipped for low visibility operations.

Response: It is noted that airports under the control of the Port Authority are not subject to these regulations as per N.J.A.C. 16:62-1.2(f). These regulations are not in lieu of the Federal regulatory program, but supplement it. These regulations will promote the general public compliance with FAR Part 77.

Comment: The Township of Stafford stated that the township was in the concluding stages of revising its master plan, updating its development ordinances and codifying all of its ordinances, and felt that it is preferable to include the provisions of the Air Safety and Hazardous Zoning Act of 1983 in these documents. However, without firm guidelines the Township was at a loss as to what to do.

Response: The Department in developing these regulations for appropriate and uniform implementation had to carefully consider the factors of applicable Federal regulations, requirements under the Act, provisions of the Municipal Land

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Use Law, and promoting the greatest degree of local initiative and latitude within the context of "home rule." In reviewing site plans and related issues, the Township should consider in addition to its current ordinances, the intent of the regulation in regard to its decision.

Speaker at Public Hearing:

Mark Sinisky, Esq., of Lakewood Township stated that the Township does support the proposed rules and has ordinances regulating land use surrounding the airport and requested clarification as to the one to seven ratio, which is basically an upgrade from the runway itself.

Response: Mr. Thomas Thacher, Division of Aeronautics, provided the clarification for Mr. Sinisky, from the drawings which were made a part of the regulations.

The full text of the Public Hearing is on file with Publication and Filings, Office of Administrative Law, Quakerbridge Plaza #9, Trenton, New Jersey 08625 and available for review in the Department of Transportation, ATTN: Administrative Practice Officer, 1035 Parkway Avenue, CN 600, Trenton, NJ 08625, telephone (609) 292-0053.

CHAPTER 62

AIR SAFETY AND HAZARDOUS ZONING

SUBCHAPTER 1. AIRPORT HAZARDS

16:62-1.1 Definitions

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

"Airport" means any area of land or water, or both, designed and set aside for the landing and taking-off of fixed wing aircraft, utilized or to be utilized by the general public for such purposes, publicly or privately owned, and licensed by the Commissioner as a public use airport or landing strip, or an area which has been determined by the Commissioner to be likely to be so licensed within one year of the determination.

"Airport hazard" means:

1. Any use of land or water, or both, which may create a dangerous condition for persons or property in or about an airport or aircraft during landing or taking-off at an airport; or

2. Any structure or tree which obstructs the airspace required for the flight of aircraft in landing or taking-off at an airport.

"Airport Hazard Area" means any area of land or water, or both, upon which an airport hazard might be created or established if not prevented as provided by this chapter.

"Commissioner" means the Commissioner of the Department of Transportation.

"Department" means the Department of Transportation.

"Development" means the construction, *reconstruction*, creation, or establishment of any structure or planting of a tree.

"Director" means the Director of the Division of Aeronautics.

"Division" means the Division of Aeronautics.

"Fast-track" means an accelerated system of application review procedures.

"Person" means any corporation, company, association, society, firm, partnership, joint stock company, individual, the State, and all political subdivisions of the State or any agencies or instrumentalities thereof.

"Structure" means any object constructed or installed by man, including, but not limited to, buildings, towers, smokestacks, chimneys, and overhead transmission lines.

"Tree" means an object of natural growth.

16:62-1.2 General requirements and provisions

(a) Under the Air Safety and Hazardous Zoning Act of 1983, this chapter establishes minimum standards for the control of airport and aeronautical hazards, and standards for land use adjacent to airports, which the municipalities of this State shall implement. These standards are minimum State standards, and municipalities may adopt more rigorous standards for control of the areas and condition under the provisions of the Municipal Land Use Law. The Commissioner may adopt under N.J.A.C. *[16:72-7]* *16:62-7* a special or amended standard for an airport when it is determined that local conditions require it.

(b) No person shall build, rebuild, create or cause to be built, rebuilt or created any object or structure, or plant, or cause to be planted or permit to grow any tree or vegetation, which will interfere with, diminish, change or obstruct the airspace or landing and take-off area available for the landing and take-off of aircraft at public use airports.

(c) Nothing in this chapter shall be construed as limiting the power of the Commissioner regarding the design, placement, location, or operation of airports or other aeronautical facilities.

(d) Municipalities of this State are required to implement and maintain land use and aeronautical hazard control ordinances in accordance with the provisions of this chapter. These ordinances are subject to review by the Commissioner of Transportation.

(e) No ordinance adopted under this chapter shall require the removal or lowering of, or other change or alteration of any structure or tree not conforming to the rules when this chapter was adopted, or otherwise interfere with the continuance of any nonconforming use.

(f) Airport hazard areas adjacent to airports not licensed by the State of New Jersey are not subject to the specific provisions of this chapter. Airports not licensed by the State of New Jersey include Newark International Airport, Teterboro Airport, Atlantic City Airport near Pomona, New Jersey, and military airports. Although the specific provisions of this chapter may not apply to areas surrounding non State licensed airports open to the public, this in no way limits the power of municipalities to enact substantially similar ordinances governing the areas in accordance with the purposes of the Municipal Land Use Law.

(g) All persons are hereby put on notice that the standards of this chapter are minimum Statewide standards. Implementation of these standards does not necessarily guarantee a prudent and comprehensive land use and hazard program suitable for all airports.

(h) In order to expedite the handling of routine applications for permits where the resulting development would have negligible adverse impact under the purposes of this chapter, the Commissioner may institute by written order, fast-track or five day application review procedures. The Commissioner may also establish by written order, classifications of permit applications, and for certain routine applications, a permit application fee of \$25.00.

(i) The mechanisms provided for control of aeronautical hazards within the "Air Safety and Hazardous Zoning Act" rely substantially upon local zoning regulations. The powers to enact traditional zoning ordinances upon navigable waters are constrained; and the operational characteristics and juris-

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dictions of water facilities may differ substantially from many land facilities; the provisions of this chapter do not apply to seaplane or water facilities unless otherwise provided for by the Commissioner in N.J.A.C. 16:62-7.1 of this chapter. Any interested person may petition the Commissioner for review of Air Safety and Hazardous Zoning issues under the operation of any Public Use Seaplane Facility.

(j) The Director may provide for informal reviews of permit applications prior to their formal submission to the Department.

(k) Within the provisions of this Chapter, Interstate highways are considered to be a 17 foot vertical development, other public roads are considered to be a 15 foot vertical development, a private road is considered to be a 10 foot vertical development, and railroads are considered to be a 23 foot vertical development.

(l) The review of applications under this chapter is limited to the purposes of this chapter as they relate to the public health, safety and welfare.

(m) In the event that an airport owner or operator has an agreement with the Federal Aviation Administration for the control of airport hazards, the airport owner or operator shall comply with the most protective provisions of both this chapter and any agreement with the Federal Aviation Administration.

***(n) This chapter shall not apply to:**

1. Any person who has submitted a complete application, as defined and required by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., for approval of the proposed development at the time of the adoption of this chapter.

2. Any person immune to local ordinance, whose proposed development has progressed beyond the preliminary engineering stage, at the time of the adoption of this chapter.*

SUBCHAPTER 2. MUNICIPALITIES

16:62-2.1 Municipal requirements

(a) Each municipality which contains within its boundaries any part of a delineated airport hazard area, as defined by N.J.A.C. 16:62-3.1, shall enact an ordinance or ordinances incorporating the standards promulgated under this chapter. These standards shall also become a part of the masterplan of development for each affected municipality which has a masterplan.

(b) Each municipality affected under this chapter shall transmit to the Division at time of adoption, amendment, or when requested, a valid copy of the ordinance(s) and a local development masterplan shall be transmitted to the following address:

New Jersey Department of Transportation
 Division of Aeronautics
 Air Safety and Hazardous Zoning Permits
 1035 Parkway Avenue
 CN 600
 Trenton, New Jersey 08625

(c) The Director will review ordinances and masterplans enacted by municipalities to implement the standards of this chapter.

(d) No variance, or other relief from the standards promulgated by or under this chapter may be granted by a municipality to itself or any person except upon the condition that the variance or relief is contingent upon the issuance of a permit allowing the variance or relief by the Commissioner.

(e) Municipalities which contain within their boundaries airports regulated by the provisions of this chapter, may not hereafter classify those airports as non-conforming land uses

within the context of their ordinances or master plans of development. Those municipalities which may currently classify an airport as non-conforming land use within the context of their ordinances or master plans of development, shall amend those ordinances or plans to eliminate that non-conforming status.

SUBCHAPTER 3. DELINEATION OF AIRPORT HAZARD AREAS

16:62-3.1 Delineation of Airport Hazard Areas

[This subchapter defines those areas which are Airport Hazard Areas as regulated by this chapter and describes the methodology used to delineate Airport Hazard Areas.]

(a) This subchapter describes the methodology to be used in delineating Airport Hazard Areas.

(b) The methodology will be applicable for most airports in New Jersey. However, in certain instances, as a result of local conditions, it may be necessary to establish special standards for an airport. Subchapter 7 of these regulations has been reserved for this purpose.

16:62-3.2 Methodology used to delineate Airport Hazard Areas

***(a) Airport Hazard Areas are delineated by the establishment of subzones of standard sizes around and off the ends of runways and airports open to the public.**

(b) The two types of subzones comprising an Airport Hazard Area are the RUNWAY SUBZONE and the RUNWAY END SUBZONE.

1. The RUNWAY SUBZONE of an Airport Hazard Area is an area, rectangular in shape, which has a common and shared centerline in respect to the runway it geometrically surrounds.

i. The width of the RUNWAY SUBZONE of the Airport Hazard Area from its longitudinal sides to the runway centerline is 1175 feet. This gives the RUNWAY SUBZONE of the Airport Hazard Area a total longitudinal width of 2350 feet along its entire length.

ii. The length of the RUNWAY SUBZONE of the Airport Hazard Area is determined by the location of the physical runway end and/or the relationship of the physical runway end along its extended centerline to the property or easement line of the airport. The length of the RUNWAY SUBZONE of the Airport Hazard Area is the length of the runway between the physical ends of the runways. When the physical end of a runway is closer than 200 feet (along its extended centerline) to the property or easement line of the airport, the length of the RUNWAY SUBZONE of the Airport Hazard Area shall not be measured from that physical runway end. Instead it should be measured from that point on that runway end on the runway centerline 200 feet inside of the airport property or easement line. In this case, a portion of the end of a runway may extend beyond the bounds of the RUNWAY SUBZONE of the Airport Hazard Area.

iii. The methodology used to delineate the RUNWAY SUBZONE of an Airport Hazard Area is further graphically depicted in Figure 1.

2. The RUNWAY END SUBZONE at an Airport Hazard Area is an area, trapezoidal in its geometric construction, which is located at the end of each RUNWAY SUBZONE of an Airport Hazard Area along, and bisected by, the extended centerline of the runway.

i. The length of the RUNWAY END SUBZONE of an Airport Hazard Area is 3000 feet measured from the end of the RUNWAY SUBZONE of an Airport Hazard Area outward from the runway along the extended centerline of the

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runway. This extended centerline bisects the RUNWAY END SUBZONE of the Airport Hazard Area.

ii The width of the RUNWAY END SUBZONE of an Airport is 2350 feet at its base which is co-located with the end of the RUNWAY SUBZONE of an Airport Hazard Area. The width of the RUNWAY END SUBZONE narrows uniformly outwardly along the 3000 feet length of the RUNWAY END SUBZONE such that its final width is 850 feet at the outward base of the subzone. The runway extended centerline bisects the width measures along the entire length of the RUNWAY END SUBZONE of the Airport Hazard Area.

iii. The methodology used to delineate the RUNWAY END SUBZONE of an Airport Hazard Area is further graphically depicted in Figure 2.]*

***(a) An Airport Hazard Area shall be established for each runway at an airport.**

(b) Each Airport Hazard Area shall consist of a RUNWAY SUBZONE and two RUNWAY END SUBZONES.*

(c) The overall Airport Hazard Area for an airport is geometrically constructed by defining and locating the RUNWAY SUBZONE and RUNWAY END SUBZONES for each runway open to the public on an airport open to the public. The outermost borders of the subzones comprise the outermost boundary of the Airport Hazard Area. The area within those outermost boundaries is that area regulated by the provisions of this chapter and is the Airport Hazard Area for an airport.

(d) The methodology used to delineate the overall construction and outermost boundaries of the Airport Hazard Area for an airport is further graphically depicted in Figure 3.

***16:62-3.3 Delineation of the RUNWAY SUBZONE**

(a) The RUNWAY SUBZONE of an Airport Hazard Area shall consist of a rectangle having the same centerline and length as the runway, unless a shorter length is necessitated by limited property ownership at the airport.

(b) The width of the RUNWAY SUBZONE shall be 2350 feet.

(c) The exact length of the RUNWAY SUBZONE shall be determined by one of the two following methods.

1. For most airports, the length of the RUNWAY SUBZONE will be the same as the physical length of the runway.

2. If the physical end of a runway is closer than 200 feet from the property or easement line of the airport, as measured along the runways extended centerline, then the end of the RUNWAY SUBZONE shall be defined by a line drawn perpendicular to the runway centerline at a point 200 feet inside of the airport property or easement line. In this case, a portion of the runway will extend beyond the bounds of the RUNWAY SUBZONE.

(d) The methodology used to delineate the RUNWAY SUBZONE of an Airport Hazard Area is illustrated in Figure 1.*

***16:62-3.4 Delineation of the RUNWAY END SUBZONES**

(a) The RUNWAY END SUBZONES of an Airport Hazard Area shall consist of trapezoids located at either end of the RUNWAY SUBZONE along the flight approach and departure path.

(b) Each RUNWAY END SUBZONE shall extend 3000 feet from the end of the RUNWAY SUBZONE, as measured along the extended centerline of the runway.

(c) The base of the RUNWAY END SUBZONE shall be defined by the end of the RUNWAY SUBZONE, and shall have a width of 2350 feet. The width of the RUNWAY END

SUBZONE shall narrow as the distance from the end of the RUNWAY SUBZONE increases. Its final width shall be 850 feet.

(d) The methodology used to delineate the RUNWAY END SUBZONE of an Airport Hazard Area is illustrated in Figure 2.*

SUBCHAPTER 4. *OBSTRUCTION* ORDINANCE STANDARDS

16:62-4.1 Minimum obstruction ordinance standards

(a) This subchapter defines the minimum obstruction ordinance standards which a municipality must enact pursuant to the provisions of this chapter, and describes the methodology used to define vertical development allowed within an Airport Hazard Area.

(b) Notwithstanding the provisions of this chapter, the primary regulation of airport development, airport property use, internal dimensional criteria, and vertical development on airports is accomplished within N.J.A.C. 16:54.

16:62-4.2 Methodology used to define vertical development allowed within an Airport Hazard Area

(a) Minimum obstruction ordinance standards establish the vertical limits up to which structures or trees may be allowed to be developed or grow within an Airport Hazard Area.

(b) Minimum obstruction ordinance standards are vertical standards measured in respect to elevations whose datum is the horizontal plane established by runway elevations. For example, if a point in an Airport Hazard Area permits at a specific point development up to "X" feet, that means "X" feet above the runway horizontal plane and not "X" feet above the natural grade of the land at that point in the Airport Hazard Area. This provision is further graphically depicted in Figure 4.

(c) The vertical standards within the RUNWAY SUBZONE of an Airport Hazard Area are determined first by establishing the elevations at the runway centerlines at the ends of the RUNWAY SUBZONE of the Airport Hazard Area. From those elevations at the RUNWAY SUBZONE ends, a line is run 90 degrees outward from each side of the runway centerline for a distance of 125 feet. Within the area defined by these four points, no development is allowed above the natural grade of the soil except for runway and flight safety equipment.

1. The vertical standards within the remainder of the RUNWAY SUBZONE of an Airport Hazard Area are determined by establishing planes from the edges of the longitudinal 0 foot development restriction line established in N.J.A.C. 16:62-3.2(b)1.ii. which slope upward and outward at a rate of seven feet horizontally to one foot vertically. This upward plane ceases when it reaches the outer longitudinal borders of the RUNWAY SUBZONE of any Airport Hazard Area at the elevation of 150 feet above its starting point at the longitudinal zero foot development line.

2. The methodology used to establish the vertical standards within the RUNWAY SUBZONE of an Airport Hazard Area is further graphically depicted in Figure 5.

(d) The vertical standards within the RUNWAY END SUBZONE of an Airport Hazard Area are determined by first establishing a plane with a rising slope of one foot upward to 20 feet outward from the end of the RUNWAY SUBZONE to the outermost end of the RUNWAY END SUBZONE. This plane is bisected by the extended runway centerline and is 250 feet in total width at its innermost dimension and widens uniformly along its 3000 foot length so as to have a total width of 850 feet at its outermost dimension where it inter-

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sects with the outermost portion of the RUNWAY END SUBZONE at the elevation of 150 feet above its starting point at the zero foot development line.

1. The vertical standards within the remainder of the RUNWAY END SUBZONE of an Airport Hazard Area are determined by establishing sloping planes from the outermost longitudinal edges of the plane established in (d) above. These planes rise upward at a rate of one foot upward to seven feet outward from the plane established in (d) above to where they meet the outermost longitudinal boundaries of the RUNWAY END SUBZONE at the elevation of 150 feet.

ii. The methodology used to establish the vertical standards with the RUNWAY END SUBZONE of an Airport Hazard Area is further graphically depicted in Figure 6.

SUBCHAPTER 5. LAND USE *ORDINANCE STANDARDS*

16:62-5.1 Minimum land use standards

(a) Within the hazard areas delineated in N.J.A.C. 16:62-3.1, each municipality shall implement under N.J.A.C. 16:62-2.1, ordinances which implement the following standards for land use around airports. Prohibited land uses are specifically prohibited without the written approval of the Commissioner. Prohibited land uses may be allowed by the Commissioner on airport property when they are determined necessary by the Director for air commerce purposes or for the operation of the airport and its vendors directly serving air commerce needs. ***An example of this is a flight school.***

1. Permitted land uses: *[(except in conjunction with a prohibited land use)]*

- i. Industrial;
- ii. Commercial;
- iii. Open space;
- iv. Agricultural;
- v. Transportation;
- vi. Airport.

2. Specifically prohibited land uses

- i. Residential (dwelling units);
- ii. Planned unit developments and multifamily dwellings;
- iii. Hospitals;
- iv. Schools;

[v. Bulk flammable or bulk compressed gas storage;]

v. Above ground bulk tank storage of compressed flammable or compressed toxic gases and liquids;

[vi. Single uses that would attract crowds in excess of 500 persons;]

vi. Within the RUNWAY END SUBZONES only, the above ground bulk tank storage of flammable or toxic gases and liquids;

[vii. Incineration facilities;]

vii**[viii.] Uses that may attract massing birds, including land fills;

viii**[ix.] Above grade major utility transmission lines and/or mains.

(b) Subject to review by the Director, a municipality may implement land uses substantially similar to those listed as permitted land uses in (a)li-vi above as long as they are in accord with the intents of this chapter as determined by the Commissioner. A municipality may not, however, implement a land use ordinance or plan which may have the effect of allowing or promoting the establishment of specifically prohibited land uses as determined by the Commissioner. A municipality further may not implement ordinances which would have the effect of preventing routine improvement of an aeronautical facility or airport within the area zoned under this chapter.

SUBCHAPTER 6. PERMIT FOR CREATION OR EXPANSION OF A PROHIBITED LAND USE OR VERTICAL HEIGHT DEVELOPMENT WITHIN AN AIRPORT HAZARD AREA

16:62-6.1 General provisions

(a) The Commissioner may issue a permit for creation or establishment of a nonconforming use or vertical height development within an airport hazard area upon determination that:

1. An application in conformance with the provisions of this section has been properly submitted;

2. A conditional development approval has been granted by the appropriate municipal agency, if required;

3. The creation of the prohibited land use or vertical height development will not in fact create an additional airport hazard limiting the size of the area available for landing, taking-off and maneuvering of aircraft; and

4. Creation or establishment of the prohibited land use or vertical height development will not harm the public health, safety and welfare.

(b) No person may commence the construction or development of any structure, land use, or condition which is contrary to the standards of this chapter without a valid permit issued by the Commissioner.

(c) In considering an application for a permit, the Director may confer with and seek additional information from the applicant or any other interested party, agency, or governmental organization.

(d) In the review of an application, the Department may take into consideration any factor relevant to the hardship demonstrated by the applicant and any information relevant to the public health, safety and welfare.

16:62-6.2 Municipal approval

(a) A developer of a project requiring creation or establishment of a prohibited land use or vertical height development shall first apply for development approval from the appropriate municipal agency. If the municipal agency approves of the development, that approval shall be conditioned on the developer applying for and receiving a permit from the Commissioner in accordance with this section. Construction, development or creation of any prohibited land use shall not commence until a permit has been issued by the Commissioner.

(b) An application for a permit will only be considered by the Department if accompanied by a letter from the municipality requesting the permit.

(c) Any person proposing to create or establish a prohibited land use or vertical height development in a designated airport hazard area not subject to municipal ordinances established in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D), shall present the proposed development to the municipal governing body, which shall be considered the municipal agency for purposes of these rules.

16:62-6.3 Permit application requirements

(a) To be considered complete, an application for a permit for creation of a prohibited land use or vertical height development within an airport hazard area must include the following:

1. Copies of a completed airport hazard permit application form;

2. A letter requesting issuance of a permit by the Department from the municipal agency having jurisdiction over the development, together with a copy of the conditional ap-

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approval for development granted by the municipal agency, if required;

3. A detailed statement of the hardship condition necessitating the application for variance or relief, and a showing that the public health, safety and welfare will not be harmed by the creation of the prohibited land use or vertical height development;

4. Certification that the applicable airport owner(s) or authority were notified of the permit application by registered mail;

5. Submission of a non-refundable \$75.00 permit application fee;

6. Submission of site plans, specifications and construction drawings detailing the substance of the proposed development for which a permit is sought. Site plans shall bear the raised seal of a New Jersey licensed Professional Engineer, Professional Planner, Land Surveyor, or Architect and shall show the location of property lines, the location of runways, the boundaries of the airport hazard area, and elevations of proposed development showing where and by what amount the development exceeds the minimum standards for vertical development adopted under this chapter; and

7. Any other material deemed necessary to the permit application by the Director.

(b) Applications for permits issued under the provisions of this chapter and correspondence to the Department relating to the provisions of this chapter should be forwarded to the following address:

New Jersey Department of Transportation
Division of Aeronautics
Air Safety and Hazardous Zoning Permits
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

16:62-6.4 Permit review procedures

(a) For routine applications, review of an application shall be completed by the Division within 90 days of the date on which an application is accepted as complete.

(b) Non-routine cases, requiring the review or approval of a Federal agency or another State agency prior to issuance of a permit, shall be conducted in as timely a fashion as possible. The Director shall notify the applicant of a delay in the review process necessitated by another agency's involvement. The notification shall be provided prior to 80 days following the date of acceptance of a complete application, and shall include an estimate of the date by which a completion of the review process can be anticipated.

(c) For routine cases not requiring review by other agencies, the Division may, at its discretion, extend the 90-day review period by 30 days if determined necessary to complete the review process. The applicant and affected municipality shall be notified of this extension by the Department at least 15 days prior to the expiration of the 90-day period.

(d) Following review of an application by the Division, the Director shall determine whether to recommend to the Commissioner that the permit be granted or denied.

(e) If the Director recommends denial, the applicant and municipal agency will be notified within five working days of the date of decision. An applicant who has been so notified by the Director may request an appeal before the Office of Administrative Law pursuant to N.J.S.A. 52:14B-1 et seq and N.J.A.C. 1:1. The applicant shall notify the Division by certified mail within 14 calendar days of notification of denial that

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an appeal will be forwarded to the Office of Administrative Law.

(f) Pursuant to N.J.S.A. 52:14B-1 et seq and N.J.A.C. 1:1, a final determination to either deny or grant the permit application will be made by the Commissioner subsequent to the filing of an Initial Decision by the Administrative Law Judge who conducted the hearing.

16:62-6.5 Permit application decisions

(a) The Commissioner may take one of the following actions:

1. Approve the application as submitted. The applicant will receive a permit which shall be effective during the same period as the development approval granted by the municipal agency. The Department will mail a copy of the permit to the applicant and municipal agency within five working days of the date of approval.

2. Deny the application. The Department will mail a copy of the permit denial to the applicant and municipal agency within five working days of the date of decision.

3. Phased or partial approval. Where conditions warrant, the Commissioner may provide for a phased approval of an application and deny the remainder. The nature of approvals granted, and of the denials, shall be transmitted to the applicant and municipal agency within five working days.

SUBCHAPTER 7. PROVISIONS FOR AMENDED AND SPECIAL AIRPORT STANDARDS

16:62-7.1 General provisions

(a) Under Section 5 of the Airport Safety Act of 1983 the Commissioner may, notwithstanding any other provision of this chapter, adopt an amended or special standard for an airport when he determines that local conditions require it. Those standards shall be adopted under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

16:62-7.2 Amended and special standards (Reserved)

SUBCHAPTER 8. LIABILITY

(a) Violation of any provision of this chapter may be grounds for fine, modification, suspension or revocation of any license issued under Title 6 of the New Jersey Statutes Annotated.

(b) The Commissioner may institute, in any court of competent jurisdiction, an action in the name of the State to prevent, restrain, correct, or abate any violation of any provision of this chapter and by way of injunction or otherwise, relief from the court.

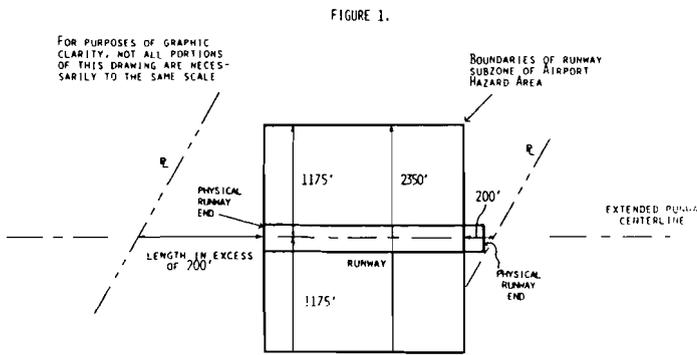


FIGURE 1.
GRAPHIC DEPICTION OF THE GENERAL CONSTRUCTION OF THE RUNWAY SUBZONE OF AN AIRPORT HAZARD AREA

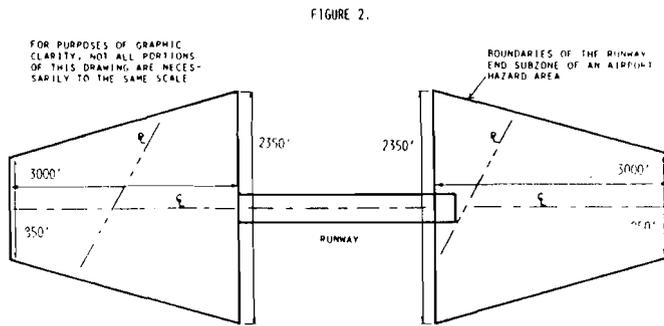


FIGURE 2.
GRAPHIC DEPICTION OF THE GENERAL CONSTRUCTION OF THE RUNWAY END SUBZONE(S) OF AN AIRPORT HAZARD AREA

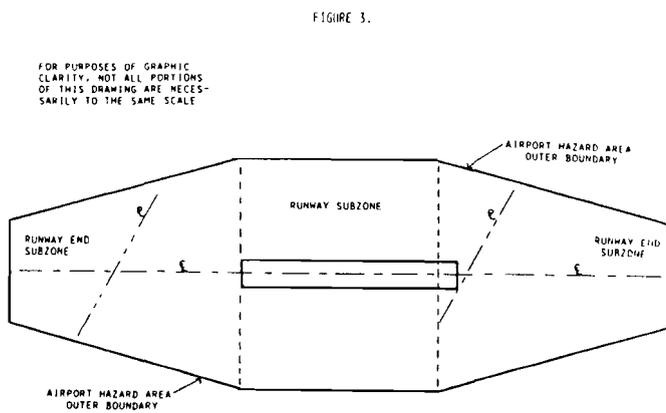


FIGURE 3.
GRAPHIC DEPICTION OF THE GENERAL OVERALL CONSTRUCTION AND OUTERMOST BOUNDARIES OF AN AIRPORT HAZARD AREA

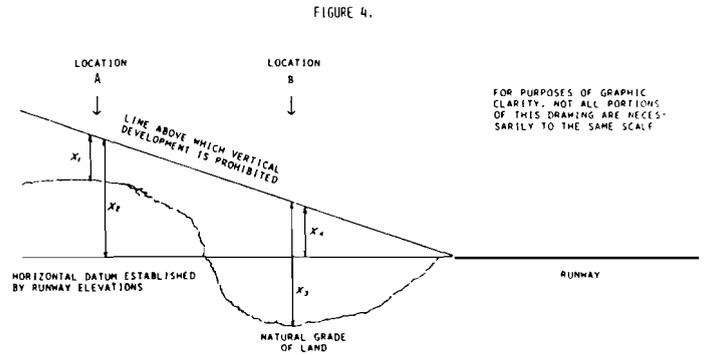
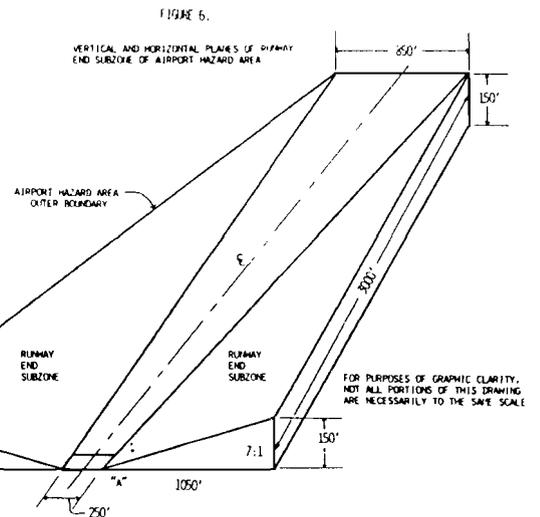
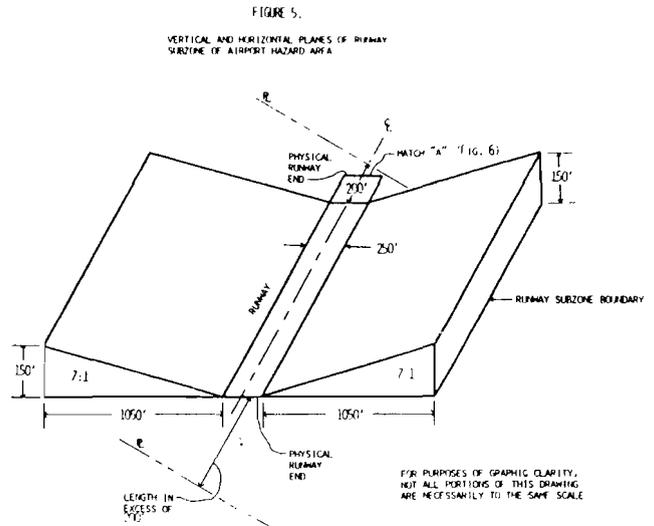


FIGURE 4.
THE MINIMUM OBSTRUCTION ORDINANCE STANDARDS RELATE DIRECTLY TO THE HORIZONTAL DATUM ESTABLISHED BY RUNWAY ELEVATIONS AND NOT THE HEIGHT ABOVE THE NATURAL GRADE OF THE LAND. FOR EXAMPLE, AT LOCATION A AN ORDINANCE MAY REFER TO A HEIGHT RESTRICTION X_1 FEET, BUT AT THAT LOCATION THE DEVELOPABLE HEIGHT RESTRICTION ABOVE THE NATURAL GRADE OF THE LAND IS ACTUALLY X_2 FEET. AT LOCATION B THE ORDINANCE HEIGHT RESTRICTION MAY BE X_2 FEET BUT THE DEVELOPABLE HEIGHT RESTRICTION MAY BE X_3 FEET.



EMERGENCY ADOPTIONS

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

Diseases of Bees Tracheal Mite Quarantine

Adopted Emergency New Rule and Concurrent Proposal: N.J.A.C. 2:24-1.3, 1.4 and 1.5

Emergency New Rule Adopted: March 26, 1985 by Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): March 25, 1985.

Emergency New Rule Filed: March 26, 1985 as R.1985 d.197.

Authority: N.J.S.A. 4:6-20.

Emergency New Rule Effective Date: March 26, 1985.
Emergency New Rule Expiration Date: May 27, 1985.

The Concurrent Proposal is known as PRN 1985-237.

Submit comments by May 15, 1985 to:
William W. Metterhouse, Director
Division of Plant Industry
N.J. Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5441

This new rule was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 54:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of the emergency new rule are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follows:

Summary

An outbreak of highly pathogenic tracheal mite disease of honey bees has been found in ten states placing the New Jersey bee industry in imminent peril. The bee industry is a highly migratory industry, therefore, it is imperative that all bee colonies or nucleus of bees or used apiary supplies be inspected by the bee inspection service of the exporting state and a certificate issued stating freedom of American foulbrood, European foulbrood, tracheal mite diseases and other infectious or contagious bee diseases.

There is a concern that migratory beekeepers may seek to move infected or diseased hives into New Jersey since the United States Department of Agriculture, Animal Plant Health Inspection Service is proposing to rescind its quarantine published in the Federal Register February 20, 1985. The intent of the quarantine is to prevent this movement and protect the beekeeping industry of New Jersey.

Social Impact

The new rules will benefit farmers or beekeepers since bee colonies will be permitted to move under certificate of inspection from all states as long as the bees are free from disease. Bees that do not have a certificate of inspection will be inspected by the Department to determine whether they are infected.

Economic Impact

Due to the fact that the quarantine will permit the movement of bees under certificate of inspection from all states there will be no detrimental economic impact on the New Jersey bee industry. This quarantine is to insure that no contaminated colonies will be moved into New Jersey. Without these rules there is the possibility of movement of infected bees into the State which if the inspection spreads could have a detrimental economic effect on the State's farmers and beekeepers.

Full text of the emergency rule with concurrent proposal follows:

2:24-1.3 Entities with apiary inspection service

No colony or nucleus of bees or used apiary supplies coming from a state or country having an apiary inspection service shall be permitted in New Jersey unless accompanied by a valid certificate of inspection from the exporting state or country stating that each colony or supplies are free from American foulbrood, European foulbrood, tracheal mite disease and all other infectious or contagious bee diseases.

2:24-1.4 Common carrier

No colony or nucleus of bees or used apiary supplies coming from a state or country having apiary inspection service shall be accepted by any person or common carrier for transportation to a point within this state unless accompanied by a valid certificate of inspection stating that each colony or supplies are free of American foulbrood, European foulbrood, tracheal mite disease or other infectious or contagious bee diseases.

2:24-1.5 Entities without apiary inspection services

A colony or nucleus of bees or used apiary supplies coming into this state from a state or country having no apiary inspection service shall be immediately reported by the consignee and by the person or carrier delivering them in this state; giving the name and address of the consignee to the Department, which shall cause the shipment to be inspected at such time as shall be expedient.

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

Food Stamp Program Noncompliance with Other Programs

Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:87-5.7

Emergency Amendment Adopted: March 12, 1985 by George J. Albanese, Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): March 18, 1985.

Emergency Amendment Filed: March 25, 1985 as R.1985 d.178.

Authority: N.J.S.A. 30:4B-2, the Omnibus Budget Reconciliation Act of 1982 (P.L. 97-253) and 49 FR 48677.

Emergency Amendment Effective Date: March 25, 1985.

Emergency Amendment Operative Date: April 1, 1985.
Emergency Amendment Expiration Date: May 24, 1985.

The concurrent agency proposal is known as PRN 1985-229.

Submit comments by May 15, 1985 to:
Audrey Harris, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follows:

Summary

The Department of Human Services is mandated by Federal law and regulation to implement, effective April 1, 1985, certain provisions of the Omnibus Budget Reconciliation Act of 1982 (P.L. 97-253) which were published as Federal final rule in the Federal Register of December 14, 1984 at 49 FR 48677.

N.J.A.C. 10:87-5.7 is being amended to reflect a regulatory change regarding the treatment of moneys recovered from a Federal, State or local means-tested assistance payment for the repayment of an overissuance which is the result of intentional noncompliance with such other program's regulations. Means-tested programs include, but are not limited to, Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), and General Assistance (GA).

The United States Department of Agriculture does not define intentional failure to comply. The Food Stamp Program will accept the determination made by the other program based on such other program's definition of intentional noncompliance.

For the purpose of this provision, intentional noncompliance in the AFDC, SSI and GA programs shall be an action determined to be fraud pursuant to a judicial determination. For all other means-tested programs, intentional noncompliance shall be determined by such other program in accordance with its governing regulations and procedures.

Currently, any recoveries made from an assistance payment for the repayment of an overissuance of any kind are exempt as income when determining a food stamp benefit. This exemption generally results in an increase in food stamp benefits due to the decrease in the assistance payment. This regulation makes no change in the treatment of recoveries to repay overpayments that result from inadvertent error on the part of the client or from agency error. However, this amendment provides that amounts being recovered from an assistance grant to repay overpayments caused by recipient fraud or intentional noncompliance will no longer be exempt and will be counted as income in determining food stamp benefits. Thus, the penalty imposed by the assistance program in the form of recovery from the assistance payment will not result in an increase in food stamp benefits. When a household is subject to both recovery due to intentional noncompliance and recovery due to reasons not related to intentional noncompliance, the first collections after the judicial determination of fraud or the determination of intentional noncompliance shall be considered to reduce that portion of the overpayment attributable to intentional noncompliance unless the program otherwise specifically identifies the allocation of the recovery.

Social Impact

Under current regulations, the impact of the penalty imposed by the assistance program for noncompliance, that is, recovery of the overpayment, is diminished by the resultant increase in food stamp benefits. This amendment, which requires that the amount being recovered due to fraud or noncompliance be counted as income in determining the food stamp benefit, will strengthen the impact of the penalty imposed by the assistance program by precluding an increase in food stamp benefits in such cases.

Economic Impact

This amendment will have an adverse economic impact on those clients whose assistance grant is reduced to recover an overpayment that is the result of recipient fraud or noncompliance with another program's regulations. Such clients will experience a more significant loss in income, since food stamps will not increase to offset the loss in the assistance

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payment. Under current regulations, the food stamp benefit would increase to offset approximately one-third of the assistance grant decrease.

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

10:87-5.7 [Monies not included in income] **Treatment of moneys used to repay overpayments**

[(a) For the purpose of this Program, income shall not include the following:]

[1.] (a) [Monies] **Moneys** used for restitution of overpayments: Moneys withheld from [an assistance payment.] earned income, or other income source, or moneys received from any income source **(except as specified in (b) below)** which are voluntarily or involuntarily returned to repay a prior overpayment that is not excludable under [section 8 of this subchapter] **N.J.A.C. 10:87-5.9 shall not be counted as income.** [For example, that amount deducted from an AFDC grant or an SSI payment as recoupment, or that portion of earned income returned to a CWA as repayment of previous AFDC overpayment shall not be included as income.] **Moneys withheld from an assistance grant to repay a prior overpayment that is the result of an inadvertent client error or agency error shall not be counted as income.**

(b) **Moneys used for recovery of overpayments caused by intentional noncompliance with requirements of other programs: Moneys withheld from a Federal, State, or local assistance grant such as AFDC, GA, or SSI, for the purpose of recovering a prior overpayment which resulted from recipient fraud or intentional failure to comply with program requirements shall be included as income.**

1. **For the purpose of this provision intentional noncompliance shall be defined as follows:**

i. **AFDC, SSI and GA programs: In the AFDC, SSI, and GA programs, intentional noncompliance shall be an action determined to be fraud pursuant to a judicial determination.**

ii. **Other means-tested programs: For all other programs, intentional noncompliance shall be determined by such other program in accordance with that program's governing regulations and procedures.**

2. **Benefit determination in cases with recovery due to fraud or intentional noncompliance: The CWA shall ensure that there is no increase in food stamp benefits to households on which a penalty resulting in a decrease in assistance payments has been imposed for fraud or intentional failure to comply with a Federal, State, or local welfare program such as AFDC, SSI or GA. Procedures for determining food stamp benefits when there is such a decrease in assistance are as follows:**

i. **When a recipient's benefits under a Federal, State, or local assistance program are decreased to recover a prior overpayment caused by fraud or intentional noncompliance, the CWA shall identify that portion of the recovery which is due to intentional noncompliance.**

(1) **For AFDC, SSI and GA, the first collections after the judicial determination of fraud shall be considered the amount of recovery for fraud.**

2. **For other programs, the penalty shall be that portion of the decrease attributed to the repayment of benefits overissued as a result of the household's intentional noncompliance.**

ii. **The CWA shall count the amount of the recovery as income in calculating the food stamp benefit.**

[2.] (c) **Child support under Title IV-D: Child support payments received by AFDC recipients which must be transferred**

to the CWA pursuant to Title IV-D of the Social Security Act to maintain AFDC eligibility **shall not be counted as income.**

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

MISCELLANEOUS TRAFFIC RULES

Truck Weigh Stations on Interstate Highway System

Routes I-78 in Warren County; I-80 in Warren County; I-287 in Middlesex County and I-295 in Salem County

Adopted Emergency New Rule and Concurrent Proposal: N.J.A.C. 16:30-12

Emergency New Rule Adopted: March 27, 1985 by John P. Sheridan Jr., Commissioner, Department of Transportation

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c): March 29, 1985

Emergency Rule Filed: April 2, 1985 as R.1985 d.199.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-81, 39:3-84a(3) and 39:4-183.27

Emergency Rule Effective Date: April 2, 1985.

Emergency Rule Expiration Date: June 3, 1985.

Submit comments by May 15, 1985 to:

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

These rules were adopted on an emergency basis and become effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency rules are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted rules become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The concurrent proposal is known as PRN 1985-240.

The agency emergency adoption and concurrent proposal follows:

Summary

By letter to the Commissioner of Transportation and the Superintendent of State Police dated February 7, 1985, the Attorney General of New Jersey has advised that those signs located alongside of the roadway in advance of truck weigh stations on Interstate highways which direct trucks and commercial motor vehicles to enter the weigh station when the

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“open” sign is displayed are not presently “traffic control devices” within the meaning of N.J.S.A. 39:1-1. Accordingly, any prosecution of truck drivers who ignore these signs and proceed without stopping to be weighed would suffer from an inability to sustain the necessary burden of proof.

Truck weigh stations are essential to the protection of New Jersey’s roads and bridges by providing for the detection and deterrence of overweight trucks. Operation of these weigh stations is also an integral part of the State’s overall truck size and weight enforcement plan and program, which is a condition for the continued receipt of federal highway aid funds.

Until recently truck and commercial motor vehicle traffic moving along the Interstate System of this State voluntarily complied with the informational and regulatory signs along the roadway, which are in conformance with the current Manual on Uniform Traffic Control Devices, by stopping at the existing four (4) Truck Weigh Stations presently located on the Interstate System. However, in the face of an adverse Municipal Court decision, several trucking industry groups advised their membership that they need not voluntarily stop at the existing Truck Weigh Stations scales unless a State Trooper gave them specific directions to enter the Truck Weigh Stations. In order to accomplish this a Trooper would be required to stand on or adjacent to the traveled portion of a high speed multi-lane highway, in some cases up to a mile, from the Truck Weigh Stations and attempt to signal to a truck driver traveling at 55 mph to pull into the Truck Weigh Stations. Such a situation creates for the Trooper the clear potential for serious or life-threatening injury as to preclude employing it as an enforcement technique. By this rule, which is adopted as an emergency rule and is concurrently proposed for permanent adoption, the Commissioner accomplishes several goals: (1) He establishes Truck Weigh Stations on the Interstate System; (2) He provides that the Truck Weigh Stations will be operated under the authority of the Superintendent of the Division of State Police; and (3) He declares that the regulatory sign erected along the roadway in advance of the scale and pursuant to the current Manual on Uniform Traffic Control Devices is an “official traffic control device”.

The adoption of this rule on an emergency basis is necessary to insure that enforcement of the vehicle size and weight laws are continued uninterrupted without placing State Troopers in a situation of unacceptable risk which could result in serious or life-threatening injury.

The Commissioner has appropriate authority to act in this matter under his powers as set forth in N.J.S.A. 27:1A-5 and 27:1A-7 and his declarations herein that the regulatory sign directing “ALL TRUCKS COMMERCIAL VEHICLES NEXT RIGHT” is a lawful exercise of the authority and jurisdiction of the Commissioner as a “public official having jurisdiction for the purpose of regulating, warning or guiding traffic”. (*Cammarata v. Essex City Park Commission*, 26 N.J. 404 (1958)). According to the Attorney General’s letter, the requirement to stop at “open” weigh station signs therefore becomes enforceable under the provisions of N.J.S.A. 39:4-81 and N.J.S.A. 39:4-203. N.J.S.A. 39:4-81 states: “The driver of every vehicle, the motorman of every streetcar and every pedestrian shall obey the instructions of any official traffic control device applicable thereto, placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer.” N.J.S.A. 39:4-203 provides for penalties for the violation of any provision of the chapter of the statutes which includes N.J.S.A. 39:4-81.

Social Impact

The emergency new rule will prevent possible flagrant and widespread disregard for the laws of this State, preclude the placing of State Troopers in a situation of unacceptable risk which could result in serious or life-threatening injury and thus enhance the safety and well-being of the populace along the highway system.

Economic Impact

The emergency new rule will prevent the possible massive evasion of New Jersey’s truck weight laws which could result from the inability to require trucks and commercial motor vehicles to obey signs directing them to enter weigh stations.

In the absence of a continuing and consistent enforcement program, trucks and other commercial vehicles will begin to be operated with more excess weight than permitted by law under the belief that apprehension will be unlikely. In fiscal year 1983-84 nearly one-third of a million trucks were weighed at the existing Truck Weigh Stations in New Jersey with a commensurate number of vehicles cited for being in violation of the weight laws. The certainty of being weighed is recognized to be a direct and definite deterrent to operating a vehicle with excess weight. Furthermore, the operation of excess weight vehicles on our highways is directly responsible for the premature deterioration of road surfaces and highway structures such as bridges. As the number of excess weight vehicles increases, the expected serviceable life span of the highways and highway structures declines rapidly, thereby increasing the cost to all levels of government for repair, maintenance and replacement. These costs could escalate to enormous proportions if a heavily overweight truck were to cause the collapse of a major bridge or structure.

Operators who fail to comply with the regulations will be subject to statutory penalties as provided in N.J.S.A. 39.

SUBCHAPTER 12. TRUCK WEIGH STATIONS ON THE INTERSTATE HIGHWAY SYSTEM

16:30-12.1 Truck Weigh Stations established

(a) The Commissioner is authorized, pursuant to the provisions of N.J.S.A. 27:1A-5 and 27:1A-7, to establish Truck Weigh Stations on the Interstate Highway System of this State at such locations as he deems appropriate and does hereby establish the following Truck Weigh Stations:

1. Interstate 78, Section 6(c), located in Greenwich Township, Warren County, at or about milepost 4.1 eastbound;
2. Interstate 80, Section 1AJ, located in Knowlton Township, Warren County, at or about milepost 2.3 eastbound;
3. Interstate 287, Section 2K, located in Piscataway Township, Middlesex County, at or about milepost 4.7, northbound;
4. Interstate 295, Section IAM, located in Carneys Point Township, Salem County, at or about milepost 3.6, northbound.

16:30-12.2 Operation

The Truck Weigh Stations established by the Commissioner pursuant to the regulations in this subchapter shall be operated by and under the authority of the Superintendent of the Division of State Police, Department of Law and Public Safety, for the purpose of effectuating enforcement of all

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State laws pertaining to vehicle size and weight and to comply with Federal law (23 U.S.C. 127).

16:30-12.3 Signs

(a) The Commissioner, pursuant to N.J.S.A. 39:4-183.27, shall cause to be created alongside of the roadway in advance of the Truck Weigh Stations established by the regulations in this subchapter such signs as are in conformance with the current Manual on Uniform Traffic Control Devices for Truck Weigh Stations. There shall be at least one sign which bears the legend:

“ALL TRUCKS, COMMERCIAL VEHICLES NEXT RIGHT”, which shall be in conformance with the current Manual on Uniform Traffic Control Devices for Truck Weigh Station regulatory signs and any such sign is declared to be an “official traffic control device”.

(b) In addition to the “official traffic control device” as declared in (a) above, the Commissioner shall also cause to be

placed, consistent with the current Manual on Uniform Traffic Control Devices, an informational sign which shall indicate if the Truck Weigh Station is “open” or “closed” for operations, and such other signs as are in conformance with the current Manual on Uniform Traffic Control Devices.

(c) When the Truck Weigh Station is “open” all trucks and commercial vehicles are required, pursuant to these regulations and the provisions of N.J.S.A. 39:4-81 and 39:3-84(3)a, to comply and enter the Truck Weigh Station to be measured and/or weighed. Failure to comply will subject the operator of that vehicle to statutory penalties as provided in Title 39 of the Revised Statutes.

MISCELLANEOUS NOTICES

BANKING

(a)

DIVISION OF BANKING

Premium Finance Agreement, N.J.A.C. 3:22-1.1

Public Notice

Take notice that N.J.A.C. 3:22-1.4, Premium finance agreement, has been recodified as 3:22-1.1 in the New Jersey Administrative Code. The current text in the Code concerning Finance Charge Rate Regulation Number One, N.J.A.C. 3:22-1.1, 1.2 and 1.3, was repealed effective August 20, 1984 (see August 20, 1984 New Jersey Register at 16 N.J.R. 2264(a)).

The title of Subchapter 1 will now read Premium Finance Agreement and will have an Executive Order No. 66(1978) expiration date of May 21, 1989.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF FISH, GAME AND WILDLIFE BUREAU OF SHELLFISHERIES

Notice of Increase of Sea Clam Quota

Authority: N.J.S.A. 50:2-6.1 and 50:2-6.3.

Take notice that, because the New Jersey sea clam harvest quota of 500,000 bushels for the 1984-85 season will be attained on or before March 23, 1985, with the advice of the Shellfisheries Councils and the Department of Zoology, Rutgers University, the season will be extended by an additional 100,000 bushels as provided in the Sea Clam Regulations, N.J.A.C. 7:25-12.1(d)3. The weekly vessel quota will be reduced to 448 bushels. These changes shall become effective March 24, 1985. If prior to May 31, 1985 the Department determines that the additional 100,000 bushels has been harvested, the Department may close the State's waters to harvesting upon two days public notice as provided by N.J.A.C. 7:25-12.1(d)3.

(c)

DIVISION OF WATER RESOURCES

Amendment to Lower Raritan/Middlesex County Water Quality Management Plan

Public Notice

Take notice that on March 5, 1985 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), the Amendment Procedure for the Lower Raritan/Middlesex County Water Quality Management Plan was adopted by the Department.

TREASURY-GENERAL

(d)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection

Notice of Assignments: March 14, 1985

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, prequalified New Jersey consulting firms. For information on DBC's prequalification and assignment procedures, call (609) 984-6979.

Last list dated February 14, 1985.

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
C219	Evaluation-Methane Gas Newark State Prison Newark, NJ	Woodward Clyde Consultants	\$42,000 Services
H767 (Re-assignment)	Upgrade Fire & Safety Systems Bray Hall Trenton State College Trenton, NJ	H.V. Weeks, Inc.	\$50,000
M624	Study-Stabilization of Slate Roof Main Building Vineland Soldiers Home Vineland, NJ	Lammey & Giorgio, AIA	\$2,000
S180	Study-Renovation/Replacement Evaluation Hammonton State Police Headquarters Hammonton, NJ	Zywotow & Eckert	\$25,000 Services
C204	Security System Review Trenton State Prison Trenton, NJ	Buford Goff Associates	\$2,400 Services
H797	Fire Safety Improvements Kendall Hall Trenton State College Trenton, NJ	Malloy & Duffe, AIA	\$175,000

MISCELLANEOUS NOTICES

TREASURY-GENERAL

H774	New Fume Hoods-Print Lab Holman Hall Trenton State College Trenton, NJ	M. Benton & Associates	\$50,000	M604	Demolition and Replacement of Fire House Ancora Psychiatric Hospital Ancora, NJ	Lammey & Giorgio, AIA	\$100,000
H783	Compactors-Travers-Wolfe Dormitory Trenton State College Trenton, NJ	M. Benton & Associates	\$25,000	E149	New Hot Water Generator Building #30 Marie H. Katzenbach School for the Deaf West Trenton, NJ	M. Benton & Associates	\$20,000
H784	Roof Replacement Ely, Allen & Brewster Halls; Window Recaulking Travers, Wolfe, Cromwell & Decker Dorms Trenton State College Trenton, NJ	Malloy & Duffe, AIA	\$74,000	M615	Life Safety Improvements Powerhouse/Maintenance Building/ Service Building Ancora Psychiatric Hospital Ancora, NJ	D'Ambly, Inc.	\$240,000
H772	New Secondary Electrical System Main Administration Building Ramapo College of New Jersey Mahwah, NJ	Frank R. Holtaway & Son	\$50,000		Competitive Proposals		
					D'Ambly, Inc.	5.20%	
					Seeler-Smith, Inc.	7.47%	
					Borda Engineers	8.67%	
H785	Interior Painting Centennial Hall Trenton State College Trenton, NJ	Malloy & Duffe, AIA	\$40,000	P457	Extension of Intra-Park Roadway Liberty State Park Jersey City, NJ	Richard A. Alaimo Associates	\$1,300,000
C280	Life Safety Survey Juvenile Medium Security Institution Bordentown, NJ	Wagner Associates	\$2,500 Services		Competitive Proposals		
					Richard A. Alaimo Associates	4.45%	
					Howard, Needles, Tammen, & Bergendoff	6.80%	
					PRC Engineering, Inc.	10.0%	
H794	Asbestos Removal/Reinsulation Mechanical Rooms & Manholes Kean College of NJ Union, NJ	O'Connor, Jeffrey & Kallaur	\$85,000	C221-01	Replacement/Renovation of Sewage Treatment Plant Annandale Youth Correctional Institution Annandale, NJ	Kupper Associates	\$1,500,000
H770	Fire Safety Renovation Study Fine Arts Building Montclair State College Upper Montclair, NJ	Jansen & Rogan, Engineers	\$2,500 Services		Competitive Proposals		
					Kupper Associates	7.5%	
					Havens & Emerson, Inc.	11.20%	
					Malcolm Pirnie, Inc.	11.40%	
H791	Study-Electrical Distribution System Stockton State College Pomona, NJ	A & A Engineering Associates, Inc.	\$19,000 Services	S192	New Parking Lot New Jersey State Police West Trenton, NJ	Thomas Tyler Moore Associates	\$480,000
H789	Reconstruction of Intersection College Drive & Jimmy Leeds Road Stockton State College Pomona, NJ	Penni Associates, Inc.	\$60,000		Competitive Proposals		
					Thomas Tyler Moore Associates	7.89%	
					Richard A. Alaimo Associates	8.45%	
					Parsons Brickerhoff-FG, Inc.	8.65%	
H792	Resurfacing of Gym Parking Lot Kean College of NJ Union, NJ	Kupper Associates	\$70,000	M619	Replacement of Street Lighting North Princeton Developmental Center Princeton, NJ	John C. Morris & Associates, Inc.	\$260,000
H793	Replacement of Roofs Science Building Student Activities Building Kean College of NJ Union, NJ	L. J. Mineo, Jr., AIA	\$150,000		Competitive Proposal		
					John C. Morris & Associates, Inc.	7.0%	
					J. M. Di Giacinto Associates	7.6%	
					Wagner Associates, Inc.	9.81%	
C276	Roof Replacement-Entire Facility Youth Correctional Institute Yardville, NJ	Goldberg Associates	\$1,600,000	C274	Re-roofing Fifteen Buildings Youth Correctional Institution Annandale, NJ	Scrimenti/Shive/ Spinelli/Perantoni, Architects	\$1,600,000
H795	Repair/Upgrade Three Cooling Towers Kean College of NJ Union, NJ	O'Connor, Jeffrey & Kallaur	\$70,000		Competitive Proposal		
					Scrimenti/Shive/Spinelli/Perantoni, Architect	2.6789%	
					Eugene F. O'Connor, AIA	3.32%	
					Vincent E. Paolicelli & Associates	4.66%	
H796	Renovations for Handicapped Accessibility Kean College of NJ Union, NJ	L. J. Mineo, Jr., AIA	\$40,000				

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 changes proposed in this issue will be entered in the Index of the next Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule 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 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 February 4, 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.1984 d.300 means the three hundredth rule adopted in 1984.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A number and date verifying the currency of rules found in each Title of the New Jersey Administrative Code: rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to quickly find the issue of publication of a rule proposal or adoption.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
16 N.J.R. 577 and 778	April 2, 1984	16 N.J.R. 2709 and 2864	October 15, 1984
16 N.J.R. 779 and 940	April 16, 1984	16 N.J.R. 2865 and 3066	November 5, 1984
16 N.J.R. 941 and 1130	May 7, 1984	16 N.J.R. 3067 and 3240	November 19, 1984
16 N.J.R. 1131 and 1294	May 21, 1984	16 N.J.R. 3241 and 3336	December 3, 1984
16 N.J.R. 1295 and 1406	June 4, 1984	16 N.J.R. 3337 and 3518	December 17, 1984
16 N.J.R. 1407 and 1634	June 18, 1984	17 N.J.R. 1 and 140	January 7, 1985
16 N.J.R. 1635 and 1832	July 2, 1984	17 N.J.R. 141 and 236	January 21, 1985
16 N.J.R. 1833 and 2026	July 16, 1984	17 N.J.R. 237 and 338	February 4, 1985
16 N.J.R. 2027 and 2184	August 6, 1984	17 N.J.R. 339 and 502	February 19, 1985
16 N.J.R. 2185 and 2318	August 20, 1984	17 N.J.R. 503 and 634	March 4, 1985
16 N.J.R. 2319 and 2390	September 4, 1984	17 N.J.R. 635 and 762	March 18, 1985
16 N.J.R. 2391 and 2474	September 17, 1984	17 N.J.R. 763 and 858	April 1, 1985
16 N.J.R. 2475 and 2708	October 1, 1984	17 N.J.R. 859 and 1006	April 15, 1985

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1, 1:2	Readopt General Hearing and Summary Proceedings rules	17 N.J.R. 2(a)		
1:2-2	Civil Service cases: readopt conference hearings	16 N.J.R. 3338(a)	R.1985 d.77	17 N.J.R. 569(a)
1:2-3	Motor Vehicle cases: readopt hearings on the papers	16 N.J.R. 3339(a)	R.1985 d.78	17 N.J.R. 569(b)
1:10	Public welfare hearings	16 N.J.R. 3068(a)	R.1985 d.79	17 N.J.R. 569(c)
1:10-17.1	Division of Public Welfare cases	16 N.J.R. 945(a)		
1:11-1.1, 15.1	Insurance filing cases	16 N.J.R. 2866(a)	R.1985 d.76	17 N.J.R. 572(a)

(TRANSMITTAL 10, dated December 17, 1984)

AGRICULTURE—TITLE 2				
2:16-2	Seed certification standards	17 N.J.R. 636(a)		
2:16-4	Field corn standards (commercial hybrids)	17 N.J.R. 638(a)		
2:16-5	Sweetcorn standards (inbred lines)	17 N.J.R. 639(a)		
2:16-6	Sweetcorn standards (single cross hybrids)	17 N.J.R. 639(b)		
2:16-7	Small grain standards	17 N.J.R. 640(a)		
2:16-9	Soybean standards	17 N.J.R. 641(a)		
2:16-10	Vegetable standards	17 N.J.R. 641(b)		
2:16-13	Turfgrass sod standards	17 N.J.R. 642(a)		
2:16-15	Vegetatively propagated grass standards	17 N.J.R. 643(a)		
2:16-16	Asparagus seed standards	17 N.J.R. 643(b)		
2:16-17	Asparagus crown standards	17 N.J.R. 644(a)		
2:16-19	Flatpea certification standards	17 N.J.R. 644(b)		
2:24-1.1, 1.2	Bee diseases: acarine mite quarantine	17 N.J.R. 118(a)	R.1985 d.107	17 N.J.R. 573(a)
2:24-1.3, 1.4, 1.5	Bee diseases: Tracheal mite quarantine	Emergency	R.1985 d.197	17 N.J.R. 985(a)
2:32-2	Sire Stakes Program	17 N.J.R. 3(a)	R.1985 d.108	17 N.J.R. 573(b)
2:32-2.7	Sire Stakes Program	17 N.J.R. 3(a)	R.1985 d.135	17 N.J.R. 686(a)
2:52-2.1, 3.1	Notice of intent to change milk supplier	16 N.J.R. 3071(a)	R.1985 d.75	17 N.J.R. 576(a)
2:53-4.1	Notice of intent to change milk supplier	16 N.J.R. 3071(a)	R.1985 d.75	17 N.J.R. 576(a)
2:69-1.11	Commercial values of fertilizers and soil conditioners	17 N.J.R. 764(a)		
2:70-1	Liming materials: readopt fineness classification	17 N.J.R. 765(a)		
2:71-2.2-2.7	Jersey Fresh Logo program	17 N.J.R. 765(b)		
2:90-3	Water conservation project cost sharing	17 N.J.R. 7(a)	R.1985 d.158	17 N.J.R. 807(a)

(TRANSMITTAL 28, dated January 21, 1985)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
BANKING—TITLE 3				
3:1-9.2-9.5	Home mortgage disclosure	16 N.J.R. 2872(a)	R.1985 d.98	17 N.J.R. 577(a)
3:2-1	Readopt rules on Advertising by Financial Institutions	17 N.J.R. 238(a)	R.1985 d.183	17 N.J.R. 904(a)
3:30-2.1	Savings associations and Federal reserve requirements	17 N.J.R. 142(a)	R.1985 d.172	17 N.J.R. 904(b)
(TRANSMITTAL 25, dated December 17, 1984)				
CIVIL SERVICE—TITLE 4				
4:1-8.24, 8.25	Examination records	16 N.J.R. 2873(a)	R.1985 d.63	17 N.J.R. 387(a)
4:1-9	Readopt Examination Scoring	16 N.J.R. 2873(a)	R.1985 d.63	17 N.J.R. 387(a)
4:1-12.12	Additions to eligible lists	16 N.J.R. 2873(a)	R.1985 d.63	17 N.J.R. 387(a)
4:1-12.12	Restorations to promotional lists	17 N.J.R. 645(a)		
4:1-12.15	Appointment of eligible certified	17 N.J.R. 10(a)		
4:1-14.7	Emergency appointments	16 N.J.R. 2191(a)	R.1985 d.124	17 N.J.R. 686(b)
4:1-18.3	Compensation for holidays	16 N.J.R. 1421(a)		
4:1-20	Readopt Performance Evaluation and Employee Training	16 N.J.R. 2877(a)	R.1985 d.61	17 N.J.R. 389(a)
4:1-20.2	Certified Public Manager Program	16 N.J.R. 3072(a)	R.1985 d.62	17 N.J.R. 392(a)
4:2-9	Readopt Examination Scoring	16 N.J.R. 2873(a)	R.1985 d.63	17 N.J.R. 393(a)
4:2-17.10	Correction: Administrative leave			17 N.J.R. 393(a)
4:2-18.1, 18.2, 18.3	Compensation for holidays	16 N.J.R. 1421(a)		
4:2-20	Readopt Performance Evaluation and Employee Training	16 N.J.R. 2877(a)	R.1985 d.61	17 N.J.R. 389(a)
4:2-20.7	Certified Public Manager Program	16 N.J.R. 3072(a)	R.1985 d.62	17 N.J.R. 389(a)
4:3-9	Readopt Examination Scoring	16 N.J.R. 2873(a)	R.1985 d.63	17 N.J.R. 387(a)
4:3-15.1	Repeal rule concerning transfer of county caseworkers	16 N.J.R. 3073(a)	R.1985 d.125	17 N.J.R. 686(c)
4:3-20	Readopt Performance Evaluation and Employee Training	16 N.J.R. 2877(a)	R.1985 d.61	17 N.J.R. 389(a)
(TRANSMITTAL 22, dated January 21, 1985)				
COMMUNITY AFFAIRS—TITLE 5				
5:12	Homelessness Prevention Program	16 N.J.R. 3497(a)	R.1985 d.74	17 N.J.R. 577(b)
5:18, 18A, 18B	Uniform Fire Code; Fire Code Enforcement; High Level Alarms	16 N.J.R. 3339(b)	R.1985 d.66	17 N.J.R. 394(a)
5:23-2.4, 2.6, 2.17A	UCC: rooming and boarding houses	16 N.J.R. 3073(b)	R.1985 d.16	17 N.J.R. 275(a)
5:23-2.15, 2.21	UCC: engineers and architects	17 N.J.R. 645(b)		
5:23-3.8A	UCC: products in violation	16 N.J.R. 3074(a)	R.1985 d.38	17 N.J.R. 421(a)
5:23-3.14, 3.20	Building and mechanical subcodes	17 N.J.R. 239(a)	R.1985 d.154	17 N.J.R. 810(a)
5:23-4.5	UCC: duties of construction officials	17 N.J.R. 340(a)		
5:23-5.4	UCC: trainee suspension, fire protection trainees	16 N.J.R. 3372(a)	R.1985 d.85	17 N.J.R. 579(a)
5:23-5.4	UCC: private enforcing agencies and trainee positions	17 N.J.R. 341(a)		
5:23-8	Asbestos hazard abatement subcode	17 N.J.R. 767(a)		
5:27	Readopt rules on Rooming and Boarding Houses	17 N.J.R. 341(b)		
5:27-1.5	UCC: rooming and boarding houses	16 N.J.R. 3073(b)	R.1985 d.16	17 N.J.R. 275(a)
5:27-1.6	Rooming and boarding houses: owner and operator training	17 N.J.R. 777(a)		
5:27-5.1	Fire safety in rooming and boarding houses	16 N.J.R. 3242(a)	R.1985 d.39	17 N.J.R. 421(b)
5:31-7.5	Local authorities: audit reports	17 N.J.R. 504(a)		
5:71	Readopt County Offices on Aging rules	17 N.J.R. 342(a)	R.1985 d.176	17 N.J.R. 904(c)
5:80	Rules of the Housing and Mortgage Finance Agency	17 N.J.R. 505(a)		
5:80-7	Housing and Mortgage Finance Agency projects: Tenant Selection Standards	16 N.J.R. 954(a)	R.1985 d.106	17 N.J.R. 580(a)
(TRANSMITTAL 26, dated January 21, 1985)				

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
DEFENSE—TITLE 5A				
5A:2	Leaves of absence for members of National Guard	17 N.J.R. 646(a)		
EDUCATION—TITLE 6				
6:3-1.2	Board of school estimate	17 N.J.R. 143(a)	R.1985 d.151	17 N.J.R. 811(a)
6:3-1.17, 1.23	School facility planning services	17 N.J.R. 650(a)		
6:8-6.2	Evaluation and certification of school districts	17 N.J.R. 143(b)	R.1985 d.149	17 N.J.R. 811(b)
6:11-4.3	Emergency certification	16 N.J.R. 3075(a)	R.1985 d.49	17 N.J.R. 422(a)
6:11-4.3	Emergency certification: operative date			17 N.J.R. 687(a)
6:20-3	Readopt rules on Tuition Public Schools	17 N.J.R. 144(a)	R.1985 d.157	17 N.J.R. 811(c)
6:20-3.1	Tuition public schools: determining rates	17 N.J.R. 119(a)	R.1985 d.91	17 N.J.R. 583(a)
6:20-5.3, 5.4	State facility pupil assignments: district of residence	17 N.J.R. 344(a)		
6:20-6	Readopt rules on Purchase and Loan of Textbooks	17 N.J.R. 148(a)	R.1985 d.150	17 N.J.R. 814(a)
6:20-8	Readopt rules on Public School Contracts	16 N.J.R. 3372(b)	R.1985 d.88	17 N.J.R. 584(a)
6:22	School facility planning services	17 N.J.R. 650(a)		
6:26-3	Readopt rules on Elementary School Summer Sessions	16 N.J.R. 2715(a)	R.1985 d.47	17 N.J.R. 422(a)
6:27-3	Readopt rules on Secondary School Summer Sessions	16 N.J.R. 2717(a)	R.1985 d.48	17 N.J.R. 423(a)
6:28-3.2, 3.6, 6.1, 6.3, 8.3	Special Education	17 N.J.R. 345(a)		
6:29-6.4	Athletics procedures	17 N.J.R. 659(a)		
6:29-7.1	Readopt Family Life Education Programs	16 N.J.R. 3377(a)	R.1985 d.185	17 N.J.R. 906(a)
6:31	Readopt Bilingual Education rules	16 N.J.R. 2721(a)	R.1985 d.46	17 N.J.R. 425(a)
6:68-2	Library assistance: readopt Incentive Grant Program rules	17 N.J.R. 346(a)		
6:70	Library network services	16 N.J.R. 3076(a)	R.1985 d.53	17 N.J.R. 428(a)
(TRANSMITTAL 27, dated January 21, 1985)				
ENVIRONMENTAL PROTECTION—TITLE 7				
7:1C-1	90-day construction permits	16 N.J.R. 3243(a)		
7:2-2.14, 3.4, 3.5	Use of State Park lands	17 N.J.R. 778(a)		
7:7F-1, 3	Shore Protection Program; local government grants	16 N.J.R. 2881(a)	R.1985 d.184	17 N.J.R. 907(a)
7:9-4, 5	Surface water quality and treatment of wastewater discharges	16 N.J.R. 3080(a)		
7:11-2.3, 2.5, 2.8-2.12	Delaware and Raritan Canal water supply system	17 N.J.R. 11(a)		
7:12	Shellfish-growing water classification	16 N.J.R. 3112(a)	R.1985 d.64	17 N.J.R. 433(a)
7:12-1.3, 1.4	Shellfish-growing water classifications	17 N.J.R. 661(a)		
7:12-2.1, 2.2, 2, 3, 2.4	Correction: Shellfish-growing water classification	16 N.J.R. 3379(a)	R.1985 d.64	17 N.J.R. 433(a)
7:13-1.4, 4.7, 5.2, 5.4	Flood hazard area control	16 N.J.R. 2193(a)	R.1985 d.24	17 N.J.R. 275(b)
7:13-1.11(c)27	Floodways along Pequest River in Sussex and Warren counties	16 N.J.R. 1306(a)		
7:13-1.11(d)49	Floodway delineations in Union County	16 N.J.R. 1146(a)		
7:13-1.11(d)51	Floodways along North Branch Raritan (Project U)	16 N.J.R. 1307(a)		
7:13-7.1(c)17	Redelineation of Delaware River in Harmony Township, Warren County	17 N.J.R. 151(a)		
7:13-7.1(c)30	Floodway delineation along Paulins Kill	16 N.J.R. 2397(a)		
7:13-7.1	Paulins kill floodway delineation: public hearing	16 N.J.R. 2885(a)		
7:13-7.1(d)50	Floodway delineation along North Branch Foulerton's Brook	16 N.J.R. 2398(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:13-7.1(d)52	Supplemental Project I floodway delineations in the Passaic River Basin	16 N.J.R. 1865(b)	R.1985 d.130	17 N.J.R. 687(b)
7:14A-1.8	Fee schedule for NJPDES permits and applicants	17 N.J.R. 13(a)		
7:19-5	Small water company takeover	16 N.J.R. 3380(a)	R.1985 d.182	17 N.J.R. 910(a)
7:19-6	Water Supply Management Act Rules	16 N.J.R. 2399(a)	R.1985 d.133	17 N.J.R. 687(c)
7:19A	Emergency Water Supply Allocation Plan rules	16 N.J.R. 308(a)	R.1985 d.67	17 N.J.R. 438(a)
7:19B	Emergency Water Surcharge Schedule	16 N.J.R. 314(a)	R.1985 d.67	17 N.J.R. 438(a)
7:20	Dam Safety Standards	16 N.J.R. 790(a)		
7:25-2	Readopt rules on Use of Land and Water Areas under DEP control	16 N.J.R. 1309(a)		
7:25-4.2, 4.14, 4.17	Possession of endangered and nongame species	17 N.J.R. 516(a)		
7:25-4.13, 4.17	Status of the osprey	17 N.J.R. 350(a)		
7:25-7.10, 7.11	Taking of oysters and mussels	16 N.J.R. 3385(a)		
7:25-7.13	Crab dredging in Atlantic coast section	16 N.J.R. 3216(a)	R.1985 d.131	17 N.J.R. 697(a)
7:25-12.1	Preservation of sea clams	16 N.J.R. 2885(b)	R.1985 d.132	17 N.J.R. 698(a)
7:25-16.1	Readopt freshwater fishing license lines	16 N.J.R. 2044(a)		
7:25-22.2	Purse seine fishing of menhaden	16 N.J.R. 1668(a)		
7:25-23	Permit to kill wild deer	17 N.J.R. 350(b)		
7:25A	Oyster management	17 N.J.R. 352(a)		
7:26	Solid and hazardous waste collector-haulers: Disclosure Statement Forms	16 N.J.R. 1425(a)		
7:26-1.4, 2.6, 2.10, 2.13, 3.5	Disposal of asbestos waste	16 N.J.R. 440(a)	R.1985 d.65	17 N.J.R. 446(a)
7:26-6.5	Solid waste flow: Atlantic County	17 N.J.R. 517(a)		
7:26-6.5	Solid waste flow: Hunterdon County	17 N.J.R. 517(b)		
7:26-7.4, 8.3, 8.15, 9.2, 10.6, 10.8	Restriction of land disposal of hazardous waste	17 N.J.R. 779(a)		
7:26-8.13, 8.16	Hazardous waste from non-specific sources; hazardous constituents	17 N.J.R. 354(a)		
7:26-8.13	Correction: Hazardous waste from non-specific sources			17 N.J.R. 842(b)
7:26-8.15	Hazardous waste management: warfarin and zinc phosphide	17 N.J.R. 356(a)		
7:26-9.10, 9.11, App. A.	Hazardous waste facilities: closure letters of credit	17 N.J.R. 241(a)		
7:26-10.5	Tank storage containment requirements	17 N.J.R. 152(a)		
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	Air quality standards: State Implementation Plan for lead	16 N.J.R. 1669(a)		
7:27-8	Air pollution control: permits and certificates	16 N.J.R. 1671(a)	R.1985 d.96	17 N.J.R. 587(a)
7:27-13.1, 13.2, 13.5-13.8	Ambient air quality standards	16 N.J.R. 1676(a)		
7:27-14.3	Diesel-powered motor vehicles: idle standard	16 N.J.R. 2887		
7:27-15.4	Air pollution and gas-fueled motor vehicles	17 N.J.R. 781(a)		
7:27-15.6	Gas-fueled motor vehicle: idle standard	16 N.J.R. 2889		
7:27-18.1, 18.2, 18.3, 18.4, 18.7	Air pollution control: emission offset rules	16 N.J.R. 1679(a)	R.1985 d.25	17 N.J.R. 277(a)
7:27B-4.6	Air pollution and gas-fueled motor vehicles	17 N.J.R. 781(a)		
7:28-24	Readopt Nuclear Medicine Technology rules	17 N.J.R. 22(a)	R.1985 d.140	17 N.J.R. 699(a)
7:29-1.1-1.5	Noise control	16 N.J.R. 1682(a)	R.1985 d.129	17 N.J.R. 699(b)
7:29-1.1-1.5	Noise control: extension of comment period	16 N.J.R. 2405(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:30	Pesticide Control Code	17 N.J.R. 242(b)		
7:36	Green Acres Program	16 N.J.R. 2405(b)		
(TRANSMITTAL 27, dated January 21, 1985)				
HEALTH—TITLE 8				
8:20-1	Birth Defects Registry	16 N.J.R. 3118(a)	R.1985 d.92	17 N.J.R. 591(a)
8:21-2.40	Baby foods and ethylene dibromide level	16 N.J.R. 2897(a)	R.1985 d.42	17 N.J.R. 449(a)
8:21A	Good drug manufacturing practices	16 N.J.R. 3248(a)	R.1985 d.141	17 N.J.R. 815(a)
8:21A-2.55	Drug manufacturing: medical gas lot or control numbers	16 N.J.R. 1685(a)		
8:31-26.3, 26.4	Health care facilities: employee physicals; child abuse	16 N.J.R. 3249(a)		
8:31-26.5	Health care facilities: licensure fees	17 N.J.R. 664(a)		
8:31A	Readopt SHARE Guidelines	16 N.J.R. 2898(a)	R.1985 d.121	17 N.J.R. 702(a)
8:31B-2, 3, 4	Hospital Rate Setting rules: temporary waiver of expiration	16 N.J.R. 2733(a)		
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	16 N.J.R. 2848(b)		
8:31B-3.23	Correction: Hospital reimbursement	16 N.J.R. 2733(b)		
8:31B-3.23, 3.24, 3.43, 3.75	Hospital rate setting; outpatient dialysis reimbursement hospital-based physician costs	16 N.J.R. 669(a)		
8:31B-3.26, App. II	Hospital reimbursement: economic factor	17 N.J.R. 153(a)	R.1985 d.189	17 N.J.R. 914(a)
8:31B-5.2	Diagnosis Related Groups: outliers	16 N.J.R. 3119(a)	R.1985 d.122	17 N.J.R. 704(a)
8:33A-1.1	New and expanded surgical services: deferral of need applications	16 N.J.R. 2734(a)		
8:33A-2	Surgical facilities: planning and need review	17 N.J.R. 154(a)	R.1985 d.188	17 N.J.R. 915(a)
8:33E-2	Cardiac surgical centers	16 N.J.R. 3120(a)	R.1985 d.28	17 N.J.R. 281(a)
8:33E-2.1-2.5, 2.10, 2.12, 2.13	Cardiac surgical centers: need review	16 N.J.R. 2196(a)		
8:33F	Renal Disease Services: readopt Planning and Certification rules	16 N.J.R. 3124(a)	R.1985 d.29	17 N.J.R. 284(a)
8:39-2.1	All health care facilities: certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.26	17 N.J.R. 285(a)
8:35	Repeal (see 8:43B-8)	16 N.J.R. 188(a)	R.1985 d.30	17 N.J.R. 285(c)
8:40	Licensure of invalid coach and ambulance services	16 N.J.R. 3127(a)	R.1985 d.192	17 N.J.R. 919(a)
8:42-1	Home health agencies: readopt licensure standards	16 N.J.R. 3250(a)	R.1985 d.117	17 N.J.R. 704(b)
8:42-1.2	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.118	17 N.J.R. 705(a)
8:42A-2.1	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.26	17 N.J.R. 285(a)
8:42B-2.1	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.26	17 N.J.R. 285(a)
8:43-1.5	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.26	17 N.J.R. 285(a)
8:43A	Licensure of ambulatory care facilities	16 N.J.R. 3254(a)		
8:43A-1.3	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.26	17 N.J.R. 285(a)
8:43B-1	Licensure of hospital facilities	16 N.J.R. 3275(a)	R.1985 d.115	17 N.J.R. 705(b)
8:43B-1.7	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.116	17 N.J.R. 705(c)
8:43B-1.14	Hospital facilities: psychiatric patient rights	17 N.J.R. 665(a)		
8:43B-6	Hospital facilities: readopt Medical Staff rules	16 N.J.R. 3152(a)	R.1985 d.27	17 N.J.R. 285(b)
8:43B-8	Hospital licensure: obstetric and newborn services	16 N.J.R. 188(a)	R.1985 d.30	17 N.J.R. 285(c)
8:43B-8.33-8.44	Newborn care services: physical plant standards	17 N.J.R. 519(a)		
8:43F	Medical day care facilities: readopt licensure standards	16 N.J.R. 3277(a)	R.1985 d.120	17 N.J.R. 706(a)
8:43F-2.1	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.119	17 N.J.R. 706(b)
8:45	Clinical laboratory services	17 N.J.R. 268(a)		
8:57-1	Readopt Reportable Diseases rules	17 N.J.R. 784(a)		
8:57-4.15	Immunization of school children: mumps vaccine	17 N.J.R. 358(a)		

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8:57-4.16	Emergency Powers of Commissioner	17 N.J.R. 483(a)	R.1985 d.195	17 N.J.R. 955(a)
8:60-1-5, 7	Asbestos licenses and permits	17 N.J.R. 788(a)		
8:60-2, 6	Asbestos training courses	Emergency	R.1985 d.144	17 N.J.R. 741(a)
8:65-5	Controlled dangerous substances: records and reports of registrants	17 N.J.R. 524(a)		
8:65-6	Controlled dangerous substances: Federally-required order forms	17 N.J.R. 528(a)		
8:65-10.1, 10.2	Controlled dangerous substances: rescheduling of Sufentanil	16 N.J.R. 2900(a)	R.1985 d.83	17 N.J.R. 592(a)
8:65-10.4	Controlled dangerous substances: add Triazolam to Schedule IV	16 N.J.R. 2901(a)	R.1985 d.191	17 N.J.R. 956(a)
8:65-10.4	Controlled dangerous substances: additions to Schedule IV	16 N.J.R. 3390(a)	R.1985 d.190	17 N.J.R. 957(a)
8:65-10.8	Controlled dangerous substances: exempt chemicals	16 N.J.R. 3280(a)	R.1985 d.84	17 N.J.R. 592(b)
8:65-11.2	Narcotic treatment programs: registration fee	17 N.J.R. 359(a)		
8:71	Generic drug list additions (see 16 N.J.R. 2672(b), 17 N.J.R. 200(b))	16 N.J.R. 1436(a)	R.1985 d.170	17 N.J.R. 957(b)
8:71	Generic drug list additions (see 17 N.J.R. 201(a))	16 N.J.R. 2483(a)	R.1985 d.171	17 N.J.R. 957(c)
8:71	Additions to generic drug list	17 N.J.R. 158(a)		

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HIGHER EDUCATION—TITLE 9

9:2-1, 2, 3, 8, 9	Repeal (See 9:6)	16 N.J.R. 2209(a)		
9:2-4, 5, 6, 7, 12, 13	Readopt Administrative Policies for colleges and universities	16 N.J.R. 2216(a)		
9:2-11	Recodify as 9:7-7	16 N.J.R. 2218(a)		
9:2-12.2	Teacher education: curriculum	17 N.J.R. 22(b)		
9:6	State College: policies and standards	16 N.J.R. 2209(a)		
9:6-1.2, 3.1, 3.4, 3.5, 3.6, 3.11, 4.4, 4.7, 5.2, 5.13	State Colleges: policies and standards	17 N.J.R. 160(a)		
9:7-2.4, 2.9	Student assistance programs: eligibility; award combinations	17 N.J.R. 787(a)		
9:7-3.1	Tuition Aid Grant Award Tables	17 N.J.R. 23(a)	R. 1985 d.155	17 N.J.R. 815(b)
9:7-4.1, 4.7, 4.8	Distinguished Scholars Program	17 N.J.R. 787(b)		
9:7-4.2	Garden State Scholars: award amounts	16 N.J.R. 3281(a)	R. 1985 d.153	17 N.J.R. 816(a)
9:7-5.1, 5.4, 5.10	Public Tuition Benefits Program	17 N.J.R. 24(a)	R. 1985 d.156	17 N.J.R. 816(b)
9:7-7	Readopt Veteran's Tuition Credit Program	16 N.J.R. 2218(a)		
9:9-1.6	Student loan applications: prohibited fee	16 N.J.R. 3281(b)		
9:9-1.16	Defaulted student loans: interest liability	16 N.J.R. 1012(a)		
9:9-9.2	PLUS Program: direct loan prerequisites	16 N.J.R. 1012(b)		
9:14	Readopt Independent College and University Assistance rules	17 N.J.R. 25(a)		

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HUMAN SERVICES—TITLE 10

10:44A-1.1-1.5, 2.2, 2.4, 3.1, 3.3, 4.3, 5.2, 9	Community residences for developmentally disabled: Supportive Living Programs	16 N.J.R. 1438(a)		
10:44B	Skill development homes and family-based respite care homes	17 N.J.R. 359(b)	R.1985 d.181	17 N.J.R. 958(a)
10:47	Private Licensed Facilities for Developmentally Disabled	16 N.J.R. 2902(a)		
10:49-1	Administration Manual: readopt General Provisions	17 N.J.R. 532(a)		
10:49-1.1	Medicaid eligibility	16 N.J.R. 2219(a)		

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10:49-1.7	Administration Manual: utilization of insurance benefits	16 N.J.R. 1933(a)	R.1985 d.7	17 N.J.R. 309(a)
10:49-1.27	Long-term care facilities: completion of field audit	16 N.J.R. 2413(a)	R.1985 d.177	17 N.J.R. 966(a)
10:52-1.1, 1.20	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:52-1.2, 1.3	Covered and non-covered inpatient hospital services	16 N.J.R. 483(a)	R.1985 d.87	17 N.J.R. 593(a)
10:52-2	Hospital Services: readopt Admission and Billing Procedures	16 N.J.R. 3159(a)	R.1985 d.56	17 N.J.R. 451(a)
10:53-1.1, 1.16	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:53-1.2, 1.3	Covered and non-covered inpatient hospital services	16 N.J.R. 483(a)	R.1985 d.87	17 N.J.R. 593(a)
10:53-2	Special Hospital Services: admission and billing	17 N.J.R. 544(a)		
10:54-1.3	Progress notes for mental health providers	16 N.J.R. 2333(a)	R.1985 d.52	17 N.J.R. 452(a)
10:54-3	Preproposal: radioimmunoassay laboratory fees	16 N.J.R. 677(a)		
10:54-3	Procedure Code Manual: immunizations	17 N.J.R. 546(a)		
10:55-1	Prosthetic and orthotic services	17 N.J.R. 26(a)	R.1985 d.152	17 N.J.R. 817(a)
10:55-1.5, 1.8, 3.1	Shoes and shoe appliances: provider reimbursement	17 N.J.R. 162(a)	R.1985 d.167	17 N.J.R. 967(a)
10:56-1.11	Dental Services: utilization of insurance benefits	16 N.J.R. 1933(a)	R.1985 d.7	17 N.J.R. 309(a)
10:59-1.2, 1.4, 1.9, 1.12	Medical Supplier Manual: recycling of durable medical equipment	16 N.J.R. 2048(a)		
10:60	Readopt Home Care Services Manual	17 N.J.R. 28(a)		
10:60-3	Community Care Waiver Program for Elderly and Disabled	16 N.J.R. 3161(a)		
10:61-1.2	Medicaid participation by State, county and municipal labs	16 N.J.R. 3162(a)		
10:63-1.6	Changes in level of long-term care	16 N.J.R. 2049(a)		
10:63-1.22	Long-term care facilities: completion of field audit	16 N.J.R. 2413(a)	R.1985 d.177	17 N.J.R. 966(a)
10:66-1.1, 1.2, 1.3, 1.6, 1.7, 1.9	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:66-1.9	Progress notes for mental health providers	16 N.J.R. 2333(a)	R.1985 d.52	17 N.J.R. 452(a)
10:67-1, 2.6	Readopt Psychologist's Services Manual	16 N.J.R. 3163(a)	R.1985 d.114	17 N.J.R. 706(c)
10:67-1.6	Progress notes for mental health providers	16 N.J.R. 2333(a)	R.1985 d.52	17 N.J.R. 452(a)
10:69A-1.2, 2.1, 5.3, 5.6, 6.1, 6.4, 6.6, 6.10, 6.11	Pharmaceutical Assistance for Aged and Disabled	17 N.J.R. 367(a)		
10:81-3.9, 3.17, 3.40	PAM: support rights; continued absence	16 N.J.R. 3282(a)	R.1985 d.99	17 N.J.R. 594(a)
10:81-3.34	PAM: temporary absence of children from home	17 N.J.R. 163(a)		
10:81-11.1, 11.4, 11.12	PAM: continuing IV-D services for families that lose AFDC	17 N.J.R. 164(a)		
10:81-11.7, 11.9	PAM: child support and health benefits	17 N.J.R. 165(a)		
10:81-11.9	PAM: reimbursement by counties to State	17 N.J.R. 369(a)		
10:82-2.2	ASH: initial grant computation	17 N.J.R. 546(b)		
10:82-2.19	ASH: recovery of overpayments	16 N.J.R. 2055(a)		
10:82-3.1-3.7	ASH: resource eligibility in AFDC	16 N.J.R. 486(a)	Expired	
10:85-3.1	GAM: household size	17 N.J.R. 37(a)	R.1985 d.168	17 N.J.R. 968(a)
10:85-3.2	GAM: determination of unemployability	17 N.J.R. 547(a)		
10:85-3.2, 10.6	GAM: willingness to work and penalty period	16 N.J.R. 2741(a)		
10:85-3.3	GAM: monthly assistance payment for residential health care	16 N.J.R. 2742(a)		
10:85-3.3	General Assistance rate in residential health care facilities	_____	_____	17 N.J.R. 48(a)
10:85-3.3, 12	GAM: medical care eligibility; repeal income standards rules	16 N.J.R. 3165(a)	R.1985 d.81	17 N.J.R. 595(a)

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10:85-3.4	GAM: suits and claims	17 N.J.R. 548(a)		
10:85-8	GAM: readopt Referral to Other Agency Programs	16 N.J.R. 3166(a)	R.1985 d.80	17 N.J.R. 596(a)
10:85-App. A	Expiration of List of Forms			17 N.J.R. 616(a)
10:87-1.14	Food Stamps: release of case file information	17 N.J.R. 166(a)	R.1985 d.179	17 N.J.R. 968(b)
10:87-2.16, 2.17, 8.2	Food Stamps: quality control case review	17 N.J.R. 167(a)	R.1985 d.180	17 N.J.R. 969(a)
10:87-2.19, 3.17-3.20	Food Stamp Program: work registration and voluntary quit		R.1985 d.145	17 N.J.R. 818(a)
10:87-5.7	Food Stamp Program: treatment of moneys used to repay overpayments	Emergency	R.1985 d.178	17 N.J.R. 986(a)
10:89-1.1, 2.2, 2.3, 3.1-3.6, 4.1, 5.3	Home Energy Assistance	16 N.J.R. 3217(a)	R.1985 d.5	17 N.J.R. 310(a)
10:94-3.16	Medicaid district offices	17 N.J.R. 38(a)		
10:94-5.6	Medicaid Only: health insurance premiums	17 N.J.R. 39(a)	R.1985 d.169	17 N.J.R. 969(b)
10:99	Commodities and Services Council: Rehabilitation Facilities	16 N.J.R. 2338(a)	R.1985 d.55	17 N.J.R. 453(a)
10:122-2.3, 2.6, 3.2, 3.3, 4.1, 4.3, 4.6, 6.8, 6.9	Child care centers	17 N.J.R. 548(b)		
10:123-3.2	Residential health care: personal needs allowance	17 N.J.R. 39(b)	R.1985 d.134	17 N.J.R. 707(a)

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CORRECTIONS—TITLE 10A

10A:31	Adult county correctional facilities	16 N.J.R. 3284(a)	R.1985 d.17	17 N.J.R. 312(a)
10A:32	County juvenile detention centers	17 N.J.R. 40(a)	R.1985 d.97	17 N.J.R. 598(a)
10A:71	State Parole Board rules	16 N.J.R. 3391(a)		

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INSURANCE—TITLE 11

11:1-2.5-2.8	Property-liability: rate counsel participation	16 N.J.R. 2918(a)		
11:1-10	Repeal rules on Licensing of Financial Institutions, Subsidiaries and Affiliates	16 N.J.R. 2919(a)	R.1985 d.69	17 N.J.R. 458(b)
11:1-16	Request for rate decrease	16 N.J.R. 3169(a)		
11:1-18	Approval of business names	17 N.J.R. 41(a)		
11:1-19	Uniform registration of branch offices	17 N.J.R. 42(a)		
11:2-10.1	Repeal Personal Lines Insurance rule	16 N.J.R. 2920(a)	R.1985 d.71	17 N.J.R. 458(a)
11:2-19	Approval of insurance schools and company training programs	16 N.J.R. 2920(b)		
11:2-20	License renewal: continuing education requirement	16 N.J.R. 2922(a)		
11:2-21	Property and casualty coverage: underwriting guidelines	16 N.J.R. 2924(a)		
11:2-23	Advertisement of life insurance and annuities	16 N.J.R. 2926(a)		
11:3-7	Automobile Reparation Reform Act rules: 90-day waiver of expiration	16 N.J.R. 2414(a)		
11:3-7	Automobile Reparation Reform Act rules	16 N.J.R. 3417(a)		
11:3-7	Readopt Automobile Reparation Reform Act rules	17 N.J.R. 43(a)	R.1985 d.109	17 N.J.R. 707(b)
11:3-7.8, 7.9	PIP premium on additional automobiles	16 N.J.R. 488(a)	Expired	
11:3-8	Nonrenewal of auto insurance policies	16 N.J.R. 2930(a)		
11:3-10	Auto physical damage claims	16 N.J.R. 3170(a)		
11:3-11.1	Moped insurance	16 N.J.R. 3285(a)	R.1985 d.72	17 N.J.R. 458(c)
11:3-16	Private passenger automobile rate filings	16 N.J.R. 2934(a)		
11:3-17	Automobile rate filings	16 N.J.R. 2936(a)		
11:3-18	Filing review procedures	16 N.J.R. 2937(a)		
11:3-20	Reporting excess profits	17 N.J.R. 370(a)		

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11:3-21	Reduced PIP premium charges	16 N.J.R. 3286(a)		
11:4-8	Charitable annuities	16 N.J.R. 3172(a)	R.1985 d.94	17 N.J.R. 598(b)
11:4-9	Annuity and deposit fund disclosure	16 N.J.R. 2939(a)		
11:4-16, 17, 18	Readopt health insurance standards	17 N.J.R. 554(a)		
11:4-16.8	Medicare Supplement Coverage: disclosure standards	16 N.J.R. 2944(a)	R.1985 d.68	17 N.J.R. 459(a)
11:4-20	Insuring of handicapped	17 N.J.R. 168(a)	R.1985 d.161	17 N.J.R. 820(a)
11:4-23	Medicare Supplement Policies and Contracts	16 N.J.R. 2945(a)	R.1985 d.70	17 N.J.R. 460(a)
11:4-25	Social security disability offset	16 N.J.R. 3287(a)		
11:5-1.15, 1.25	Advertising of real estate; sale of interstate property	17 N.J.R. 666(a)		
11:5-1.19	Real estate branch offices	16 N.J.R. 2228(a)	R.1985 d.187	17 N.J.R. 970(a)
11:5-1.24	Closing or transfer of real estate brokerage	16 N.J.R. 2228(b)	R.1985 d.186	17 N.J.R. 970(b)
11:5-1.28	Approved real estate schools: requirements	17 N.J.R. 376(a)		
11:5-1.32	Residential rental referral agencies	16 N.J.R. 2952(a)	R.1985 d.93	17 N.J.R. 600(a)
11:10-1	Dental plan organizations	16 N.J.R. 2230(a)		
11:10-2	Employees' dental benefit plans	17 N.J.R. 45(a)		
11:14-1.3, 2.1, 2.4, 3.1, 3.3, 4.1, 4.2	Auto body repair facilities	16 N.J.R. 2235(a)		
11:15-2.15	Payment of joint fund assessments by local governments	17 N.J.R. 218(a)	R.1985 d.128	17 N.J.R. 709(a)
11:16	Provider verification of services	17 N.J.R. 47(a)		
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12:15-1.1	Unemployment Compensation: contributions, records and reports	16 N.J.R. 2488(b)		
12:16	Contributions, records, reports	16 N.J.R. 2488(b)	R.1985 d.147	17 N.J.R. 820(b)
12:19	Contributions, records, reports	16 N.J.R. 2488(b)	R.1985 d.147	17 N.J.R. 820(b)
12:120-1-5, 7	Asbestos licenses and permits	17 N.J.R. 788(a)		
12:120-2, 6	Asbestos training courses	Emergency	R.1985 d.144	17 N.J.R. 741(a)
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12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1984 d.421	16 N.J.R. 2683(a)
LAW AND PUBLIC SAFETY—TITLE 13				
13:1-4.6	Police Training Commission: radar instructor certification	17 N.J.R. 377(a)		
13:2-23.16, -24, -35	ABC preproposal: industry marketing and sales practices	16 N.J.R. 3292(a)		
13:2-33	ABC: readopt Brand Registration rules	17 N.J.R. 794(a)		
13:13	Discrimination against handicapped persons	16 N.J.R. 838(a)		
13:13	Discrimination against handicapped persons	17 N.J.R. 671(a)		
13:18-6.1	DMV: notification of liability coverage termination	16 N.J.R. 3174(a)	R.1985 d.162	17 N.J.R. 831(a)
13:19-10	Point System and Driving During Suspension: 25-day waiver of expiration of rules	16 N.J.R. 502(a)	Expired	
13:20-26.5, 26.12, 26.16	State inspection of certain trucks and truck tractors	17 N.J.R. 270(a)	R.1985 d.174	17 N.J.R. 971(a)
13:20-32.16	Motor vehicle reinspection centers	17 N.J.R. 676(a)		
13:20-33.1, 33.50	Licensed reinspection centers	16 N.J.R. 3288(a)	R.1985 d.20	17 N.J.R. 313(a)
13:20-34	Motor vehicle registration identifying marks	16 N.J.R. 2743(a)	R.1985 d.101	17 N.J.R. 601(a)
13:20-37	Motor vehicles with modified chassis height	16 N.J.R. 2501(a)	R.1985 d.100	17 N.J.R. 603(a)
13:20-38	Maximum length for auto transporters	16 N.J.R. 3176(a)	R.1985 d.23	17 N.J.R. 313(b)
13:21-1.3, 1.4, 1.5	Driver's licenses and social security numbers	16 N.J.R. 2746(a)		
13:21-4.1	Readopt rules on Motor Vehicle Titles	17 N.J.R. 377(b)		

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13:21-14 13:21-15.6	Readopt rules on licensing of bus drivers Auto dealers: acceptance of altered title documents	17 N.J.R. 556(a) 17 N.J.R. 169(a)		
13:25-3.15, 3.16, 3.17 13:27-3.13	Motorized bicycle operator license Certification of landscape architects: fee schedule	17 N.J.R. 48(a) 16 N.J.R. 3176(b)	R.1985 d.112 R.1985 d.22	17 N.J.R. 709(b) 17 N.J.R. 313(c)
13:27-8 13:28-1 13:28-2	Certified landscape architects Readopt Beauty Culture Industry rules Readopt rules on Beauty Culture Schools	17 N.J.R. 169(b) 17 N.J.R. 49(a) 17 N.J.R. 172(a)	R.1985 d.163 R.1985 d.139 R.1985 d.160	17 N.J.R. 833(a) 17 N.J.R. 709(c) 17 N.J.R. 835(a)
13:29-1.1-1.6, 1.8-1.12 13:29-2.1, 2.2, 2.3 13:29-3	Board of Accountancy general rules Registered municipal accountants Accountancy: readopt rules of professional conduct	17 N.J.R. 557(a) 17 N.J.R. 559(a) 16 N.J.R. 3418(a)		
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